
Recent Case Law & Policy Developments -- 2001

Public Employment Relations Commission

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What follows is an overview of Commission case law since the May 2000 Annual Conference.

Discrimination and Protected Rights
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The New Jersey Employer-Employee Relations Act prohibits discrimination to encourage or discourage union activity protected by the Act, and interference with protected rights. An employer violated the Act when it filed disciplinary charges against the union president alone for an action he took at the direction of the union membership. *Hillsborough Tp.*, P.E.R.C. No. 2000-82, 26 *NJPER* 207 (¶31085 2000), app. pending App. Div. Dkt. No. A-005281-99T3. The employer did not violate the Act when it initiated an investigation of the president based on another officer's complaint. *Ibid.*

An employer violated the Act when it reprimanded a sheriff's officer for submitting a safety complaint as a PBA delegate directly to the Sheriff rather than going through the chain of command. *Camden Cty. Sheriff,*

P.E.R.C. No. 2001-55, 27 *NJPER* __ (¶____ 2001). If the employer believed that the PBA should have followed some other procedure when raising safety concerns, it had a right to communicate that belief. But it did not have a legitimate reason to discipline the delegate as an employee for his actions on behalf of the PBA.

When acting as agents of the majority representative in investigatory interviews, union representatives are limited to assisting the employee rather than negotiating with the employer. Their representation cannot obstruct the employer's right to conduct such interviews. *State of New Jersey (Dept. of Treasury)*, P.E.R.C. No. 2001-51, 27 *NJPER* __ (¶____ 2001).

The Commission found illegal motivation in *Rutgers, the State Univ.*, P.E.R.C. No. 2001-38, 27 *NJPER* 91 (¶32034 2001) and held that the employer had discriminatorily demoted an employee during a trial period. The employer retaliated against the employee for exercising her right to use the

negotiated grievance procedure after being passed over for a promotion.

The Commission found no illegal motivation in *Burlington Cty.*, P.E.R.C. No. 2000-87, 26 *NJPER* 219 (¶31090 2000) (supervisor did not make anti-union statement leading to suspension); *Warren Cty. Prosecutor's Office*, P.E.R.C. No. 2000-88, 26 *NJPER* 223 (¶31091 2000) (termination not in retaliation for union activity); *Union Cty.*, P.E.R.C. No. 2001-4, 26 *NJPER* 359 (¶31143 2000) (charging party did not prove that employer was hostile toward her protected activity or that it retaliated against her for such activity); *State of New Jersey (Dept. of Human Services and Office of Employee Relations)*, P.E.R.C. No. 2001-14, 26 *NJPER* 427 (¶31167 2000) (supervisors did not threaten to reassign employee if she did not withdraw her grievance); *State of New Jersey (Dept. of Human Services)*, P.E.R.C. No. 2001-52, 27 *NJPER* ___ (¶_____ 2001) (shop steward was not engaged in protected activity when he yelled at one supervisor and intimidated another; reprimand for absences from work areas was not motivated by retaliation for protected activity).

Assignments, Duties, Work Schedules and Shift Selection

The Commission restrained arbitration of a grievance seeking to prevent an employer from using volunteers to perform any of the wide range of functions sheriff's officers perform. The union was seeking to arbitrate issues that did not relate solely to negotiable terms and conditions of employment. *Essex Cty. Sheriff's Dept.*, P.E.R.C. No. 2000-79, 26 *NJPER* 202 (¶31082 2000).

The Commission granted a request for a restraint of binding arbitration to the extent the grievance challenged the school district's right to have private security guards assigned to a school to provide after-school security services, where private security guards provided those services at those schools during the day. *Paterson State-Operated School Dist.*, P.E.R.C. No. 2001-42, 27 *NJPER* 99 (¶32038 2001), app. pending App. Div. Dkt. No. ___. The Commission, however, denied the request for a restraint to the extent the grievance challenged the termination of an evening overtime assignment for one district security guard and the use, instead, of a full-time private security guard, where the district security guard also worked during the day at

that school. The District had adopted a policy of continuity in security guard services.

