What follows is an overview of Commission case law since the March 1997 Annual Conference.

**Transfers and Assignments**

Public employers have a prerogative to transfer or reassign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. See *Local 195, IFPTE v. State*, 88 N.J. 393 (1982). The Commission will therefore generally restrain binding arbitration over transfer decisions. *Matawan-Aberdeen Reg. School Dist. Bd. of Ed.*, P.E.R.C. No. 97-131, 23 *NJPER* 337 (¶28153 1997)(board had prerogative to transfer cafeteria aide after reduction in force); *New Jersey Transit Corp.*, P.E.R.C. No. 97-127, 23 *NJPER* 304 (¶28139 1997)(police department could select officers with special skills and characteristics in starting up a new police unit); *South Brunswick Tp.*, P.E.R.C. No. 98-90, 24 *NJPER* 83 (¶29045 1997)(arbitrator cannot second-guess employer's determination of most qualified candidate for ranger officer position); *City of Atlantic City*, P.E.R.C. No. 97-132, 23 *NJPER* 339 (¶28154 1997)(employer had prerogative to determine that deputy fire chief was most qualified to fill position of acting fire chief and not to rotate assignment); *Borough of North Plainfield*, P.E.R.C. No. 98-76, 24 *NJPER* 27 (¶29015 1997)(proposal to have EMS duties performed by firefighters who volunteer not mandatorily negotiable); *City of Newark*, P.E.R.C. No. 98-108, 24 *NJPER* _ (¶___ 1998)(restraining arbitration over decision not to assign active duty police officer performing armed security and other tasks at credit union).

In the education context, a contract article on non-instructional duties is not mandatorily negotiable to the extent it restricts a board's right to assign staff to perform lunchroom supervision duties and related clerical duties. *Paterson State-Operated School Dist.*, P.E.R.C. No. 98-29, 23 *NJPER* 514 (¶28250 1997). The article is mandatorily negotiable to the extent it relates to the
assignment of clerical duties that are not part of or incidental to the teachers' normal assignments. Id. A contract clause requiring that involuntary transfers or reassignments of custodians be based on length of service is not mandatorily negotiable. West Windsor-Plainsboro Reg. Bd. of Ed., P.E.R.C. No. 97-133, 23 NJPER 436 (¶28199 1997).


Maintaining an attendance register is incidental to the duty of providing instruction. Englewood Bd. of Ed., P.E.R.C. No. 98-75, 24 NJPER 21 (¶29014 1997). A board did not show how transporting students was incidental to teaching or how a restriction on that duty interfered with its educational mission. Id.

Reassignments that result in a loss of benefits are not per se disciplinary. City of Jersey City, P.E.R.C. No. 98-38, 23 NJPER 549 (¶28274 1997).

A provision prohibiting, absent operational needs, the transfers of union officials so they can administer the contract is an exception to the rule that transfers are not mandatorily negotiable. Edison Tp., P.E.R.C. No. 98-16, 23 NJPER 492 (¶28237 1997); See also Local 195, IFPTE v. State, 88 NJPER 393, 419 (1982).

**Workload and Compensation**


Although an arbitrator cannot second-guess a Department of Personnel ruling in a classification appeal, the question of whether an employer is contractually obligated to pay higher compensation to a grievant for

Arbitration demands for additional compensation based on claims that employees have performed the duties of higher-ranking positions involve mandatorily negotiable and legally arbitrable matters. *City of Newark*, P.E.R.C. No. 98-37, 23 *NJPER* 548 (¶28273 1997).

Workload and the length of the workday are, in general, mandatorily negotiable. A claim for compensation for an alleged workday extension is mandatorily negotiable. *Fairfield Tp. Bd. of Ed.*, P.E.R.C. No. 98-32, 23 *NJPER* 541 (¶28268 1997). Whether an alleged workday extension is de minimis is for an arbitrator to decide. The Commission cannot say that a dispute is too insignificant to be submitted to the legislatively-favored and voluntarily-negotiated forum of binding arbitration. *Id.*; see also *Irvington Bd. of Ed.*, P.E.R.C. No. 98-21, 23 *NJPER* 500 (¶28242 1997)(number of days worked by administrators was within range of days worked over past nine years; no evidence of request and refusal to negotiate over compensation); *Willingboro Bd. of Ed.*, P.E.R.C. No. 98-11, 23 *NJPER* 471 (¶28220 1997)(workload increase after a reduction in force not arbitrable; claim for compensation or negotiations over compensation for alleged increase in workload legally arbitrable).

