



A GUIDE TO NEGOTIABILITY

The Employer-Employee Relations Act (also known as the PERC Law) requires school boards to negotiate over grievance and disciplinary review procedures, rules governing working conditions, and “other terms and conditions of employment.” Subsection 5.4(a)(5) of the Act makes it an unfair labor practice for public employers to refuse to negotiate in good faith with the majority representative concerning terms and conditions of employment.

In many cases where PERC has found a violation of this negotiations obligation, the school board involved did not purposely intend to ignore the requirements of the law; rather, the board was not aware that it had crossed the line from the unilateral decision-making process to the bilateral negotiations process. It is, therefore, important for boards to be aware of which matters fall within the scope of negotiations. A brief discussion of negotiability may prove helpful.¹

To determine whether a matter is mandatorily negotiable, the New Jersey Supreme Court has developed a three-prong test of negotiability, and the Public Employment Relations Commission (PERC) applies this test in cases which come before it. The test of negotiability holds that:

1. the matter must intimately and directly affect employees’ work and welfare;
2. negotiations over the matter must not be preempted by a statute or regulation which speaks in the imperative and leaves nothing to the discretion of the employer; and
3. negotiations over the matter must not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy.

To be negotiable, the issue must meet *all* three prongs of this test. If all three prongs are not met, the matter is deemed to be nonnegotiable.

It is important to note that the second prong of the negotiability test preempts negotiations only where a statute or regulation speaks in the imperative and leaves nothing to the discretion of the employer. There are, however, many instances where negotiations can and do occur even though there exists a statute or regulation on the matter.

In cases where the statute or regulation grants *discretionary* (as opposed to imperative) authority to the employer, the employer must negotiate over that discretion if the majority representative so requests. Also, where a statute sets a minimum level of benefits, a greater level may be negotiated. Likewise, where a ceiling or maximum is established by law, a lesser level can also be negotiated. Before assuming that a statute is preemptive, it may be necessary to review case law interpreting employers’ negotiations obligation under the statute in question.

The third prong of the negotiability test holds that negotiations over the matter must not “significantly” interfere with the board’s ability to set educational or governmental policy. To determine whether there would be significant interference, PERC will decide whether, on balance, the issue predominantly affects an educational policy, or whether it predominantly pertains to employees’ work and welfare. If it is predominantly a policy matter, it will be ruled nonnegotiable.

In applying this balancing test, PERC may look at the specific factual pattern in individual cases to determine whether there would indeed be significant interference. A matter which has been ruled to be nonnegotiable in one district could be found to be negotiable in another district *depending on the specifics of the case*. The implication for school boards of this case-by-case approach is that boards should be aware of the need to demonstrate *specific* significant interference with its governmental policy-making function.

Although this three-prong test has been applied to hundreds of cases and the negotiability status of many topics is well-settled, the distinction between mandatorily negotiable and nonnegotiable subjects is still not always clear. There are several reasons for this. One reason has just been discussed: that is, the case-by-case approach for determining significant interference in the board’s policy-making powers.

Another reason is because many decisions are “split,” meaning that the issue contains aspects which are subject to unilateral board action as well as aspects which require negotiations. One example of this would be in the area of staff evaluations. Criteria and standards for evaluations are clearly nonnegotiable, as are certain evaluation procedures which are preempted by regulation; however, many evaluation procedures are not preempted and are therefore negotiable. Similarly, staff assignments are nonnegotiable; however, if the assignment results in an increase in work

¹ For a historical perspective of the developing case law affecting negotiations, see also “Scope of Negotiations” in The Structure of Negotiations section of *The Negotiations Advisor*.

load, then the issues of work load and/or compensation are severable from the decision to assign, and must be negotiated.

Finally, a third reason that the line of negotiability is not always readily ascertainable is due to the evolving nature of the legal environment. New statutes and regulations are enacted and modified on a regular basis. Case law interpreting these statutes is continually being issued. Because the law is not static, and because the scope of negotiations is constantly being redefined, it is important for school boards to keep abreast of changes in the law.

The following *Guide to Negotiability* contains an alphabetical listing of numerous personnel and labor relations topics. The status of negotiability is indicated for each topic, and important PERC and court cases are cited. Topics which are deemed mandatorily negotiable are identified with an "M." On these topics, boards may not act unilaterally, but must negotiate with the majority representative before changing the *status quo*. Topics

which are nonnegotiable are identified with an "N." Such topics are not subject to the negotiations process; they are either controlled by statute or may be subject to unilateral board action. Some matters are not only nonnegotiable but may also be illegal to have in board policy or in practice because they violate a specific section of the law. These are noted with an asterisk (*).

This *Guide* is intended to be a handy reference for school boards seeking to ascertain their legal rights and negotiations obligations on specific issues under the current state of the law. Additional case cites may appear in *The Negotiations Advisor* articles on specific topics. In addition, to obtain specific guidance as well as the latest developments, readers are encouraged to contact their board attorney, labor relations consultant or the NJSBA Labor Relations Department.