The Commission found not legally arbitrable a grievance challenging the employer's decision to assign lieutenants to work on a regular and overtime basis to fill in for sergeants the employer believed were working too many overtime hours. *City of Jersey City*, P.E.R.C. No. 2001-32, 27 *NJPER* 30 (¶32016 2000), mot. for recon. pending.

Whether the contract ties overtime assignments to building seniority or district seniority is for the arbitrator to resolve. *Fairview Bd. of Ed.*, P.E.R.C. No. 2000-92, 26 *NJPER* 275 (¶31108 2000).

A proposal to increase the number of acting captains from three to five before a captain is called in on overtime may be permissively negotiable, but it is not mandatorily negotiable. *City of East Orange*, P.E.R.C. No. 2001-8, 26 *NJPER* 365 (¶31147 2000).

An employer cannot be forced to fill a temporarily vacant position. *City of Atlantic City*, P.E.R.C. No. 2001-56, 27 *NJPER* ____ (¶____ 2001).

A 24/72 work schedule for firefighters presents a mandatorily negotiable subject. A proposal for such a schedule can be submitted

to an interest arbitrator who must evaluate the parties' concerns in light of the public interest and all the statutory criteria present in the interest arbitration statute. *Town of Kearny*, P.E.R.C. No. 2001-58, 27 *NJPER* ____ (¶____ 2001); *City of Long Branch*, P.E.R.C. No. 2000-94, 26 *NJPER* 278 (¶31110 2000).

The Commission declined to restrain arbitration of a grievance contesting a change for police officers from steady to rotating shifts. *City of Egg Harbor City*, P.E.R.C. No. 2000-98, 26 *NJPER* 286 (¶31114 2000), recon. den. P.E.R.C. No. 2001-11, 26 *NJPER* 425 (¶31164 2000). The employer did not show any particularized governmental policy need to change work schedules in the middle of the contract rather than through the normal negotiations process.

An employer did not show any governmental policy need for placing caps on the number of shift exchanges a fire officer could make during a month and a year or unilaterally prohibiting employees from carrying over exchanges to the next year. *City of Passaic*, P.E.R.C. No. 2001-27, 27 *NJPER* 14 (¶32007 2000); *see also Town of Kearny*, P.E.R.C. No. 2001-58 (proposal to increase number of allowed shift swaps mandatorily

negotiable provided exchanges subject to chief's approval).

Length of service can be the deciding factor in transfers and reassignments when the employer has decided that all other factors are equal. *Winslow Tp. Bd. of Ed.*, P.E.R.C. No. 2000-95, 26 *NJPER* 280 (¶31111 2000).

The Commission restrained binding arbitration to the extent a grievance challenged the police chief's assessment of the relative qualifications of officers eligible for acting assignments. *Plainsboro Tp.*, P.E.R.C. No. 2001-36, 27 *NJPER* 43 (¶32022 2000). The Commission declined to restrain arbitration to the extent the grievance claimed that the employer breached the contract by not reviewing the grievants' qualifications before making those assignments.

The Commission restrained arbitration of a grievance challenging a directive that two teachers begin and end their work day earlier so they could perform student supervision duties. *Wood-Ridge Bd. of Ed.*, P.E.R.C. No. 2000-109, 26 *NJPER* 317 (¶31128 2000). However, the issues of release time and compensation for performing the duty, workload, and methods of selecting qualified staff to perform the duty could be arbitrated.

An arbitrator's remedy awarding employees compensation for an increase in the workday and his rescission of a 17-minute extension of the workday involved mandatorily negotiable subjects. *Passaic Bd. of Ed.*, P.E.R.C. No. 2001-54, 27 *NJPER* ___ (¶_____ 2001).

