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# 1996-RECENT CASE LAW & POLICY DEVELOPMENTS

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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What follows is an overview of Commission case law since the April 1995 Annual Conference. In addition to a full range of cases covering unfair practices, representation and the scope of negotiations, this past year brought amendments to the interest arbitration statute and new regulations to implement those amendments.

<b>Workload, Work Schedules, Assignments and Compensation</b>
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Changes in workload may trigger a negotiations obligation. The Commission therefore held that a school board had an obligation to negotiate before increasing the workload of three full-time supervisory subject matter coordinators by adding a teaching assignment to their duties. *Ewing Tp. Bd. of Ed.*, P.E.R.C. No. 95-99, 21 *NJPER* 217 (¶26137 1995). There was no evidence that either party contemplated that the coordinators would have teaching duties in addition to their regular duties. The Commission also reaffirmed that contractual clauses limiting the number of a teacher's subject areas and teaching preparations are mandatorily negotiable aspects of workload. *West Paterson Bd. of Ed.*, P.E.R.C. No. 95-102, 21 *NJPER* 222 (¶26140 1995).

Changes in assignments may also trigger a negotiations obligation. For example, compensation for temporary assignments to replace absent superior officers is mandatorily negotiable. *City of Hoboken*, P.E.R.C. No. 96-7, 21 *NJPER* 280 (¶26179 1995). A grievance seeking extra compensation for department chairpersons assigned to perform scheduling duties normally performed by scheduling administrators or vice-principals was found legally arbitrable. *Newark Bd. of Ed.*, P.E.R.C. No. 96-37, 22 *NJPER* 21 (¶27008 1996).

Sometimes changes in assignments do not trigger a negotiations obligation. Assignments to supervise students on the playground relate to student safety, security and control. Where such assignments substituted one form of student supervision for another and did not increase student supervision time, the Commission restrained binding arbitration over the assignments. *Clifton Bd. of Ed.*, P.E.R.C. No. 96-10, 21 *NJPER* 284 (¶26182 1995). A decision to increase the amount of passing time between classes at a middle school was found not mandatorily negotiable in *Franklin Tp. Bd. of Ed.*, P.E.R.C. No. 96-31, 21 *NJPER* 395 (¶26242 1995), but compensation was a severable and negotiable issue. *Ibid.*

Changes in work schedules may also trigger negotiations obligations. An employer violated the Act by refusing to negotiate concerning any proposed change in shift rotation frequency and by issuing a memorandum changing the express terms of the collective negotiations agreement concerning exchanges of days, hours and tours of duty. *Borough of Belmar*, P.E.R.C. No. 95-109, 21 *NJPER* 231 (¶26147 1995). A school board had a prerogative to determine the days and hours custodial services were needed and the number of custodians on duty at any given time. *Bridgewater-Raritan Regional Bd. of Ed.*, P.E.R.C. No. 95-107, 21 *NJPER* 227 (¶26145 1995). Given those determinations, however, the work schedules and work hours of individual employees were, in general, mandatorily negotiable. In addition, the board had a prerogative to determine that no weekend work need be assigned but not to determine whether assigned weekend work would be paid at overtime rates. *Ibid.*

The number of employees needed to provide a service is normally a prerogative. However, where an agreement set the number of employees needed to provide a service and where the employer requested that a union refer workers, the union could legally arbitrate whether employees who reported for work but did not work were entitled to be paid. *New Jersey Highway Auth. (Garden State Arts*

*Center)*, P.E.R.C. No. 95-114, 21 *NJPER* 250 (¶26160 1995).

A grievance contested the elimination of a stipend for teachers who participated in a site-based management program. The Commission found that if the employer exercised its prerogative to operate such a program, it could contractually obligate itself to pay participating employees. *Morris School Dist. Bd. of Ed.*, P.E.R.C. No. 95-95, 21 *NJPER* 211 (¶26133 1995).

The Commission found that a reduction in workweek of 1,800 employees in *the State of New Jersey (Department of Environmental Protection)* was not mandatorily negotiable. P.E.R.C. No. 95-115, 21 *NJPER* 267 (¶26172 1995), *aff'd* 22 *NJPER* 15 (¶27005 1995), *certif. den* \_ N.J. \_ (1996). In light of Merit System Board regulations and the Department of Personnel's approval of the Department of Environmental Protection's layoff plan, the Commission considered the reduction in force to be a layoff action within the meaning of *N.J.S.A. 11A:8-1* and therefore outside the scope of negotiations.