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TOPIC	NEGOTIABILITY STATUS	PERC/COURT CASE CITES
ABOLITION OR ELIMINATION OF POSITION <i>See Reduction in Force</i>		
ABSENTEEISM/ATTENDANCE/TARDINESS POLICIES Policy to monitor attendance	N	Piscataway , PERC No. 82-64, 8 <i>NJPER</i> 13039
Policy to verify that leave is taken for purpose stated in contract or set by statute <i>See also Leaves of Absence, Verification of</i>	N	Barnegat , PERC No. 84-123, 10 <i>NJPER</i> 15133
ACADEMIC FREEDOM	N	New Milford , PERC No. 81-36, 6 <i>NJPER</i> 11231, aff'd App. Div. (10/21/81)
ADVISORY COMMITTEES Provision allowing staff to offer non-binding advice on educational policy issues	M	Dunellen , 64 <i>N.J.</i> 17 (1973)
AGENCY SHOP/REPRESENTATION FEE	M	Wayne , PERC No. 81-106, 7 <i>NJPER</i> 12067
ARBITRATION (Note that <i>N.J.S.A.</i> 34:13A-29 mandates binding arbitration of school employees' grievances over reprimands and discipline as defined in <i>N.J.S.A.</i> 34:13A-22 <i>et seq.</i>) Binding or advisory, as final step of grievance procedure	M	Hunterdon Central , PERC No. 87-83, 13 <i>NJPER</i> 18036
Advisory arbitration for application of management prerogative to individual employees <i>See also specific topic</i>	M	Bernards Twp. , 79 <i>N.J.</i> 311 (1979)
ASSIGNMENTS Deployment of personnel	N	Ridgefield Park , 78 <i>N.J.</i> 144 (1978); Asbury Park , PERC No. 88-128, 14 <i>NJPER</i> 19164
Determination of qualifications	N	Perth Amboy , PERC No. 83-52, 8 <i>NJPER</i> 13301
To extracurricular duties involving students	M	Ramapo-Indian Hills , PERC No. 90-104, 16 <i>NJPER</i> 21129
To nonteaching student supervisory duties	N	Long Branch , 150 <i>N.J. Super.</i> 262 (App. Div. 1976) aff'd 73 <i>N.J.</i> 461 (1977); Byram , 152 <i>N.J. Super.</i> 12 (App. Div. 1977)
To after-school meetings and workshops not involving students	M	Carteret , PERC No. 80-30, 5 <i>NJPER</i> 10205, aff'd App. Div. Dkt. No. A-419-79 (Nov. 10, 1980)
Of regular teachers to class coverage (i.e., substitute coverage)	N	Fairview , PERC No. 80-32, 5 <i>NJPER</i> 10207
Procedures for transfers and reassignments	M	Local 195 , 88 <i>N.J.</i> 393 (1982)
Compensation for, as severable issue from decision to assign <i>See also Compensation</i>	M	Woodstown-Pilesgrove , 81 <i>N.J.</i> 582 (1980)
Work load issues that are severable from board's ability to assign	M	Buena Reg. , PERC No. 86-3, 11 <i>NJPER</i> 16154
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TOPIC	NEGOTIABILITY STATUS	PERC/COURT CASE CITES
BUDGET FORMULATION	N	<i>Rutgers</i> , PERC No. 76-13, 2 <i>NJPER</i> 13
CALENDAR Academic or school calendar	N	<i>Burlington County College</i> , 64 <i>N.J.</i> 10 (1973); <i>Green Brook</i> , PERC No. 77-11, 2 <i>NJPER</i> 288
Decision to reschedule days (e.g., to make up snow days)	N	<i>Piscataway</i> , 307 <i>N.J. Super</i> 263(1998), cert den. 156 <i>N.J.</i> 385 (1998)
Impact of decision to reschedule days which does not interfere with board's ability to change calendar	M	<i>Piscataway</i> , 307 <i>N.J. Super</i> 263(1998), cert den. 156 <i>N.J.</i> 385 (1998)
Work year, length of <i>See also Holidays</i>	M	<i>Old Tappan</i> , PERC No. 80-74, 5 <i>NJPER</i> 10286
CLASS SIZE	N	<i>Wanaque</i> , PERC No. 80-152, 6 <i>NJPER</i> 11160; <i>Plainfield</i> , PERC No. 88-46, 13 <i>NJPER</i> 18324; <i>Old Bridge</i> , PERC No. 95-15, 20 <i>NJPER</i> 25175
Compensation for increased work load when two classes are merged into one	M	<i>Franklin Twp.</i> , PERC No. 2003-58, 29 <i>NJPER</i> 27 (appeal pending)
COMMITTEES <i>See Advisory Committees</i>		
COMPENSATION Salary, longevity, mileage reimbursement**, overtime, for extra duties, etc.	M	<i>Hillside</i> , PERC No. 76-11, 1 <i>NJPER</i> 55
Severable from nonnegotiable managerial prerogatives (e.g., assignments, consolidation of positions, scheduling parent/teacher conferences) <i>See also Salary</i>	M	<i>Ramapo Indian Hills</i> , 176 <i>N.J. Super</i> 35 (App. Div. 1980); <i>Piscataway</i> , PERC No. 83-87, 9 <i>NJPER</i> 14037; <i>Manchester</i> , PERC No. 80-136, 6 <i>NJPER</i> 11119
CURRICULUM <i>See also Extracurricular Activities</i>	N	<i>Rockaway Twp.</i> , 120 <i>N.J. Super</i> 564 (Ch. Div. 1972)
DISCIPLINE Decision to discipline	N	<i>Willingboro</i> , PERC No. 85-74, 11 <i>NJPER</i> 16030
Just cause clause	M	<i>Delran</i> , PERC No. 87-155, 13 <i>NJPER</i> 18212; <i>Montclair</i> , PERC No. 92-62, 18 <i>NJPER</i> 23018
Just cause clause for evaluative withholdings	N	<i>Atlantic Highlands</i> , PERC No. 93-40, 19 <i>NJPER</i> 24005
Disciplinary review procedures		
Non-school employees may negotiate binding arbitration of disciplinary grievances in the absence of alternate statutory appeal mechanism.	M	<i>CWA v. PERC</i> , 193 <i>N.J. Super</i> 658 (App. Div. 1984), cert. den. 99 <i>N.J.</i> 169 (1984)