The number of teaching periods assigned to individual teachers is a term and condition of employment that must be preserved during successor contract negotiations. *Berkeley Heights Bd. of Ed.*, P.E.R.C. No. 98-6, 23 *NJPER* 452 (¶28213 1997)(where regional school district dissolved, individual board could not unilaterally increase number of teaching periods). A school district has a prerogative to determine the structure of the school day and to establish block scheduling (double periods). *Jersey City State-Operated School District*, P.E.R.C. No. 97-151, 23 *NJPER* 396 (¶28182 1997).

However, compensation for increased workload is severable, negotiable and legally arbitrable. *Id.* And teachers have a generally negotiable interest, expressed in terms of safety and workload, in not teaching more than four consecutive periods without a break or without additional compensation. *South Brunswick Tp. Bd. of Ed.*, P.E.R.C. No. 97-117, 23 *NJPER* 238 (¶28114 1997).

A school board had the right to permit teachers to hold parent-teacher conferences in
lieu of administrative or department meetings. *Teaneck Bd. of Ed.*, P.E.R.C. No. 97-114, 23 NJPER 232 (¶28111 1997). The association had the right to seek compensation for teachers who conduct such conferences. *Id.*

Where an association claimed that the use of a second textbook constituted an additional preparation in violation of the contract, the Commission restrained arbitration. *West Paterson Bd. of Ed.*, P.E.R.C. No. 98-31, 23 NJPER 540 (¶28267 1997). It held that negotiations over the amount or variety of supplemental materials to be used in a class and curriculum would entrench too much upon educational policy determinations concerning the best textbooks or instructional materials to use. *Id.*

A school board had an obligation to negotiate before changing its practice of not requiring any administrator to report for work on days when the schools were closed for inclement weather. *Irvington Bd. of Ed.*, P.E.R.C. No. 97-148, 23 NJPER 392 (¶29179 1997). The Commission ordered the board to negotiate and compensate employees who reported to work, restore leave time to employees who were compelled to use leave, and post a notice.

Anti-union Discrimination

The New Jersey Employer-Employee Relations Act prohibits discrimination to encourage or discourage union activity protected by the Act, and interference with protected rights. The Commission found that an employer illegally denied a union president access to a jail facility; served him with a notice of termination at negotiations; and objected to his participation in negotiations because he had been fired. Atlantic Cty. (Dept. of Corrections), P.E.R.C. No. 98-8, 23 NJPER 466 (¶28217 1997). Hostility toward an association and one of its representatives motivated a majority of board members not to promote the representative. Willingboro Tp. Bd. of Ed., P.E.R.C. No. 98-113, 24 NJPER 466 (¶28217 1997). The acting director of a library violated the Act when he transferred two library assistants to another library branch and increased proposed three-day suspensions against them to five days. Camden Free Public Library, P.E.R.C. No. 98-69, 24 NJPER 12 (¶29008 1997). The Commission found that these actions were taken in retaliation for the employees' having grieved the proposed suspensions and their representative's having filed an unfair practice charge against the Library. Id.


Contested Transfer Cases

In 1990, the Legislature amended the Act to prohibit transfers of education employees between work sites for disciplinary reasons. N.J.S.A. 34:13A-25. The Commission has interpreted the undefined phrase "work sites" to refer to disciplinary

**Reprimands and Evaluations**


**Evaluations**

In general, the criteria to be used in evaluating school district personnel are not mandatorily negotiable while evaluation procedures which are not expressly, specifically or comprehensively preempted by education statutes or regulations are mandatorily negotiable. *See Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n*, 91 N.J. 38 (1982); *Ocean Tp. Bd. of Ed.*, P.E.R.C.

Fines, Suspensions, Terminations, and Nonrenewals

Under a 1997 amendment to N.J.S.A. 34:13A-5.3, disciplinary review procedures may provide for binding arbitration of disputes involving the minor discipline of employees other than State troopers. The Appellate Division has clarified that minor discipline is defined as a suspension or fine of five days or less. Monmouth Cty. and CWA, 300 N.J. Super. 272 (App. Div. 1997). The Commission rejected the argument that the amendment applies only to employees covered by statutory tenure or civil service laws. Rutgers, the State Univ., P.E.R.C. No. 98-2, 23 NJPER 448 (¶28209 1997).