An employer has a prerogative to promote or not promote an employee. *North Bergen Tp. Bd. of Ed. v. North Bergen Fed. of Teachers*, 141 *N.J. Super.* 97, 104 (App. Div. 1976). Salary guides often provide for salary guide advancement when an employee earns an advanced degree. For example, a salary guide covering teachers with the same seniority will typically reflect a higher salary

for a teacher with a higher degree. *See, e.g., Clifton Bd. of Ed.*, P.E.R.C. No. 95-3, 20 *NJPER* 316 (¶25160 1994). However, where a union sought to enforce an alleged past practice of promoting social workers earning master's degrees to a higher position with a higher salary, promotion and salary claims were interwoven and not mandatorily negotiable or arbitrable. *County of Monmouth*, P.E.R.C. No. 96-15, 21 *NJPER* 347 (¶26213 1995).

Provisions requiring a minimum number of police officers on patrol are not mandatorily negotiable, but premium pay provisions are severable and mandatorily negotiable. *Lopatcong Tp.*, P.E.R.C. No. 91-15, 16 *NJPER* 479 (¶21207 1990). Absent any showing of significant interference with the police department's staffing determinations, the Commission found that an employer repudiated its contractual obligation to pay double time to a police officer working alone after dark. *Lopatcong Tp.*, P.E.R.C. No. 96-12, 12 *NJPER* 290 (¶26184 1995).

An employer allegedly violated a collective negotiations agreement when it denied an employee overtime pay for hours worked as Emergency Management Coordinator, before, during and after a snow storm. The employer asserted that the employee was not a member of the union's negotiations unit when he acted as Emergency Management Coordinator and that therefore a claim seeking overtime compensation for hours worked in that

capacity was not arbitrable. The Commission found that resolution of that question depended on an interpretation of the parties' contractual recognition clause and a factual determination as to whether the employee was performing unit duties within the meaning of the collective negotiations agreement. Those questions properly belong to the arbitrator. *City of Hoboken*, P.E.R.C. No. 96-16, 21 *NJPER* 348 (¶26214 1995), app. pending App. Div. Dkt. No. A-1619-95T5.

The ice storms of 1993-94 used up scheduled snow days in school districts throughout the State. The Commission restrained arbitration of a grievance seeking additional pay and personal days for employees who allegedly suffered losses after a board eliminated a week of spring vacation days from the school calendar and required teachers and secretaries to work during those days. The Commission concluded that the claims were governed by *Edison Tp. Bd. of Ed. and Edison Tp. Ed. Ass'n*, *NJPER* Supp.2d 66 (¶47 App. Div. 1979), certif. den. 82 N.J. 274 (1979), rev'g P.E.R.C. No. 79-1, 4 *NJPER* 302 (¶4152 1978). The Commission treated differently a claim that secretaries were required to work five days more than a contractual limit of 200 days. A claim for compensation for work performed in excess of a negotiated work year could be arbitrated. *Ibid.*

### **Deferral to Arbitration**

Where an unfair practice charge alleges that an employer merely breached a contractual provision, the Director of Unfair Practices will refuse to issue a Complaint and will dismiss the charge under *State of New Jersey (Dept. of Human Services)*, P.E.R.C. No. 84-148, 10 *NJPER* 419 (¶15191 1984). Thus, the Commission sustained a refusal to issue a Complaint where an allegation that an employer violated a contractual provision with respect to one employee did not suggest that the employer had repudiated the parties' agreement or was unwilling to comply with any resolution through the grievance procedure. *State of New Jersey (Dept. of Human Services)*, P.E.R.C. No. 95-112, 21 *NJPER* 248 (¶26158 1995). Deferral to arbitration is the preferred mechanism when a charge essentially alleges a violation of subsection 5.4(a)(5) interrelated with an alleged breach of contract and when the employer has not asserted that the dispute is not contractually or legally arbitrable. *Brookdale Comm. College*, P.E.R.C. 83-131, 9 *NJPER* 266 (¶14122 1983). A deferral to arbitration is not a refusal to issue a Complaint. *State of New Jersey (Dept. of Human Services and Dept. of Military and Veterans Affairs)*, P.E.R.C. No. 96-57, 22 *NJPER* \_\_ (¶\_\_ 1996). Because a deferral is interlocutory, it cannot be appealed without obtaining special permission to appeal under *N.J.A.C. 19:14-4.6. Ibid.*