School employees' grievance procedure must provide binding arbitration of grievances concerning reprimands and discipline as defined in <i>N.J.S.A. 34:13A-22 et seq.</i>	N	
However, binding grievance arbitration is not the legal forum to review:		
<ul style="list-style-type: none"> • termination of tenured employees 	N	
<ul style="list-style-type: none"> • evaluative withholding of increments for teaching staff 	N	<i>Bernards Twp.</i> , 79 <i>N.J.</i> 311 (1979); <i>N.J.S.A.</i> 34:13A-27
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DISCIPLINE (<i>cont.</i>) <ul style="list-style-type: none"> • evaluative letters of reprimand for teaching staff 	N	<i>Holland Twp.</i> , PERC No. 87-43, 12 <i>NJPER</i> 17316, aff'd App. Div. Dkt. No. A-2053-86T8 (10/23/87)
<ul style="list-style-type: none"> • nonrenewals of nontenured teachers 	N	<i>Englewood</i> , PERC No. 92-78, 18 <i>NJPER</i> 23040; <i>Long Branch</i> , PERC No. 92-79, 18 <i>NJPER</i> 23041
<ul style="list-style-type: none"> • nonrenewals of nontenured secretaries <i>See also Withholding of Increments</i> 	N	<i>Ridgefield Park</i> , PERC No. 98-55, 23 <i>NJPER</i> 28303
DRESS CODE Adoption and content of	N	<i>Egg Harbor Twp.</i> , PERC No. 86-84, 12 <i>NJPER</i> 17039; <i>Carlstadt</i> , 1980 <i>S.L.D.</i> 370 (State Bd. of Ed.) aff'd App. Div. 1982 <i>S.L.D.</i> 1448
DURATION OF AGREEMENT (length of agreement must be consistent with Ramsey Board of Ed. v. Ramsey Teachers Assn., 2012 N.J. Super. Unpub., LEXIS 2566, Doc. No. A-1338-11T3 (App. Div. Nov., 21, 2012), cert. denied 213 N.J. 535 (May 2, 2013))	M	<i>Dover</i> , PERC No. 76-34, 2 <i>NJPER</i> 188; <i>Mercer Voc.</i> , PERC No. 85-90, 11 <i>NJPER</i> 16063
EVALUATION Criteria, establishment of	N	<i>Teaneck</i> , 161 <i>N.J. Super.</i> 75 (App. Div. 1978)
Application of criteria	N	<i>Hazlet</i> , App. Div. Dkt. No. A-2875-78 (March 27, 1980)
Criteria which are used to determine merit increases (<i>this represents an exception to the general rule that criteria are nonnegotiable, because of the direct impact on employee compensation</i>)	M	<i>County of Essex</i> , PERC Nos. 86-149, 12 <i>NJPER</i> 17201, and 87-48, 12 <i>NJPER</i> 17321, aff'd App. Div. Dkt. Nos. A-5803-85T7 and A-1458-86T7 (June 30, 1987)
Procedures for teaching staff members which conflict with state rules and regulations or which interfere with evaluation process. For example:	N	<i>Bethlehem</i> , <i>supra.</i>
<ul style="list-style-type: none"> • identity of and restrictions on who performs evaluation 	N	<i>Bethlehem</i> , <i>supra.</i> ; <i>Tenafly</i> , PERC No. 83-51, 8 <i>NJPER</i> 13297
<ul style="list-style-type: none"> • a system for rating employees on evaluation reports 	N	<i>Clinton Twp.</i> , PERC No. 85-30, 10 <i>NJPER</i> 15260; <i>Rutgers</i> , 256 <i>N.J. Super.</i> 104 (1992)
<ul style="list-style-type: none"> • content of final evaluation report and format of report which limits contents 	N	<i>Union City</i> , PERC No. 84-79, 10 <i>NJPER</i> 15026
<ul style="list-style-type: none"> • advance notice of observation 	N	<i>Keansburg</i> , PERC No. 85-55, 10 <i>NJPER</i> 15313
<ul style="list-style-type: none"> • notice of change in forms that is overly broad and can prevent implementation of educational policy 	N	<i>Holmdel</i> , PERC No. 2000-43, 26 <i>NJPER</i> 31008
Procedures for teaching staff members which do not conflict with state rules and regulations and which do not interfere with evaluation process. For example:	M	<i>Bethlehem</i> , <i>supra.</i>
<ul style="list-style-type: none"> • notification of name of evaluator 	M	<i>Brookdale Community College</i> , PERC No. 84-84, 10 <i>NJPER</i> 15058
<ul style="list-style-type: none"> • notification of evaluation criteria and change in 	M	<i>State Troopers</i> , 179 <i>N.J. Super.</i> 80 (App. Div. 1981); <i>Manalapan-Englishtown</i> , PERC No. 87-49, 12 <i>NJPER</i> 17322
<ul style="list-style-type: none"> • number of evaluations above minimum set by state rules and regulations 	M	<i>Brookdale Community College</i> , <i>supra.</i>
<ul style="list-style-type: none"> • prohibition on use of surveillance devices 	M	<i>Fairview</i> , PERC No. 80-18, 5 <i>NJPER</i> 10193
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TOPIC	NEGOTIABILITY STATUS	PERC/COURT CASE CITES
EVALUATION <i>(cont.)</i>		
Procedures for teaching staff members that do not interfere with evaluation process:		
•notice of strengths and weaknesses	M	Burlington County College , PERC No. 90-13, 15 <i>NJPER</i> 20213
•requirement to include data to support comments and listing of supervisory steps taken to assist teachers, if such information is available	M	Englewood , PERC No. 98-75, 24 <i>NJPER</i> 29014
Procedures for non-teaching staff members	M	City of Newark , PERC No. 90-95, 16 <i>NJPER</i> 21113
See also: <i>Withholding of Increment</i> <i>Discipline</i> <i>Lesson Plans</i> <i>Personnel File</i>		