Proposals to require replacement of absent administrators and hiring of additional clerical employees to meet staff requirements were found to be not mandatorily negotiable. *State-Operated School Dist. of the City of Newark*, P.E.R.C. No. 2001-10, 26 *NJPER* 368 (¶31149 2000), app. pending App. Div. Dkt. No. A-006972-99T3. A proposal to provide a procedural opportunity for a supervisor to recommend that a vacancy be filled by a qualified employee was found to be mandatorily negotiable. *Ibid.*

The Commission dismissed an unfair practice charge challenging a change in a longstanding practice of scheduling half day sessions on the days before winter and spring recess. *Mountainside Bd. of Ed.*, P.E.R.C. No. 2001-29, 27 *NJPER* 17 (¶32009 2000). The Association was notified of the calendar change pursuant to a contractual notice provision and had ample opportunity to object

to the announced calendar change before it was adopted.

Job Security

A university could not be forced to negotiate over making tenure available to clinical faculty who did not have the requisite scholarship, but other forms of job security might be mandatorily negotiable. *Rutgers, the State Univ.*, P.E.R.C. No. 2000-83, 26 *NJPER* 209 (¶31086 2000).

A city had the right to abolish an EMT position and increase its Firefighter/EMT positions. *City of Gloucester City*, P.E.R.C. No. 2001-22, 27 *NJPER* 2 (¶32002 2000), app. pending App. Div. Dkt. No. A-001983-00T2. Permitting enforcement of an alleged agreement requiring the use of civilian EMTs would have substantially limited the governmental policymaking decision on how to deliver firefighter and EMT services.

Discipline

A civil service employee cannot contest a major disciplinary action through binding arbitration even if the employer fails to provide the employee with a Final Notice of Disciplinary Action. *City of Union City*,

P.E.R.C. No. 2000-84, 26 *NJPER* 213 (¶31087 2000). Major discipline in a civil service jurisdiction is not legally arbitrable even if the employer participated in the selection of the arbitrator and agreed to an arbitration date. *City of Union City*, P.E.R.C. No. 2000-89, 26 *NJPER* 271 (¶31105 2000), app. pending App. Div. Dkt. No. A-005151-99T3.

The suspension of a firefighter from working temporarily in a higher position was found to be a form of minor discipline subject to binding arbitration. *City of Atlantic City*, P.E.R.C. No. 2001-15, 26 *NJPER* 428 (¶31168 2000).

A reprimand of a police officer involves minor discipline that may be submitted to binding arbitration. *City of Cape May*, P.E.R.C. No. 2001-18, 26 *NJPER* 434 (¶31171 2000).

A schedule of penalties to be imposed for minor disciplinary infractions is mandatorily negotiable. Any grievance challenging the imposition of such a penalty would be legally arbitrable. *City of Passaic*, P.E.R.C. No. 2001-27, 27 *NJPER* 14 (¶32007 2000).

Comments on an evaluation could not be contested through binding arbitration given

the employer's commitment that the comments would not be viewed as a prior act of discipline in the event of a future disciplinary proceeding. *Manasquan Bd. of Ed.*, P.E.R.C. No. 2000-96, 26 *NJPER* 283 (¶31112 2000).

Prohibiting an administrator from writing a memorandum whenever an informal classroom visit does not last an entire period would significantly interfere with the ability of administrators to conduct such visits, evaluate instruction, and suggest improvements. *Woodstown-Pilesgrove Reg. Bd. of Ed.*, P.E.R.C. No. 2000-103, 26 *NJPER* 302 (¶21122 2000) (arbitration restrained).

The Commission restrained binding arbitration over two memoranda placed in a teacher's personnel file where the dispute focused on what instruction was appropriate for future classes, not on what punishment was warranted for past behavior. *Delran Bd. of Ed.*, P.E.R.C. No. 2001-43, 27 *NJPER* 101 (¶32039 2001).