*N.J.S.A. 18A:17-2* establishes the statutory framework governing tenure for school secretaries. Under that framework, secretaries do not achieve tenure until they have worked three consecutive calendar years or such shorter period as may be fixed by the board, or have worked three consecutive academic years and begun employment in the next academic year. A tenured secretary has a right to continued employment, absent a reduction in force, during good behavior and efficiency. Absent some claim of job security, a decision not to reemploy a secretary could not be characterized as disciplinary and subject to binding arbitration under *N.J.S.A. 34:13A-29*. *Ridgefield Bd. of Ed.*, P.E.R.C. No. 98-55, 23 NJPER 624 (¶28303 1997). That statute requires that grievance procedures in schools be deemed to require binding arbitration as the terminal step with respect to disputes concerning the imposition of reprimands and discipline.

*N.J.S.A. 40A:14-147* establishes certain procedural rights for police officers facing departmental charges. Those rights include a pre-disciplinary hearing before an employer-designated hearing officer. *N.J.S.A. 34:13A-5.3* authorizes negotiations over disciplinary review procedures and permits an agreement to have an arbitrator review suspensions of five days or less. The question of who, under *N.J.S.A. 40A:14-147*, determines whether discipline will be imposed is different from the question of who, under *N.J.S.A. 34:13A-5.3*, reviews whether a disciplinary action, once imposed, was


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**Increment Withholdings**


The Legislature did not mean to go beyond addressing the forum for reviewing initial increment withholdings, to repeal the part of N.J.S.A. 18A:29-14 prohibiting the mandatory restoration of adjustment increments, or to overrule the prior case law holding mandatory restoration clauses non-negotiable. Cherry Hill Bd. of Ed., P.E.R.C. No. 97-139, 23 NJPER 346 (¶28160 1997).


Although advance notice and other procedural aspects of increment withholdings are generally negotiable, a contract may not interfere with the board's ability to continue to evaluate a teacher's performance until the end of the school year to determine whether an increment should be withheld. West Windsor-Plainsboro Reg. Bd. of Ed., P.E.R.C. No. 97-128, 23 NJPER 305 (¶28140 1997).

**Work Hours and Schedules**

Public employers have a prerogative to determine the hours and days during which a service will be operated and the staffing levels at any given time during those hours. But within that framework, work schedules of individual employees are, as a rule,
mandatorily negotiable. *Local 195, IFPTE v. State*, 88 N.J. 393 (1982). A particular work schedule proposal is not mandatorily negotiable if the record demonstrates that it would significantly interfere with a governmental policy determination. Applying that case law, the Commission found that a provision concerning work schedules for officers in the corrections division of a county jail was mandatorily negotiable; a provision concerning work schedules in the transportation division was mandatorily negotiable except to the extent it would prohibit the employer from scheduling employees after 6:00 p.m.; and a provision concerning scheduling of weekends off in the corrections division was mandatorily negotiable.

A school board had a managerial prerogative to provide remedial instruction before and after the school day to fulfill its educational policy goal of not removing students during the regular school day for basic skills instruction. The Commission therefore restrained arbitration to the extent the association sought to challenge the board's decisions to require one teacher to work 48 minutes before the contractual workday and another teacher to work 48 minutes after the contractual workday. *Wood-Ridge Bd. of Ed.*, P.E.R.C. No. 98-45, 23 NJPER 570 (¶20285 1997).

A school board has a prerogative to determine the days and hours custodial services are needed and the number of custodians on duty at any given time. *Bloomfield Bd. of Ed.*, P.E.R.C. No. 98-84, 24 NJPER 60 (¶20307 1997). A desire to reduce labor costs by changing the custodial workday to encompass early morning and evening hours does not involve educational policy. *Id.*

A grievance contesting a five day "layoff" of custodial employees was mandatorily negotiable and legally arbitrable. *Woodbury Bd. of Ed.*, P.E.R.C. No. 98-112, 24 NJPER __ (¶20313 1998). No positions were abolished and the work force was not reduced. *Id.*