EXTRACURRICULAR ACTIVITIES Assignment to and retention in	M	Holmdel , PERC No. 91-62, 17 <i>NJPER</i> 22038
Non-retention in position eliminated due to reorganization	N	Manchester , PERC No. 94-22, 19 <i>NJPER</i> 24216
Compensation for	M	Ramapo Indian Hills , 176 <i>N.J. Super.</i> 35 (App. Div. 1980)
FACILITIES Relating to educational process	N	Byram , 152 <i>N.J. Super.</i> 12 (App. Div. 1977); Hoboken , PERC No. 93-15, 19 <i>NJPER</i> 23200
Teachers' lounge	M	Byram , <i>supra.</i>
Smoking in teachers' lounge	N*	
Access to facilities by majority representative and minority representative (except during open window period)	M	Union County Regional , PERC No. 76-17, 2 <i>NJPER</i> 50
FRINGE BENEFITS (including benefits for RIFed employees) <i>See specific headings, such as:</i> <i>Leaves of Absence</i> <i>Insurance</i> <i>Tuition Reimbursement</i> <i>Vacations</i> <i>Holidays</i> <i>Payment for Unused Sick and Personal Leave</i>	M	Montville , PERC No. 76-51, 2 <i>NJPER</i> 230
FULLY BARGAINED CLAUSE <i>See Zipper Clause</i>		
GRIEVANCE PROCEDURES	M	West Windsor , 78 <i>N.J.</i> 98 (1978)
HOLIDAYS Number of holidays for 12-month employees	M	Black Horse Pike , PERC No. 84-157, 10 <i>NJPER</i> 15200; Roxbury , PERC No. 84-83, 10 <i>NJPER</i> 15057
Establishment of holidays as part of school calendar	N	Burlington County College , 64 <i>N.J.</i> 10 (1973)
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HOURS OF WORK Length of workday	M	<i>Woodstown-Pilesgrrove</i> , 81 N.J. 582 (1980); <i>Galloway</i> , PERC No. 77-3, 2 NJPER 254, aff'd 157 N.J. Super. 74 (App. Div. 1978)
Starting and stopping times	M	<i>Verona</i> , PERC No. 86-91, 12 NJPER 17074
Starting and stopping times, changes for policy reasons	N	<i>Hoboken</i> , PERC No. 93-14, 19 NJPER 23199
INCREMENTS <i>See Withholding of Increments</i>		
INSTRUCTIONAL MATERIALS, TEXTBOOKS, AND EQUIPMENT Selection and use of	N	<i>Jersey City</i> , PERC No. 82-52, 7 NJPER 12308
INSURANCE (must be consistent with Chapter 78) Medical, dental, prescription drug, optical	M	<i>Rutgers</i> , PERC No. 83-136, 9 NJPER 14127; <i>Hillside</i> , PERC No. 78-59, 4 NJPER 4076
Disability income insurance	M	<i>Watchung Borough</i> , PERC No. 80-110, 6 NJPER 11059
Identity of insurance carrier (when level of benefits not affected)	N	<i>Hunterdon Central</i> , PERC No. 87-83, 13 NJPER 18036
Increase in 20 hours threshold of eligibility under the SEHBP School employees hired after 5/21/2012 must work a minimum of 25 hours to participate in SEHBP or a private carrier.	M	<i>Frankford</i> , PERC No. 98-60, 23 NJPER 28304
For retiring employees <i>See Retirement</i>		
JOB DESCRIPTIONS	N	<i>West Deptford</i> , PERC No. 80-95, 6 NJPER 11030
JOB SECURITY For employees not covered by statutory tenure <i>See also</i> <i>Seniority</i> <i>Tenure</i>	M	<i>Wright v. East Orange</i> , 99 N.J. 112 (1985); <i>Evesham</i> , PERC No. 92-63, 18 NJPER 23019
JUST CAUSE <i>See Discipline</i>		
LEAVES OF ABSENCE Personal leave (number of days, criteria, reasons, procedures, approval, etc.)	M	<i>Cliffside Park</i> , PERC No. 77-2, 2 NJPER 252
Religious leave if not charged to general personal leave or vacation	N*	<i>Hunterdon Central</i> , 86 N.J. 43 (1981)
Sick leave days in excess of statutory minimum of 10	M	<i>Hillside</i> , PERC No. 76-11, 1 NJPER 55
Use of statutory sick leave for other reasons than stated in school law	N*	<i>Hackensack</i> , 184 N.J. Super. 31, cert. den. 91 N.J. 217 (1982)
Sick banks that conflict with school law	N*	<i>Plainfield</i> , PERC No. 88-46, 13 NJPER 18324; <i>Delaware Twp.</i> , PERC No. 87-50, 12 NJPER 17323
Sick banks that do not conflict with school law (must be consistent with NJSA 18A:30-10&11)	M	<i>Winslow Township</i> , PERC No. 2000-95, 26 NJPER 31111
Blanket extended sick leave	N*	<i>Piscataway</i> , 152 N.J. Super. 235 (App. Div. 1977)
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LEAVES OF ABSENCE <i>(continued)</i>		
Verification of leave	N	<i>Piscataway</i> , PERC Nos. 82-64, 8 <i>NJPER</i> 13039 and 83-111, 9 <i>NJPER</i> 14072
• establishment of policy to verify that leave is taken for purpose stated in contract or law	N	<i>Barnegat</i> , PERC No. 84-123, 10 <i>NJPER</i> 15133
• binding arbitration to review application of leave verification policy	M	<i>Piscataway</i> , PERC Nos. 82-64, 8 <i>NJPER</i> 13039 and 83-111, 9 <i>NJPER</i> 14072
• payment for doctor's visit for securing verification	M	<i>City of Elizabeth</i> , PERC No. 84-75, 10 <i>NJPER</i> 15022
Pregnancy Disability/Maternity Leave (negotiated provisions must be consistent with sick leave statute and N.J. Law Against Discrimination)	M	<i>Ocean Twp.</i> , PERC No. 86-60, 11 <i>NJPER</i> 16250
Child Care Leaves (distinguished from pregnancy disability leaves; must not contradict the Federal Family and Medical Leave Act or the N.J. Family Leave Act)	M	<i>Ocean Twp.</i> , <i>supra</i> .