Increment Withholdings

Withholding an increment is generally a form of discipline, but not all increment withholdings can go to binding arbitration. Since the 1990 amendments to the PERC Act, *N.J.S.A. 34:13A-22 et seq.*, the Commission

has been empowered to determine the proper forum for reviewing increment withholding disputes involving teaching staff members. *Scotch Plains-Fanwood Bd. of Ed.*, P.E.R.C. No. 91-67, 17 *NJPER* 144 (¶22057 1991), sets out the analysis the Commission uses in making such determinations.

Withholdings based predominately on the evaluation of teaching performance cannot be reviewed by an arbitrator and can only be reviewed by the Commissioner of Education. *Greater Egg Harbor Regional Bd. of Ed.*, P.E.R.C. No. 2000-85, 26 *NJPER* 214 (¶31088 2000) (reasons included need to improve communications with students, co-workers and parents; need to present a more positive atmosphere; inappropriate physical conduct during class time; and inappropriate language in class); *Salem City Bd. of Ed.*, P.E.R.C. No. 2001-3, 26 *NJPER* 357 (¶31142 2000) (cited reasons involve teaching performance; contention that withholding was pretext must be considered by Commissioner of Education).

Withholdings not based predominately on the evaluation of teaching performance may be reviewed by an arbitrator. *Franklin Tp. Bd. of Ed.*, P.E.R.C. No. 2000-90, 26 *NJPER* 272 (¶31106 2000) (withholding based on alleged

failure to comply with administrative directive to contact a parent); *Middlesex Bd. of Ed.*, P.E.R.C. No. 2000-86, 26 *NJPER* 217 (¶31089 2000) (alleged inability to perform due to absenteeism).

Transfers

N.J.S.A. 34:13A-25 prohibits binding arbitration over all transfers of school board employees between work sites. *Hamilton Tp. Bd. of Ed.*, P.E.R.C. No. 2001-39, 27 *NJPER* 94 (¶32035 2001). Disciplinary transfers between work sites are prohibited and can be contested by filing a petition with the Commission.

The Commission found that a school board transferred a teacher between work sites to punish him as a teacher for actions that took place while he was a coach and that the transfer was an attempt to satisfy a New Jersey Interscholastic Athletic Association condition that administrative action be taken against the former coach. *Camden Bd. of Ed.*, P.E.R.C. No. 2001-9, 26 *NJPER* 366 (¶31148 2000). The Commission ordered the board to return him to his former work site.

The Commission found that another school board transferred a supervisor to a new position in a new work site because of his

complaints about the district's computer network and to preempt any effort to contact the media to assist repair efforts. *West New York Bd. of Ed.*, P.E.R.C. No. 2001-41, 27 *NJPER* 96 (¶32037 2001). In the absence of exceptions, the Commission ordered the board to transfer the supervisor back to his old work site, but in his new position.

Requiring consultation with the union before effectuating a transfer does not, in general, interfere with governmental policymaking determinations. *City of Newark*, P.E.R.C. No. 2001-37, 27 *NJPER* 46 (¶32023 2000). Absent any argument that bringing formal charges before invoking a disciplinary transfer would substantially limit governmental policymaking, the Commission declined to restrain binding arbitration over that issue.

Even if motivated by ill will, the transfer of a police officer cannot be contested through binding arbitration. *Borough of Sayreville*, P.E.R.C. No. 2001-28, 27 *NJPER* 15 (¶32008 2000).

Health Benefits

N.J.S.A. 26:2J-20 does not expressly, specifically, or comprehensively prohibit employers from agreeing to pay the full cost of

HMOs. *Piscataway Tp.*, P.E.R.C. No. 2001-40, 27 *NJPER* 95 (¶32036 2001).

N.J.S.A. 40A:10-23 does not prohibit payment of health benefit premiums for retirees on disability pensions when the employer has not first adopted an enabling ordinance or resolution. *Borough of Watchung*, P.E.R.C. No. 2000-93, 26 *NJPER* 276 (¶31109 2000).