As a rule, a clause permitting shift exchanges subject to an employer's prior approval is mandatorily negotiable. However, an employer can deny shift exchanges if an officer's special skills are required on a particular shift. *City of Jersey City*, P.E.R.C. No. 98-96, 24 NJPER 116 (¶20358 1997).
Promotions

Public employers have a prerogative to make promotions to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). A seniority provision cannot require an employer to keep an employee in a promotional position permanently unless the employer can show that the employee is unqualified. Somerset Raritan Valley Sewerage Auth., P.E.R.C. No. 97-120, 23 NJPER 291 (¶28132 1997). The Commission restrained arbitration over the portion of a grievance challenging the employer's substantive right to set promotional qualifications, including a requirement that applicants have supervising skills and experience. Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 97-113, 23 NJPER 230 (¶28110 1997). However, it declined to restrain arbitration over the procedural claim that the Board changed the posted qualifications. Id. Similarly, the Commission restrained arbitration where the grievance challenged a determination of what constituted relevant professional experience. Sussex Cty. Community College, P.E.R.C. No. 98-61, 23 NJPER 633 (¶28309 1997). The Commission declined to restrain arbitration to the extent, if any, the grievance alleged that the employer did not properly notify employees that the categories of teaching and work experience would not be considered as relevant professional experience. Id.; see also Englewood Bd. of Ed., P.E.R.C. No. 98-75, 24 NJPER 21 (¶29014 1997)(included among negotiable procedures are guarantees that employees who meet all the promotional criteria will be considered for promotion).

Generally it is not mandatorily negotiable to restrict promotional opportunities to current employees. North Bergen Bd. of Ed. v. North Bergen Teachers Fed., 141 N.J. Super. 97 (App. Div. 1976); New Jersey Hwy. Auth., P.E.R.C. No. 98-92, 24 NJPER 110 (¶29054 1998)(employer has prerogative to interview candidates outside negotiations unit and to decide which applicants are qualified). N.J.S.A. 40A:14-29 narrows an employer's prerogative in this area. It requires that in most municipalities, promotions to fire superior positions shall be made from the membership of the department. A contract may incorporate that mandate.
Arbitration was restrained where a grievance alleged a violation of a practice of promoting the most senior candidate. Greenwich Tp., P.E.R.C. No. 98-20, 23 NJPER 499 (¶28241 1997). An employer may leave a position vacant after its former holder has retired, resigned or been promoted. Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981); Monclair Tp., P.E.R.C. No. 98-36, 23 NJPER 546 (¶28272 1997)(employer had not yet determined whether to fill vacancy).

Unit Work

A public employer must negotiate over shifting work traditionally done by a group of employees within a negotiations unit to another group of its employees outside its unit. See, e.g., City of Jersey City, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996), aff’d 23 NJPER 325 (¶28148 App. Div. 1997), certif. granted S.Ct. Dkt. No. 44,268; Regular police may seek contractual protection against having their opportunities to earn overtime compensation reduced through the use of special police officers to fill in for absent officers. City of Egg Harbor City, P.E.R.C. No. 98-95, 24 NJPER 114 (¶29057 1998). In an unfair practice case, the Commission ordered a school board to immediately discontinue the use of non-unit substitute custodians who were performing work previously assigned during the school year to unit custodians as overtime work. North Arlington Bd. of Ed., P.E.R.C. No. 98-10, 23 NJPER 469 (¶28210 1997). A loss of overtime opportunities was not negotiable where the employer decided to curtail emergency medical services on holidays and rely on volunteer services instead. Monroe Tp., P.E.R.C. No. 97-149, 23 NJPER 394 (¶28179 1997).

In a case involving the decision to staff a Home Energy Assistance Program with personnel contracted through Kelly Temporary Services, Inc., there was no duty to negotiate. Burlington Cty. Bd. of Social Services, P.E.R.C. No. 98-62, 24 NJPER 2 (¶29001 1997). The case was primarily about contracting to hire extra temporary personnel for seasonal work rather than eroding a negotiations unit. The Commission noted the minor effect of the decision on the in-house staff and the lack of a contractual right of temporary personnel to reemployment each
heating season or any expectation of reemployment.

**Benefits for Sickness and Disability**

A dispute over whether a police officer's injury is a new or separate injury entitling him to another year of paid leave under the parties' contract can be decided by an arbitrator consistent with N.J.S.A. 40A:14-137. *Woodbridge Tp.*, P.E.R.C. No. 98-101, 24 *NJPER* 124 (¶29062 1998).