"Stacking" of statutory leave under the federal and state family/medical leave	M	<i>Lumberton</i> , App. Div. Dkt. No. A-1328-01T5, (October 8, 2002.)
Bereavement Leaves	M	<i>Newark</i> , PERC No. 85-26, 10 <i>NJPER</i> 15256
Sabbatical Leaves	M	<i>South Orange-Maplewood</i> , 146 <i>N.J. Super.</i> 457 (App. Div. 1977)
Military Leave (that does not contradict statutory provisions)	M	<i>Freehold Regional</i> , PERC No. 92-26, 17 <i>NJPER</i> 2206
LESSON PLANS Format and scheduling of submission	N	<i>West Amwell</i> , PERC No. 78-31, 4 <i>NJPER</i> 4012
As a criterion for evaluation	N	<i>Fairview</i> , PERC No. 81-19, 6 <i>NJPER</i> 11204
LUNCH PERIOD FOR STAFF Duty-free lunch	M	<i>Willingboro</i> , PERC No. 78-20, 3 <i>NJPER</i> 369
Permitting staff to leave building during lunch period (where student safety not affected)	M	<i>Freehold Regional</i> , PERC No. 81-58, 6 <i>NJPER</i> 11278, aff'd App. Div. (March 17, 1982)
Assignment of teachers to supervise students during teachers' duty-free lunch in exceptional circumstances	N	<i>Byram</i> , 152 <i>N.J. Super.</i> 12 (App. Div. 1977)
MAKE-UP DAYS <i>See Calendar</i>		
MANAGEMENT RIGHTS CLAUSE	M	<i>Town of Kearny</i> , PERC No. 82-12, 7 <i>NJPER</i> 12202
MERIT PAY <i>See Salary</i>		
NEGOTIATIONS Composition of bargaining team	N	<i>Matawan Regional</i> , PERC No. 80-153, 6 <i>NJPER</i> 11161
Authority of bargaining team	N	<i>Bergenfield</i> , PERC No. 90, 1 <i>NJPER</i> 44
Commencement date for negotiations (if different than date set by PERC rules) than date set by PERC rules)	M	
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NONRENEWAL OF EMPLOYEES NOT ELIGIBLE FOR STATUTORY TENURE		
Arbitrability of decision to not renew, when negotiated contract provides contractual tenure or promise of continued employment	N	<i>Hanover</i> , PERC No. 99-7, 24 <i>NJPER</i> 29191, aff'd. App. Div., Dkt No. A-306-98T2. (9/13/99); <i>Wayne</i> , App. Div. Dkt No. A-2749-97T5 (3/31/99), cert. den., 3/31/99.
Arbitrability of decision to not renew, when negotiated contract <i>does not</i> provide contractual tenure or promise of continued employment	M	<i>Hanover</i> , PERC No. 99-7, 24 <i>NJPER</i> 29191, aff'd. App. Div., Dkt No. A-306-98T2. (9/13/99); <i>Wayne</i> , App. Div. Dkt No. A-2749-97T5 (3/31/99), cert. den., 3/31/99.
NONRENEWAL OF NONTENURED TEACHERS Decision to not renew	N	<i>Union County Regional</i> , 145 <i>N.J. Super.</i> 435 (App. Div. 1976), cert. den. 74 <i>N.J.</i> 248 (1977); <i>Englewood</i> , 150 <i>N.J. Super.</i> 265 (App. Div. 1977), cert. den. 75 <i>N.J.</i> 525, 1977; <i>Fair Lawn</i> , 174 <i>N.J. Super.</i> 554 (App. Div. 1980)
Binding arbitration of decision remains illegal after 1990 amendments	N	<i>Englewood</i> , PERC No. 92-78, 18 <i>NJPER</i> 23040; <i>Long Branch</i> , PERC No. 92-79, 18 <i>NJPER</i> 23041
Fair dismissal procedures which do not interfere with board's ability to dismiss	M	<i>Bridgewater-Raritan</i> , PERC No. 77-21, 3 <i>NJPER</i> 23; <i>Edison</i> , PERC No. 83-100, 9 <i>NJPER</i> 14055; <i>East Brunswick</i> , PERC No. 81-123, 7 <i>NJPER</i> 12109, aff'd in part, reversed in part, App. Div. (5/3/82)
NUMBER OF EMPLOYEES <i>See Staffing</i>		
PARENT-TEACHER CONFERENCES Decision to schedule and the number of conferences	N	<i>Parsippany Troy Hills</i> , PERC No. 77-27, 3 <i>NJPER</i> 17; <i>Freehold Regional</i> , PERC No. 84-119, 10 <i>NJPER</i> 15129
Number of evening conferences, changes in for policy reasons	N	<i>Berkeley Heights</i> , PERC No. 89-61, 15 <i>NJPER</i> 20008 and <i>Monroe</i> , PERC No. 93-9, 19 <i>NJPER</i> 23194
Compensation for increased parent-teacher conferences	M	<i>Piscataway</i> , PERC No. 83-87, 9 <i>NJPER</i> 14037
PARITY ARRANGEMENTS ("Me too" clauses) Based on outcome of prospective negotiations	N*	<i>Plainfield</i> , PERC No. 78-87, 4 <i>NJPER</i> 4130
Based on already negotiated contracts	M	<i>Westwood Regional</i> , PERC No. 90-31, 15 <i>NJPER</i> 20253
PAST PRACTICE CLAUSE ("Maintenance of Benefits" or "Savings" clause)	M	<i>Twp. of Hillside</i> , PERC No. 78-59, 4 <i>NJPER</i> 4070; <i>New Milford</i> , PERC No. 81-36, 6 <i>NJPER</i> 11231, aff'd App. Div. (10/21/81)
PAYMENT FOR UNUSED SICK LEAVE/PERSONAL LEAVE (must be consistent with NJSA 18A:30-3.6 which limits payment for unused sick leave, upon retirement, to \$15,000 for employees hired after 5/21/2010) <i>See also Retirement</i>	M	<i>City of Somers Point</i> , PERC No. 77-48, 3 <i>NJPER</i> 99; <i>Union City</i> , PERC No. 84-79, 10 <i>NJPER</i> 15026
PENSIONS <i>See Retirement</i>		
Negotiability Status: M = Mandatorily negotiable N = Nonnegotiable		* = In addition to being nonnegotiable, this topic is illegal to have in policy or in practice ** = To maximum rate of OMB circular per NJAC 6A:23A-7.9(4)(c)(i)