The Commission found that the City of Newark violated the Act by reducing the number of hospitals for which employees represented by the Police Superior Officers' Association of Newark, New Jersey, Inc. would receive full coverage and by increasing payroll deductions for health benefit plans during the pendency of interest arbitration proceedings. *City of Newark*, P.E.R.C. No. 95-108, 21 *NJPER* 229 (¶26146 1995), app. dism'd App. Div. Dkt. No. A-5230-94T5 (2/23/96). While not bound to follow a grievance arbitrator's contractual interpretation in related cases, the Commission exercised its discretion to do so, especially since the arbitrator's award had been confirmed by the Superior Court. *Ibid.*

### **Maintaining the Status Quo**

An employer must preserve existing employment conditions during successor contract negotiations. *Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n*, 78 *N.J.* 25, 48 (1978). Interim relief will be ordered where the charging party shows a failure to pay automatic salary increments. *Morris Cty. Prosecutor's Office*, I.R. No. 96-18, 22 *NJPER* \_\_ (¶\_\_ 1996); *Watchung Hills Bd. of Ed.*, I.R. No. 96-10, 22 *NJPER* 44 (¶27022 1995); *Hudson Cty. Area Vo-Tech Schools Bd. of Ed.*, I.R. No. 96-7, 21 *NJPER* 366 (¶26228 1995); *Union City Bd. of Ed.*, I.R. No. 96-3, 21 *NJPER* 314 (¶26200 1995). Relief will not be ordered where there is no

showing that increment payments were automatic under the expired agreement. *Hamilton Tp. Bd. of Ed.*, I.R. No. 96-9, 21 *NJPER* 368 (¶26230 1995); *Hudson Cty. Area Vo-Tech Schools Bd. of Ed.*, I.R. No. 96-7; *Florham Park Bd. of Ed.*, I.R. No. 96-2, 21 *NJPER* 313 (¶26199 1995). The duty to maintain the status quo extends to other terms and conditions of employment. *Town of Kearny*, I.R. 95-19, 21 *NJPER* 187 (¶26120 1995)(vacation policy); *UMDNJ*, I.R. No. 96-4, 21 *NJPER* 325 (¶26209 1995)(grievance arbitrations in progress before expiration of contract).

#### **Duty to Supply Information**

A union is entitled to information it needs to negotiate. Interim relief will be ordered to protect the negotiations process. *Borough of Ringwood*, I.R. No. 96-12, 22 *NJPER* 83 (¶27039 1996)(documents relating to new health insurance plan); *Lakewood Bd. of Ed.*, I.R. No. 95-22, 21 *NJPER* 233 (¶26149 1995), enf'd Law Div. Dkt. No. OCN-L-1436-95, lv. to appeal den. App. Div. Dkt. No. AM-1115-94T1 (7/10/95), app. withdrawn App. Div. Dkt. No. A-5590-95-T1 (7/21/95)(information on health benefit savings); *New Jersey Turnpike Auth.*, I.R. No. 96-6, 21 *NJPER* 364 (¶26227 1995)(information on overtime costs).

#### **Post-Impasse Implementation**

A school board violated the Act by unilaterally implementing salary, longevity and health benefit proposals before reaching a genuine post-factfinding impasse. *Fredon Tp. Bd. of Ed.*, P.E.R.C. No. 96-5, 21 *NJPER* 275 (¶26177 1995), app. pending App. Div. Dkt. No. A-234-95T3. The Commission reaffirmed that the concept of implementation is predicated on the notion that the majority representative has rejected the employer's last best offer. In this case, the employer implemented a portion of its last best offer.

Another school board properly implemented a revised salary guide structure. *Readington Tp. Bd. of Ed.*, P.E.R.C. No. 96-4, 21 *NJPER* 273 (¶26176 1995). The parties had reached a genuine post-factfinding impasse and the Board remained willing to continue negotiating over modifications to the guides it imposed. *Ibid.*