N.J.S.A. 40A:14-154, which authorizes an employer to provide limited supplemental compensation to police officers disabled while performing their duties, does not preempt negotiations over a proposal to have an employer purchase a group disability insurance policy for its employees. *Old Bridge Tp.*, P.E.R.C. No. 98-53, 23 *NJPER* 622 (¶28301 1997).


Overtime

Part of a State employee's grievance concerning overtime for travelling on a Sunday was preempted by regulation. *State of New Jersey (OER)*, P.E.R.C. No. 98-66, 24 *NJPER* 7 (¶29005 1997). Part of the grievance relating to overtime compensation for attending training on a holiday was legally arbitrable. *Id.*

A claim by a State employee for overtime compensation for travel time to and from field locations beyond his normal commuting time to and from regional headquarters was not preempted and was therefore legally arbitrable. *State of New Jersey (Dept. of Transportation)*, P.E.R.C. No. 98-52, 23 *NJPER* 608 (¶28299 1997).

A public employer has a right to deviate from a negotiated overtime allocation system when necessary to protect the public interest. *City of Elizabeth*, P.E.R.C. No. 97-115, 23 *NJPER* 234 (¶28112 1997) (overtime detail called for officers with specialized experience). *Id.*

Other Compensation Issues


The Commission dismissed an unfair practice charge alleging that the employer, during successor contract negotiations, unilaterally changed terms and conditions of employment by refusing to pay an automatic salary adjustment. *Bergen Cty.*, P.E.R.C. No. 97-124, 23 *NJPER* 297 (¶28136 1997). The Commission found that the case involved adjustments to overall salary levels -- adjustments that are conceptually different from increments. The Commission declined to consider a salary increase unrelated to attainment of an additional year of service as part of the status quo. *Id.*

*N.J.S.A. 34:13A-5.3* states that "[p]roposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." Thus, existing employment conditions cannot be changed without negotiations. *Barnegat Tp. Bd. of Ed.*, P.E.R.C. No. 91-18, 16
A charging party need not prove an established past practice creating a contractual term. It is sufficient to show that the employment condition existed and was changed. Thus, an employer violated the Act by unilaterally changing a practice of placing new police officers with police academy training and at least one year's municipal police department experience at step three of the salary guide. *Middletown Tp.*, P.E.R.C. No. 98-77, 24 *NJPER* 28 (¶29016 1997), app. pending App. Div. Dkt. No. A-2351-97T5.

Employers and majority representatives may legally agree that new employees will not be paid more than incumbent employees performing the same duties. *Somerset Cty.*, P.E.R.C. No. 98-24, 23 *NJPER* 505 (¶28245 1997).

An employer violated the Act by unilaterally requiring police applicants to agree to repay certain training costs if they leave employment within two years of completing police academy training. *New Jersey Transit*, P.E.R.C. No. 97-125, 23 *NJPER* 298 (¶28137 1997), app. pending App. Div. Dkt. No. A-005710-96T5. The Commission found the disputed requirement to be a term and condition of employment which intimately and directly concerns the duration of employment of police trainees. *Id.*

An employer may not unilaterally change the pay period from weekly to biweekly. *Borough of Fairview*, P.E.R.C. No. 97-152, 23 *NJPER* 398 (¶28183 1997).

### Miscellaneous

Given safety concerns, a dispute over whether certain police officers must turn in their portable, two-way radios was found to be at least permissively negotiable and therefore arbitrable. *City of Newark*, P.E.R.C. No. 97-153, 23 *NJPER* 400 (¶28184 1997).

Special circumstances justified a prohibition against employees wearing t-shirts stating "Don't Privatize, Manage Wise" within the inner perimeter of correctional facilities. *State of New Jersey (Dept. of Corrections)*, P.E.R.C. No. 97-145, 23 *NJPER* 388 (¶28176 1997).

