

OTHER AGENCIES

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Scope of Negotiations Proceedings

Proposed Readoption: N.J.A.C. 19:13

Authorized By: Public Employment Relations Commission, Mary E. Hennessy-Shotter, Chair.

Authority: N.J.S.A. 34:13A-5.4.d, 34:13A-11, and 34:13A-27.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2025-072.

Submit comments by September 5, 2025, to:

Mary E. Hennessy-Shotter, Chair

Public Employment Relations Commission

PO Box 429

Trenton, New Jersey 08625-0429

Comments may also be submitted through email at rulecomments@perc.nj.gov.

The agency proposal follows:

Summary

In accordance with N.J.S.A. 52:14B-5.1, the Public Employment Relations Commission (Commission) proposes to readopt the rules at N.J.A.C. 19:13, which were scheduled to expire on May 31, 2025. As the Commission submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to November 27, 2025, pursuant to N.J.S.A. 52:14B-5.1.c(2). The rules at N.J.A.C. 19:13 regulate the processing of petitions for scope of negotiations determinations filed pursuant to N.J.S.A. 34:13A-5.4.d; describe the nature of scope of negotiations proceedings and the limits of the

Commission's jurisdiction; provide who may file and list the required contents of a scope of negotiations petition; and describe the steps in the processing of scope of negotiations petitions, including the filing of briefs, required supporting documentation, conferences, hearings, oral arguments, amendments, withdrawals, and dismissals, interim relief, final determination, and reconsideration. These rules proposed for readoption have worked well and enabled smooth processing of the Commission's scope of negotiations cases for many years, so no amendments are proposed. The Commission has reviewed these rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required pursuant to Executive Order No. 66 (1978).

N.J.A.C. 19:13 sets forth three subchapters. Subchapter 1 sets forth the nature of scope of negotiations proceedings, which are intended to resolve disputes over negotiability and legal arbitrability without protracted administrative proceedings. Additionally, Subchapter 1 sets forth the limits of the Commission's scope of negotiations jurisdiction, providing that with respect to disputes concerning the legal arbitrability of a grievance sought to be submitted to binding arbitration, the merits of the grievance are not within the Commission's jurisdiction.

Subchapter 2 provides that a petition for scope of negotiations determination may be filed by a public employer or an exclusive public employee representative. N.J.A.C. 19:13-2.2 describes the required contents of a petition for scope of negotiations determination, including a certification, names, addresses, and an explanation of the matters in dispute, including the pertinent facts and the context in which the dispute arose. The rules proposed for readoption also require that petitions resulting from the withholding of an increment of a teaching staff member be accompanied by a copy of the statement of reasons issued to the teaching staff member at the time the increment was withheld; have the petition list any other actions that the petitioner knows

about that involve the same or a related dispute, before the Commission or any other administrative agency, arbitrator, or court; and, consistent with current law and practice, advise that the filing of a petition shall not stay the conduct of a grievance arbitration hearing, unless otherwise ordered by the Commission.

Subchapter 3 sets forth the scope of negotiations procedures. The subchapter sets forth that, in cases where a petition to initiate compulsory interest arbitration has been filed, the Commission will suspend the processing of any scope of negotiations petition involving issues in dispute in the interest arbitration proceeding. This subchapter sets forth the situations in which the Commission will resume the processing of the scope of negotiations case either as part of an appeal of an interest arbitration award that includes the disputed issue, or where the parties have agreed to settle the terms of a successor collective negotiations agreement, but seek a decision on issue(s) that were asserted to be non-negotiable in the scope of negotiations petition. Subchapter 3 further provides procedures for: motions to intervene in scope of negotiations cases; informal conferences to clarify issues in dispute, the possibility of settlement, or stipulations of fact; and how a petition may be amended, withdrawn, or dismissed.

N.J.A.C. 19:13-3.6 sets the schedule for filing a petitioner's brief, a respondent's brief, and a petitioner's reply brief, and the procedure for requesting extensions of time. The rule governs the required contents of briefs, which shall: recite all pertinent facts supported by certification(s) based upon personal knowledge; cite all pertinent statutes, regulations, and cases and, where the brief exceeds 20 pages in length, include a Table of Authorities; apply all relevant negotiability tests and precedents to the particular facts of the dispute; and include an appendix with all pertinent documents not previously filed.

N.J.A.C. 19:13-3.7, 3.8, and 3.9 govern the procedures for filing a request for an evidentiary hearing, holding an evidentiary hearing, filing a request for oral argument before the Commission, and how oral arguments will be conducted.

N.J.A.C. 19:13-3.10 describes the manner in which the Commission shall issue and serve its final determination, including its findings of fact and conclusions of law.

N.J.A.C. 19:13-3.11 provides that a petitioner may file an application for interim relief while the case is pending before the Commission, in accordance with the provisions applicable to interim relief in unfair practice cases, N.J.A.C. 19:14-9.

N.J.A.C. 19:13-3.12 governs the filing of motions for reconsideration of the Commission's decision, providing that they must be filed within 15 days after service of the Commission decision and that the movant shall specify and bear the burden of establishing the extraordinary circumstances and reasons of special importance warranting reconsideration.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption are necessary to allow the Commission to continue to carry out its statutory mandate to resolve questions concerning the representation of public employees in units appropriate for collective negotiations. The rules proposed for readoption would help representation cases proceed smoothly and, thus, effectuate the New Jersey Employer-Employee Relations Act's purposes concerning the right to seek representation.

Economic Impact

The rules proposed for readoption will have no discernible economic impact on the public. The rules proposed for readoption simply outline the procedures for resolving disputes over the scope of collective negotiations pursuant to the New Jersey Employer-Employee Relations Act.

Federal Standards Statement

The National Labor Relations Act excludes from its coverage “any State or political subdivision thereof.” 29 U.S.C. § 152(2). Thus, no Federal law, rule, or regulation applies to the subject matter of the rules proposed for readoption. As there is no comparable Federal rule or standard upon which the Commission can rely to achieve the aim of the New Jersey Employer-Employee Relations Act, the rules proposed for readoption are necessary.

Jobs Impact

The Commission does not expect that any jobs will be generated or lost as a result of the rules proposed for readoption.

Agriculture Industry Impact

The Commission’s jurisdiction is limited to employer-employee relations in public employment. The rules proposed for readoption impose no requirements on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption impose no reporting, recordkeeping, or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Commission’s jurisdiction is limited to employer-employee relations in public employment. Therefore, a regulatory flexibility analysis is not necessary.

Housing Affordability Impact Analysis

The rules proposed for readoption would not have an impact on the average costs associated with housing or on the affordability of housing because the rules proposed for readoption are designed to resolve questions concerning the scope of negotiations and arbitrability in disputes between public employers and the exclusive majority representatives of public employees.

Smart Growth Development Impact Analysis

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules proposed for readoption would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption are designed to resolve questions concerning the scope of negotiations and arbitrability in disputes between public employers and the exclusive majority representatives of public employees.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The rules proposed for readoption will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:13.