#### **Discipline**

*State v. State Troopers Fraternal Ass'n*, 134 *N.J.* 393 (1993), precludes binding arbitration of the merits of disciplinary actions against police officers under the Employer-Employee Relations Act. *Union Cty.*, P.E.R.C. No. 95-43, 21 *NJPER* 64 (¶26046 1995), app. pending App. Div. Dkt. No. A-3416-94T1. Accordingly, the Commission restrained arbitration of a grievance filed by a police officer to the extent the grievance contested the merits of his

termination. *Rutgers, the State Univ.*, P.E.R.C. No. 96-22, 21 *NJPER* 356 (¶26220 1995). The Commission declined to restrain arbitration over the procedural claims that the officer was improperly denied a pre-termination hearing and union representation during an investigatory interview. *Ibid*; see also, *Camden Cty. Prosecutor*, P.E.R.C. No. 96-32, 21 *NJPER* 397 (¶26243 1995)(pre-discipline hearing procedures mandatorily negotiable except to the extent would limit prosecutor's discretion to remove investigator despite a contrary recommendation from presiding officer); *Town of Harrison*, P.E.R.C. No. 95-111, 21 *NJPER* 247 (¶26157 1995) (restrains arbitration over suspension but not over alleged failure to provide hearing required by *N.J.S.A.* 40A:14-147).

Disputes involving non-negotiable personnel actions, such as an alleged disciplinary failure to assign an "Honors Geometry" course to a teaching staff member, may be submitted to advisory arbitration. *Somerville Bd. of Ed.*, P.E.R.C. No. 96-66, 22 *NJPER* \_\_\_ (¶\_\_\_\_\_ 1996); see also *Teaneck Bd. of Ed. and Teaneck Teachers Ass'n*, 94 *N.J.* 9, 19-20 (1983); *Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n*, 79 *N.J.* 311, 325-326 (1979).

### **Increment Withholdings**

Since the 1990 education 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 to balance the competing factors. Withholdings based predominately on an evaluation of teaching performance cannot be reviewed by an arbitrator and can only be reviewed by the Commissioner of Education. *Willingboro Bd. of Ed.*, P.E.R.C. No. 96-28, 21 *NJPER* 388 (¶26239 1995) (allegations that teacher used inappropriate disciplinary techniques such as excluding students from classes required by their IEP's and directing parents to take students home; teacher did not cooperate with the case manager and other child study team members in implementing IEP's; and teacher unilaterally altered IEP's and implemented his own disciplinary techniques); *Butler Bd. of Ed.*, P.E.R.C. No. 96-24, 21 *NJPER* 258 (¶26222 1995)(evaluation of assistant principal's performance as an educational leader and manager); *Newton Bd. of Ed.*, P.E.R.C. No. 96-3, 21 *NJPER* 271 (¶26175 1995)(appropriateness of teacher's interactions with her students during class); *Parsippany-Troy Hills Bd. of Ed.*, P.E.R.C. No. 96-52, 22 *NJPER* 65 (¶27029 1996)(evaluation of teaching performance of learning disabilities teacher consultant); *South Harrison Tp. Bd. of Ed.*, P.E.R.C. No. 96-36,

22 *NJPER* 20 (¶27007 1995)(ineffective instruction as observed in the classroom); *Mansfield Bd. of Ed.*, P.E.R.C. No. 96-65, 22 *NJPER* \_\_\_ (¶\_\_\_\_\_ 1996)(one reason requires interpretation and application of education statutes and regulations that pertain to special education teachers; other reason touches on teaching responsibilities).

### **Evaluations/Reprimands**

The Commission presumes that the substantive comments of an evaluation relating to teaching performance are not disciplinary, but that statements or actions that are not designed to enhance teaching performance are disciplinary. *See Holland Tp. Bd. of Ed.*, P.E.R.C. No. 87-43, 12 *NJPER* 824 (¶17316 1986), *aff'd NJPER Supp.2d* 183 (¶161 App. Div. 1987). Reviewing the facts, the Commission restrained arbitration over a critical paragraph in an observation report. *Oradell Bd. of Ed.*, P.E.R.C. No. 95-106, 21 *NJPER* 226 (¶26144 1995). The Commission concluded that the paragraph contained non-disciplinary comments intended to improve teaching performance. *Ibid.*

An employer has a non-negotiable right to select evaluation criteria. *See Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n*, 91 *N.J.* 38 (1982); *Bridgewater Tp. and PBA Local 174*, 196 *N.J. Super.* 258 (App. Div. 1984). The Commission therefore restrained arbitration to the extent a grievance contested an employer's use of a traffic enforcement

index as an evaluation criterion or a traffic enforcement standard. *Howell Tp.*, P.E.R.C. No. 96-60, 22 *NJPER* \_\_ (¶\_\_\_\_\_ 1996). The Commission declined to restrain arbitration to the extent the grievance alleged that a patrol officer was not informed of the basis on which he was evaluated. *Ibid.*

An educational institution has non-negotiable rights to determine who will evaluate employees; what criteria the evaluators will use; and how internal evaluative concerns will be communicated. *Sussex Cty. Community College*, P.E.R.C. No. 96-18, 21 *NJPER* 350 (¶26216 1995).