N.J.S.A. 18A:16-19b prohibits school district retirees who take State-paid coverage under the State Health Benefits Program from receiving employer-paid coverage. *Northern Burlington Cty. Reg. Bd. of Ed.*, P.E.R.C. No. 2001-19, 26 *NJPER* 436 (¶31172 2000).

N.J.S.A. 18A:16-12 does not prohibit providing health benefits to replacement teachers employed under one-year contracts. *Hunterdon Central Reg. H.S. Bd. of Ed.*, P.E.R.C. No. 2001-24, 27 *NJPER* 436 (¶31172 2000) (restraint of arbitration denied). The Commission ruled that employees covered under one-year contracts were not temporary employees under *N.J.S.A.* 18A:16-12.

Sick Leave

Disputes over the application of a sick leave policy can be submitted to binding arbitration. *Hudson Cty.*, P.E.R.C. No. 2001-23, 27 *NJPER* 4 (¶32003 2000). In addition, minor disciplinary sanctions imposed on law enforcement officers can be reviewed through binding arbitration. *Ibid.*; see also *Wyckoff Tp.*, P.E.R.C. No. 2000-106, 26 *NJPER* 308 (¶31125 2000).

The Commission restrained binding arbitration of a grievance seeking to prevent an employer from initiating discipline for sick leave abuse against employees who had not exhausted all of the sick leave benefits to which they were entitled in a given year. *Montclair Tp.*, P.E.R.C. No. 2000-107, 26 *NJPER* 310 (¶31126 2000). After discipline is imposed, however, the employees can contest the disciplinary action. Further, while an employer has a prerogative to establish a sick leave verification policy, those portions of a policy that provide for fines, warnings, suspensions or termination after a specific number of absences move beyond verification and into the area of discipline. Those elements of a sick leave policy may therefore be negotiated and arbitrated.

Fitness For Duty

A contention that sick leave verification requirements were adopted to harass employees during negotiations must be pursued through an unfair practice charge, not binding arbitration. *Raritan Tp.*, P.E.R.C. No. 2000-97, 26 *NJPER* 284 (¶31113 2000).

A sick leave bank for non-statutory sick days is mandatorily negotiable. *Winslow Tp. Bd. of Ed.*, P.E.R.C. No. 2000-95, 26 *NJPER* 280 (¶31111 2000).

An employer violated its duty to negotiate in good faith when it unilaterally eliminated the right of unit employees to accrue negative sick leave balances and required employees to choose among employer-selected options for reducing their balances. *City of Orange Tp.*, P.E.R.C. No. 2001-46, 27 *NJPER* 124 (¶32046 2001).

N.J.S.A. 11A:2-11i preempted arbitration to enforce an alleged agreement to continue a pilot program authorizing paying out accumulated sick leave hours. *Bergen Cty. Utilities Auth.*, P.E.R.C. No. 2001-25, 27 *NJPER* 9 (¶32005 2000). Under Civil Service law, pilot programs cannot extend beyond one year or be extended. *Ibid.*

Arbitration was restrained to the extent a grievance challenged the employer's right to have its own physician assess whether an employee was fit for duty or eligible for workers' compensation. *South Brunswick Tp.*, P.E.R.C. No. 2001-35, 27 *NJPER* 40 (¶32021 2000). Arbitration was also restrained to the extent the grievance challenged the employer's right to decide whether a particular police officer was fit to carry a firearm or drive a vehicle.

An officer's ability to challenge the application of a fitness for duty policy does not extend to trying to block an employer from determining whether an officer is psychologically fit. *City of Elizabeth*, P.E.R.C. No. 2001-33, 27 *NJPER* 34 (¶32017 2000).

The Commission restrained arbitration to the extent a grievance contested the requirement that police officers take a functional capacity examination before being permitted to return to work. *City of Atlantic City*, P.E.R.C. No. 2001-44, 27 *NJPER* 122 (¶32044 2001). Procedural issues could be subject to arbitration.