A GUIDE TO NEGOTIABILITY

TOPIC	NEGOTIABILITY STATUS	PERC/COURT CASE CITES
PERSONNEL FILES Employee access to	M	<i>West Amwell</i> , PERC No. 78-31, 4 <i>NJPER</i> 4012
Procedures for placing material in	M	<i>Delaware Twp.</i> , PERC No. 87-50, 12 <i>NJPER</i> 17323; <i>Nutley</i> , PERC No. 86-86, 12 <i>NJPER</i> 17041
Limits on the number, type of, and contents of Letters of Reprimand <i>See Discipline</i>	N	<i>Fairview</i> , PERC No. 80-18, 5 <i>NJPER</i> 10193
POSTING PROCEDURES	M	<i>Jersey City</i> , PERC No. 82-110, 8 <i>NJPER</i> 13144; <i>Byram</i> , 152 <i>N.J. Super.</i> 12 (App. Div. 1977)
PREPARATION PERIODS Amount of prep time	M	<i>Newark</i> , PERC No. 79-38, 5 <i>NJPER</i> 10026
Allowing teachers to leave building during prep time where student safety not affected	M	<i>Freehold Regional</i> , PERC No. 81-58, 6 <i>NJPER</i> 11278, aff'd App. Div. (3/17/82)
Use of, to conduct union business	M	<i>Haddonfield</i> , PERC No. 80-53, 5 <i>NJPER</i> 10250
Release time for teachers when a special teacher is present	M	<i>Plainfield</i> , PERC No. 88-46, 13 <i>NJPER</i> 18324
PROCEDURES (which do not conflict with statute or interfere with an inherent managerial prerogative) <i>See specific topics:</i> <i>Evaluation Procedures</i> <i>Promotion Procedures</i> <i>Posting Procedures</i> <i>Transfer Procedures</i> <i>Withholding of Increments Procedures</i>	M	<i>Bethlehem</i> , 91 <i>N.J.</i> 38 (1982); <i>Local 195</i> , 88 <i>N.J.</i> 393 (1982)
PROMOTIONS Qualifications, criteria, methods of selection	N	<i>North Bergen Twp.</i> , 141 <i>N.J. Super.</i> 97 (App. Div. 1976); <i>Jersey City</i> , PERC No. 82-110, 8 <i>NJPER</i> 13144
Procedures (such as posting, advance notice of criteria, written notice of rejection, procedures for time, date and posting of exams for promotion)	M	
Trial periods for qualified internal candidates before consideration of an outside applicant	M	<i>West Milford</i> , PERC No. 94-41, 19 <i>NJPER</i> 24271
QUALIFICATIONS For employment	N	<i>Byram</i> , 152 <i>N.J. Super.</i> 12 (App. Div. 1977)
For promotion	N	<i>North Bergen Twp.</i> , 141 <i>N.J. Super.</i> 97 (App. Div. 1976)
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TOPIC	NEGOTIABILITY STATUS	PERC/COURT CASE CITES
QUALIFICATIONS <i>(cont.)</i>		
For increment	N	Greater Egg Harbor , PERC No. 88-37, 13 NJPER 18312; Bernards Twp. , 79 N.J. 311 (1979)
REDUCTION IN FORCE (RIF) Decision to RIF	N	Cinnaminson , Dkt. No. A-2682-77 (App. Div. June 1, 1979), cert. den. 81 N.J. 341 (1979); Englewood , 150 N.J. Super. 265 (App. Div. 1977)
Impact of RIF on remaining employees when there is no substantial increase in work load	N	Maywood , 168 N.J. Super. 45, cert. den. 81 N.J. 292 (1979)
Compensation for remaining staff if there is substantial increase in work load	M	Rahway , PERC No. 88-29, 13 NJPER 18286
Procedures covered in statute and regulation (seniority, recall, and bumping rights for tenure-eligible RIFed employees)	N	Keansburg , PERC No. 85-55, 10 NJPER 15313
Notice procedures	M	Old Bridge , 193 N.J. Super. 182 (App. Div. 1984), aff'd 98 N.J. 523 (1985)
Procedures for layoff and recall of non-tenured non-certificated employees <i>See also:</i> <i>Seniority Provisions</i> <i>Work Year</i>	M	Keansburg , PERC No. 85-55, 10 NJPER 15313
REPRESENTATION At teacher conferences, evaluation conferences, or other meetings where discipline is expected	M	Edison , PERC No. 83-100, 9 NJPER 14055; Atlantic Highlands , PERC No. 93-40, 19 NJPER 24005
RETIREMENT Early retirement incentives	N*	Fair Lawn , 79 N.J. 574 (1979)
Health benefits for future retirees that do not conflict with statute or regulation	M	Bradley Beach , PERC No. 81-21, 6 NJPER 11196
Pensions	N	
RULES Proposed new rules or modification to existing rules governing working conditions	M	Galloway , 78 N.J. 25 (1978); Ocean Twp. PBA , PERC No. 81-133, 7 NJPER 12149
SAFETY Employee safety issues	M	Maurice River , PERC No. 87-91, 13 NJPER 18054
Student safety issues	M	
Initial placement on the salary guide	M	Belleville , 209 N.J. Super. 93 (App. Div. 1986)
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TOPIC	NEGOTIABILITY STATUS	PERC/COURT CASE CITES
SALARY (<i>cont.</i>)		
• Payment of increment to teaching staff members upon expiration of three-year contract	N*	<i>Neptune</i> , 144 N.J. 16 (1996)