### **Leave**

Terminal leave is a mandatorily negotiable form of compensation. *See Middlesex Cty. Prosecutor*, P.E.R.C. No. 91-83, 17 *NJPER* 219 (¶22093 1991), *aff'd NJPER Supp.2d* 280 (¶227 App. Div. 1992). The legality of a terminal leave clause does not depend on whether the benefit is linked to some other form of leave, *e.g.*, unused accumulated sick leave. *Borough of Pompton Lakes*, P.E.R.C. No. 95-103, 21 *NJPER* 223 (¶26141 1995); P.E.R.C. No. 95-104, 21 *NJPER* 224 (¶26142 1995).

Under *N.J.S.A.* 11A:6-2(f) and *N.J.A.C.* 4A:6-1.2, a Civil Service employer may not pay employees for vacation days they were permitted to use but did not use during the calendar year they were earned or during the next succeeding calendar year. *State of New*

## Anti-Union Discrimination

*Jersey (Dept. of Higher Ed.)*, P.E.R.C. No. 96-47, 22 *NJPER* 37 (¶27018 1995). However, an employee could legally arbitrate a claim that his employer refused to allow him to take timely vacation leave. *Ibid.* And *N.J.A.C.* 6:1-2(f) does not prohibit payment for unused vacation days not yet lost. *Hazlet Tp.*, P.E.R.C. No. 96-56, 22 *NJPER* 73 (¶27033 1996).

A union cannot negotiate paid union leave for employees represented by another majority representative. *City of Newark*, P.E.R.C. No. 96-53, 22 *NJPER* 67 (¶27030 1996), app. pending App. Div. Dkt. No. A-\_\_.

*N.J.S.A.* 34:15-20 does not preclude an employee from pursuing a contractual claim to a paid leave of absence for an alleged work-related injury. *City of Camden*, P.E.R.C. No. 96-33, 21 *NJPER* 399 (¶26244 1995).

The Commission refused to restrain arbitration over a grievance alleging a breach of contract when a board required that teachers seeking personal leave for a snow make-up day justify their requests and when it denied some requests. *Bernardsville Bd. of Ed.*, P.E.R.C. No. 96-49, 22 *NJPER* 41 (¶27020 1995). The Commission held that whether the board had the right under the collective negotiations agreement to restrict the usage of personal leave time was for an arbitrator to decide. *Ibid.*

The Commission found that a police chief's actions tended to interfere with a PBA president's rights and ordered the employer to withdraw disciplinary charges and expunge all references to those charges from the officer's personnel file. *Borough of Sayreville*, P.E.R.C. No. 95-97, 21 *NJPER* 213 (¶26135 1995). Threatening and disciplining employees in retaliation for their protected activity and telling a teacher not to speak to an Association representative about a work-related incident also violated the Act. *Middletown Tp. Bd. of Ed.*, P.E.R.C. No. 96-45, 22 *NJPER* 31 (¶27016 1995), app. pending App. Div. Dkt. No. A-29999-95T1.

The Commission found no illegal motivation in *Newark Bd. of Ed.*, P.E.R.C. No. 96-17, 21 *NJPER* 349 (¶26215 1995), app. pending App. Div. Dkt. No. A-1621-95T3 (no showing that decision not to promote was motivated by protected activity); *County of Monmouth*, P.E.R.C. No. 96-6, 21 *NJPER* 279 (¶26178 1995)(shift change motivated by State inspection, not protected activity); *Belvidere Bd. of Ed.*, P.E.R.C. No. 96-9, 21 *NJPER* 283 (¶26181 1995)(work hour reductions and transfer consistent with determination that business education and industrial arts areas could best sustain necessary budget cuts); *Tabernacle Tp. Bd. of Ed.*, P.E.R.C. No. 96-40, 22 *NJPER* 24 (¶27011 1995)(no hostility to protected activity); *State of New Jersey (Dept. of Human*



*Services*), P.E.R.C. No. 96-20, 21 *NJPER* 352 (¶26218 1995)(anti-union animus not a substantial factor in termination decision).