Compensation

A claim for compensation while performing the duties of a higher position is legally arbitrable. *Passaic Valley Water Commission*, P.E.R.C. No. 2001-20, 26 *NJPER* 439 (¶31173 2000).

An arbitrator could determine whether the employer violated the contract when it compensated a sergeant at the sergeant's salary rate rather than the lieutenant's salary rate for duties performed while he was assigned as shift commander. *City of Garfield*, P.E.R.C. No. 2001-5, 26 *NJPER* 360 (¶31144 2000).

Initial placement on a salary guide is mandatorily negotiable. *Belleville Ed. Ass'n v. Belleville Bd. of Ed.*, 209 *N.J. Super.* 93 (App. Div. 1986). A school board had difficulty in hiring certificated math and science teachers. The Association contested the higher salary guide placement of the new math and science teachers, but did not appear to be seeking to block management from fulfilling its educational obligation to provide qualified teachers. The Commission declined to restrain binding arbitration, but retained jurisdiction in case the arbitrator found a contractual violation and issued an award the board

believed significantly interfered with its educational obligation to provide qualified math and science teachers. *Vernon Tp. Bd. of Ed.*, P.E.R.C. No. 2001-49, 27 *NJPER* 130 (¶32049 2001).

A school board had a right to schedule school on a public holiday, but, under *N.J.S.A.* 18A:25-3, it did not have a right to require teaching staff members to work that day. *Rockaway Tp. Bd. of Ed.*, P.E.R.C. No. 2001-6, 26 *NJPER* 362 (¶31145 2000). The amount of compensation for working on a holiday is mandatorily negotiable. *Ibid.*

UMDNJ faculty receive a base salary that is negotiated between UMDNJ and the AAUP. Some faculty also receive a supplemental salary, the amount of which is determined for each member through negotiations between the individual faculty member and the department chair. AAUP filed a grievance claiming that when it notified UMDNJ that 63 unit members were being paid base salaries below range, the employer raised those base salaries by taking funds from the employees' supplemental salaries. The Commission declined to restrain arbitration. It ruled that the employer did not have a managerial prerogative to reduce supplemental salaries unilaterally in order to bring base

salaries up to the appropriate range. *UMDNJ*, P.E.R.C. No. 2001-31, 27 *NJPER* 28 (¶32015 2000).

Payment for a full pay period to an employee who retired one day before the end of the pay period is not an unconstitutional gift of public funds. An arbitrator could determine whether the payment was required under the parties' contract. *State-Operated School Dist. of the City of Newark*, P.E.R.C. No. 2001-21, 26 *NJPER* 441 (¶31174 2000).

A proposal to include holiday pay in base pay is mandatorily negotiable. *Town of Kearny*, P.E.R.C. No. 2001-58. Whether holiday pay should be included in base pay for pension purposes must be decided by the Division of Pensions.

Promotions

Neither the Commission nor an arbitrator can second-guess the employer's determination as to whether an employee is qualified for promotion. *Somerset Raritan Valley Sewerage Auth.*, P.E.R.C. No. 2001-26, 27 *NJPER* 11 (¶32006 2000). Once the employer determined that the grievant was not qualified for the position, he was no longer eligible for a 30-day trial period under the contract.

The Commission restrained arbitration over the substantive decision to choose an employee with less seniority for a promotional position. *East Brunswick Tp.*, P.E.R.C. No. 2001-7, 26 *NJPER* 364 (¶31146 2000).

Posting requirements are mandatorily negotiable even though the vacant position is outside the negotiations unit. *Howell Tp.*, P.E.R.C. No. 2000-104, 26 *NJPER* 304 (¶31123 2000).

Procedural Issues

An unfair practice charge must contain a clear and concise statement of the facts constituting the alleged unfair practice. Attaching exhibits to a charge or generally incorporating exhibits does not satisfy that requirement. *Teamsters Local 331*, P.E.R.C. No. 2001-30, 27 *NJPER* 25 (¶32014 2000); *see also Town of Secaucus*, P.E.R.C. No. 2001-45, 27 *NJPER* 123 (¶32045 2001) (attachments are not part of charge); *N.J.A.C.* 19:14-1.3(a).