• Payment of increment to all other employees upon expiration of any contract (except if part of teachers' bargaining unit)	M	<i>Neptune</i> , 144 N.J. 16 (1996)
Salary pay procedures (e.g., pay schedule, salary holdback, etc.)	M	<i>Ewing</i> , PERC No. 81-85, 7 NJPER 12035
Merit pay plans (amount and evaluation criteria to be utilized in determining merit payments)	M	<i>County of Essex</i> , PERC Nos. 86-149, 12 NJPER 17201, and 87-48, 12 NJPER 17321, aff'd App. Div. Dkt. Nos. A-5803-85T7 and A-1458-86T7 (June 30, 1987); <i>Manalapan-Englishtown</i> , PERC No. 87-49, 12 NJPER 17322
SENIORITY PROVISIONS For tenured certificated staff (concerning RIFs)	N	<i>South River</i> , PERC No. 79-35, 5 NJPER 10020; <i>Keansburg</i> , PERC No. 85-55, 10 NJPER 15313
For tenured custodians (concerning RIFs)	N	
For non-certificated staff other than tenured custodians (concerning RIFs)	M	<i>Lyndhurst</i> , PERC No. 87-111, 13 NJPER 18113 (aff'd App. Div. 5/25/88)
As a consideration in transfers, reassignments, and promotions <i>after all other factors are deemed equal by the board</i>	M	<i>Trenton</i> , PERC No. 85-62, 11 NJPER 16013
For purposes of scheduling overtime and vacations where no interference with board's ability to determine qualifications or staffing levels	M	<i>Hunterdon Central</i> , PERC No. 87-83, 13 NJPER 18036
SHIFTING UNIT WORK To employees outside bargaining unit (<i>distinguishable from nonnegotiable policy decision to subcontract</i>) <i>See also Subcontracting</i>	M	<i>Rutgers</i> , PERC No. 82-20, 7 NJPER 12224, aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83)
STAFFING Number of employees	N	<i>Kingwood</i> , PERC No. 82-31, 7 NJPER 12262; <i>Rutgers</i> , PERC No. 76-13, 2 NJPER 13
Decision not to fill vacancy	N	<i>Maywood</i> , 168 N.J. Super. 45 (App. Div. 1979); <i>Newark</i> , PERC No. 83-85, 9 NJPER 14035
Hiring substitutes	N	<i>Elizabeth</i> , PERC No. 80-10, 5 NJPER 10164
Use of teacher aides <i>See also:</i> <i>Reduction in Force</i> <i>Assignment</i> <i>Qualifications</i>	N	<i>North Bergen</i> , PERC No. 82-109, 8 NJPER 13143; <i>Union City</i> , PERC No. 84-79, 10 NJPER 15026
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TOPIC	NEGOTIABILITY STATUS	PERC/COURT CASE CITES
STRIKES No strike/job action clause	M	<i>County of Essex</i> , PERC No. 83-82, 9 <i>NJPER</i> 14028
STUDENT-RELATED ISSUES Behavior/discipline	N	<i>Jersey City</i> , PERC No. 82-52, 7 <i>NJPER</i> 12308
Grading/testing	N	<i>Middlesex County College</i> , PERC No. 78-13, 4 <i>NJPER</i> 4023; <i>Union City</i> , PERC No. 84-79, 10 <i>NJPER</i> 15026
Safety	N	<i>Tenafly</i> , PERC No. 76-24, 2 <i>NJPER</i> 75
Grievance procedure	N	<i>Middlesex County College</i> , PERC No. 78-13, 4 <i>NJPER</i> 4023
Schedule	N	<i>Lincoln Park</i> , PERC No. 78-88, 4 <i>NJPER</i> 4131; <i>Old Bridge</i> , PERC No. 95-15, 20 <i>NJPER</i> 25175
Classroom time for students (distinguishable from teacher-pupil contact time)	N	<i>Middlesex County College</i> , PERC No. 78-13, 4 <i>NJPER</i> 4023; <i>Byram</i> , PERC No. 76-27, 2 <i>NJPER</i> 143, 152 <i>N.J. Super.</i> 12 (1977)
SUBCONTRACTING <i>See also Shifting Unit Work</i>		
Decision to subcontract	N	<i>Local 195</i> , 88 <i>N.J.</i> 393 (1982)
Discussion of economic subcontracting and notification to employees	M	<i>Old Bridge</i> , PERC No. 88-143, 14 <i>NJPER</i> 19194
Severance pay and recall rights	M	<i>Pennsville</i> , PERC No. 84-21, 9 <i>NJPER</i> 14246
Negotiated agreement as a bar to subcontracting	N	<i>Ridgewood</i> , PERC No. 93-81, 19 <i>NJPER</i> 24098, aff'd. App. Div., April 4, 1994, cert. den. 137 <i>N.J.</i> 312 (1994)
Notice of intent to subcontract that is overly broad and can prevent response to fiscal emergency	N	<i>Holmdel</i> , PERC No. 2000-43, 26 <i>NJPER</i> 31008
SUPERVISION OF EMPLOYEES	N	<i>Borough of Butler</i> , PERC No. 89-87, 15 <i>NJPER</i> 20064
TEACHER AIDES <i>See Staffing</i>		
TEACHER-PUPIL CONTACT TIME <i>See Work Load</i>		
TEACHING PERIODS <i>See Work Load</i>		
TENURE For teaching staff members	N	<i>North Bergen</i> , PERC No. 82-29, 7 <i>NJPER</i> 12260
For secretaries	N	
For custodians not appointed to a fixed-term contract	N	<i>Wright v. East Orange</i> , 99 <i>N.J.</i> 112 (1985)
For custodians appointed to a fixed-term contract	M	<i>Wright</i> , <i>supra.</i>
For employees not covered by statutory tenure provisions	M	<i>Woodbridge</i> , PERC No. 77-51, 3 <i>NJPER</i> 149, aff'd 159 <i>N.J. Super.</i> 83 (App. Div. 1978)