### Transfers

Transfers of school board employees between work sites are not mandatorily negotiable or legally arbitrable. *N.J.S.A.* 34:13A-25. The Commission has the authority to rescind disciplinary transfers prohibited by the Act. *N.J.S.A.* 34:13A-25; 27. A contention that a transfer was motivated by anti-union animus may be litigated in an unfair practice proceeding. *Bergenfield Bd. of Ed.*, P.E.R.C. No. 95-96, 21 *NJPER* 212 (¶26134 1995).

### Miscellaneous

Where an employer already determined that promotions are automatic after three years of satisfactory service, a dispute over counting all years of satisfactory service was found to be mandatorily negotiable and legally arbitrable. *Sussex Cty. Community College*, P.E.R.C. No. 96-48, 22 *NJPER* 39 (¶27019 1995). The employer had asserted that one year should not be counted because the employee had been paid pursuant to a grant rather than a College-funded account.

Neither an employer nor the majority representative may interfere with each other's choice of representatives for negotiations and grievance processing. The Commission restrained arbitration over a grievance

contesting the number and identity of employer representatives at grievance hearings. *Middletown Bd. of Ed.*, P.E.R.C. No. 96-46, 22 *NJPER* 35 (¶27017 1995). No allegation or evidence suggested that having a second person present to take notes intimidated or coerced the Association representatives or prevented the adjustment of grievances. *Ibid.*

Absent of any showing of a significant interference with Rutgers' educational mission, the Commission found no basis to hold that Rutgers could not have legally agreed to permit custodians to use staff facilities. *Rutgers, the State Univ.*, P.E.R.C. No. 96-39, 22 *NJPER* 23 (¶27010 1995). Whether employees must change into their uniforms during work time or on their own time relates to work hours and is mandatorily negotiable and whether the employer must provide changing areas predominately relates to working conditions and is also mandatorily negotiable and legally arbitrable. *Ibid.*

*N.J.S.A.* 34:13A-23 expressly permits an employer to agree to arbitrate disputes over the non-retention of an employee in an extracurricular position. *Middletown Tp. Bd. of Ed.*, P.E.R.C. No. 96-29, 21 *NJPER* 391 (¶26240 1995) (reappointment of basketball coach).

The Commission sustained a decision not to issue a Complaint based on an unfair practice charge alleging that a union breached its duty of fair representation by not permitting

the charging parties to vote on a tentative contract and by not advising them of a contract ratification meeting. *Service Employees International Union, Local 455/74*, P.E.R.C. No. 96-19, 21 *NJPER* 351 (¶26217 1995). The Commission found no specific allegations that the majority representative tried to preclude certain groups of employees from voting or that it tried to improperly influence the vote. *Ibid.*

An arbitration award requiring private bus companies that took over two New Jersey Transit Bus lines to become parties to the collective negotiations agreement between Transit and ATU would violate the private sector statutes and cases proscribing union-signatory agreements because the private companies would be required to recognize ATU as the majority representative of the private workforce. *New Jersey Transit Bus Operations, Inc.*, P.E.R.C. No. 96-11, 21 *NJPER* 286 (¶26183 1995), app. pending App. Div. Dkt. No. A-379-95T2.

Whether an employee was injured on-duty or off-duty is irrelevant to whether that employee is physically qualified to perform light duty. Instead, that consideration merely concerns the legally arbitrable issue of allocating available light duty assignments among qualified employees and that allocation issue is legally arbitrable. *Township of Franklin*, P.E.R.C. No. 95-105, 21 *NJPER* 225 (¶26143 1995).

Negotiations and arbitration over providing weapons to retired police officers would not simply involve questions of compensation for past services, but would implicate the broader policy question of whether and which private citizens should be provided weapons by governmental bodies. *Rochelle Park Tp.*, P.E.R.C. No. 96-68, 22 *NJPER* \_\_\_\_ (¶\_\_\_\_ 1996). The Commission therefore restrained arbitration over a grievance claiming that past practice entitled two police lieutenants to retain their service revolvers when they retired. *Ibid.*

The Division of State Police has a prerogative to establish a physical fitness program to ensure that each trooper is fit for duty at all times. *State of New Jersey (Division of State Police)*, P.E.R.C. No. 96-55, 22 *NJPER* 70 (¶27032 1996). However, the union could seek compensation, release time, or access to physical fitness equipment. *Ibid.*