Representation

The Commission clarified a negotiations unit to exclude a business manager/uniformed fire division where the

employer represented that the employee would evaluate negotiations proposals and share negotiations confidences in future negotiations. *Mt. Laurel Board of Fire Commissioners, Dist. One*, P.E.R.C. No. 2001-50, 27 *NJPER* 132 (¶32050 2001). The Commission also found that the employer violated the Act when, during negotiations, its chief negotiator threatened to demote or terminate the business manager/ufd unless he resigned from the union. *Ibid.*

The Commission declined to a review a decision of the Director of Representation ordering an election among staff attorneys employed by the City of Newark. *City of Newark*, P.E.R.C. No. 2000-100, 26 *NJPER* 289 (¶31116 2000), app. pending App. Div. Dkt. No. A-006106-99T2. The Director had found that the attorneys in question were not managerial executives or confidential employees. The Commission also held that the Rules of Professional Conduct do not prohibit collective negotiations for the attorneys. *Ibid.*

Miscellaneous

A union did not breach its duty of fair representation when it did not pursue the charging party's claim for reinstatement following her acquittal on criminal charges of

official misconduct and theft. *Amalgamated Transit Union, Local 880 and New Jersey Transit*, P.E.R.C. No. 2001-48, 27 *NJPER* 128 (¶32048 2001), app. pending App. Div. Dkt. No. A-___. The union satisfied its duty by contacting the employer about the charging party's case, corresponding with her attorney, and taking a position on the contractual merits that was not unreasonable.

The six-month statute of limitations for filing an unfair practice charge alleging a breach of the duty of fair representation was tolled while the charging party was pursuing his internal union appeal. *PBA Local 152 and New Jersey State PBA*, P.E.R.C. No. 2001-1, 26 *NJPER* 356 (¶31140 2000).

Class size centers on educational policy and is not mandatorily negotiable. *Winslow Tp. Bd. of Ed.*, P.E.R.C. No. 2000-95, 26 *NJPER* 280 (¶31111 2000).

N.J.S.A. 9:6-8.10a provides that the release of confidential information kept in Division of Youth and Family Services files must be considered by the officer hearing a disciplinary appeal. *State of New Jersey (Dept. Of Human Services)*, P.E.R.C. No. 2000-105, 26 *NJPER* 306 (¶31124 2000). The Commission therefore dismissed an unfair practice charge challenging a refusal to

produce information requested to represent employees at disciplinary hearings.

Arbitration over a decision to adopt a “differentiated supervision” program for teaching staff members would significantly interfere with educational decision-making. *Woodbury Bd. of Ed.*, P.E.R.C. No. 2000-108, 26 *NJPER* 313 (¶31127 2000). Issues of notice of the adoption of the program and notice of the criteria for placement were found to be negotiable.

The administrative fee an employer charges to private employers requesting police services is not a term and condition of employment. *Borough of Paramus*, P.E.R.C. No. 2001-57, 27 *NJPER* __ (¶_____ 2001). The fee involves the relationship between the employer and a third party so it is not mandatorily negotiable. But it does not involve a matter of governmental policy, so it is permissively negotiable rather than non-negotiable.

A clause providing that if a non-mandatory subject becomes mandatory, the contract will be reopened for negotiations on that issue was found not mandatorily negotiable. *Town of Kearny*, P.E.R.C. No. 2001-58. Legislative changes may, however, trigger a right to mid-contract negotiations.

See, e.g., Wayne Bd. of Ed., P.E.R.C. No. 81-106, 7 *NJPER* 151 (¶12067 1981).

Even if the Appellate Division upholds a lower court’s determination that a statute granting paid convention leave is unconstitutional special legislation, public employers may still agree to provide paid convention leave through a collective negotiation agreement. *Town of Kearny*, P.E.R.C. No. 2001-58.