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TOPIC	NEGOTIABILITY STATUS	PERC/COURT CASE CITES
TIME KEEPING PROCEDURES	N	<i>North Bergen</i> , PERC No. 92-5, 17 NJPER 22177
TRANSFERS (Note that <i>N.J.S.A. 34:13A-25 prohibits</i> transfers of school employees between work sites for disciplinary reasons) Decisions and criteria	N	<i>Ridgefield Park</i> , 78 N.J. 144 (1978)
Procedures for transfers (such as notification and statement of reasons, prior consultation, etc.)	M	<i>Local 195</i> , 88 N.J. 393 (1982)
TUITION REIMBURSEMENT (must be consistent with NJSA 18A:6-8.5)	M	<i>Plainfield PBA</i> , PERC No. 76-42, 2 NJPER 168
UNION BUSINESS Release time for, or use of prep time for	M	<i>Haddonfield</i> , PERC No. 80-53, 5 NJPER 10250
VACATIONS Length of (<i>distinguished from nonnegotiable matter of academic calendar</i>)	M	<i>Cliffside Park</i> , PERC No. 77-2, 2 NJPER 252
WITHHOLDING OF INCREMENT <i>As per N.J.S.A. 34:13A-26, 27</i> Appeal mechanisms for teaching staff members <ul style="list-style-type: none"> • Increments withheld for predominantly evaluative reasons are submitted to Commissioner of Education • Increments withheld for predominantly disciplinary reasons may be submitted to binding arbitration 		
Appeal mechanisms for noncertificated staff <ul style="list-style-type: none"> • binding arbitration for withholdings of noncertificated staff's withholding based predominantly on evaluative reasons 	M	<i>Randolph Twp.</i> , App. Div. Docket No. A-2541-98T3, cert. den. 6/7/2000
Decision to withhold	N	<i>Bernards Twp.</i> , 79 N.J. 311 (1979)
Criteria for granting/withholding for teaching staff members, which do not conflict with statutes	N	<i>West Windsor-Plainsboro</i> , PERC No. 97-128, 23 NJPER 28140
Restoration of previously withheld increment	N	<i>Rockaway Twp.</i> , PERC No. 94-46, 19 NJPER 24276
Procedures for teaching staff which contravene statute or regulation or which interfere with managerial prerogatives	N	<i>Upper Saddle River</i> , <i>supra.</i> ; <i>Greater Egg Harbor</i> , <i>supra.</i>
Procedures for teaching staff not contravened by statute or regulation and not impinging on managerial prerogative. For example: <ul style="list-style-type: none"> • notice of evaluation results • statement of reasons • opportunity for board hearing • notification of recommendation to withhold • clause permitting withholding to be grieved but not to binding arbitration 	M	<i>Greater Egg Harbor</i> , PERC No. 88-37, 13 NJPER 18312; <i>Upper Saddle River</i> , PERC No. 88-58, 14 NJPER 19025
Procedures for non-teaching staff members	M	<i>Bernardsville</i> , PERC No. 86-47, 11 NJPER 16237; <i>East Brunswick</i> , App. Div. Dkt. No. 5569-8356, March 14, 1985, cert. den. 101 N.J. 280 (1985)
WORKDAY		
Length of <i>See also Hours of Work</i>	M	<i>Galloway</i> , PERC No. 77-3, 2 NJPER 254, aff'd 157 N.J. Super. 74 (App. Div. 1978)
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TOPIC	NEGOTIABILITY STATUS	PERC/COURT CASE CITES
WORK LOAD (<i>distinguished from managerial prerogative to assign</i>)		
• Decision to implement block scheduling	N	South Brunswick , PERC No. 97-117, 23 NJPER 28114; Jersey City , PERC No. 97-151, 23 NJPER 28182
• Impact of decision to implement block scheduling	M	South Brunswick , PERC No. 97-117, 23 NJPER 28114; Jersey City , PERC No. 97-151, 23 NJPER 28182
Number of classes taught	M	Buena Regional , PERC No. 79-63, 5 NJPER 10072
Teacher-pupil contact time	M	Kingwood , PERC No. 85-94, 11 NJPER 16084
Number of nonteaching duties	M	Bayonne , PERC No. 80-58, 5 NJPER 10255, aff'd App. Div. (11/3/80) cert. den. 87 N.J. 310 (1981)
Number of teacher academic preparations <i>See also:</i> <i>Class Size</i> <i>Extracurricular Activities</i> <i>Preparation Periods</i> <i>Assignments</i>	M	Ramsey , PERC No. 85-119, 11 NJPER 16133, aff'd App. Div. Dkt. No. A-4836-84T1 (2/6/86)
WORKSHOPS AND AFTER-SCHOOL MEETINGS For teachers, assignment to	M	Carteret , PERC No. 80-30, 5 NJPER 10205, aff'd App. Div. (11/10/80)
WORK YEAR Length of	M	Old Tappan , PERC No. 80-74, 5 NJPER 10286
Decision to reduce	M	Piscataway , 164 N.J. Super. 98 (App. Div. 1978)
ZIPPER CLAUSE ("Fully bargained" clause)	M	City of Jersey City , PERC No. 84-24, 9 NJPER 14249
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