Appeals involving the demotional/layoff rights of permanent Civil Service employees must be filed with the New Jersey Department of Personnel. *City of Rahway*, P.E.R.C. No. 97-147, 23 *NJPER* 391 (¶28178 1997).
In *Local 195, IFPTE v. State*, 88 N.J. 393 (1982), the Court held that subcontracting decisions are not mandatorily negotiable. The Court added, however, that an employer cannot subcontract in bad faith for the sole purpose of laying off public workers or substituting private workers for public workers. *Id.* at 411. Such a claim cannot, however, be pursued through binding arbitration. *Borough of Belmar*, P.E.R.C. No. 97-150, 23 NJPER 395 (¶28181 1997); *N.J. Sports & Exposition Auth.*, P.E.R.C. No. 90-63, 16 NJPER 48 (¶21023 1989).


Arbitration over aspects of grievances contesting a recalculation of sick leave time after a workweek reduction were preempted by N.J.A.C. 4A:6-1.5(f). *State of New Jersey (DEP)*, P.E.R.C. No. 98-114, 24 NJPER _ (¶__ 1998). Since no comparable regulation specifies a formula for recalculating administrative and vacation time balances in the event of workweek reductions, arbitration over that aspect of the grievances was not restrained. *Id.*

A school board has a right to set a student discipline policy normally providing that only the vice-principal or principal can summon the police to a school, but a majority representative may seek to negotiate over a narrow exception where a teacher's safety is threatened and immediate action is required. *Perth Amboy Bd. of Ed.*, P.E.R.C. No. 98-59, 23 NJPER 632 (¶28308 1997).


*N.J.S.A. 40A:14-155* mandates that an employer provide legal representation to police officers in certain instances. But it is well-established that this statute does not prohibit an employer from agreeing to provide
coverage beyond the instances required by that statute. *City of Newark*, P.E.R.C. No. 98-82, 24 *NJPER* 56 (¶29035 1997), app. pending App. Div. Dkt. No.______.

Disputes over compliance with protections afforded by the Open Public Meetings Act may be arbitrated. *Union Cty. Reg. H.S. Dist. No. 1 Bd. of Ed.*, P.E.R.C. No. 98-98, 24 *NJPER* 119 (¶29060 1998). Extracurricular appointments and retentions are mandatorily negotiable and procedural claims related to non-renewals are also mandatorily negotiable. *Id.*


A union did not breach its duty of fair representation where it declined in good faith to process a unit member's grievances but did not inform him that he could file grievances on his own. *Carteret Ed. Ass’n*, P.E.R.C. No. 97-146, 23 *NJPER* 390 (¶28177 1997). The Commission has declined to recognize a duty to inform absent some other action by the union that misleads employees or impedes that right.

An employer has a prerogative to decide which employees will be trained, how they will be trained, and how long they will be trained. *See, e.g., Borough of Dunellen*, P.E.R.C. No. 95-113, 21 *NJPER* 249 (¶26159 1995). However, an employer may agree to reimburse employees for tuition payments for work-related courses. *Wayne Tp.*, P.E.R.C. No. 98-85, 24 *NJPER* 71 (¶29040 1997).

Language requiring consultation with a teacher before a grade change is mandatorily negotiable because it does not restrict a board's right to change grades nor does it bind the board in regard to its managerial prerogative to establish student grading policy. *Middletown Tp. Bd. of Ed.*, P.E.R.C. No. 98-74, 24 *NJPER* 19 (¶29013 1997).

Parties may agree to exchange information and material relevant to a grievance that they have agreed cannot be submitted to binding arbitration. *Rutgers, the State Univ.*, P.E.R.C. No. 98-109, 24 *NJPER* ____ (¶____ 1998).

Clauses which state that non-negotiable subjects will become a part of the contract in the event of a change in the case law or a statute are not mandatorily negotiable. *Englewood Bd. of Ed.*, P.E.R.C. No. 98-75, 24 *NJPER* 21 (¶29014 1997). Clauses which allow the reopening of negotiations in the event of increases in
salaries or other benefits negotiated by other units are not illegal parity clauses and are mandatorily negotiable. *City of Perth Amboy*, P.E.R.C. No. 98-67, 24 *NIPER* 8 (¶29006 1997).

**Commission Procedures**

Where one party alleges a violation of the statutory duty to negotiate and the other party raises a contractual defense, a Complaint will normally issue. *East Brunswick Tp.*, P.E.R.C. No. 97-112, 23 *NIPER* 229 (¶28109 1997); *North Caldwell Bd. of Ed.*, P.E.R.C. No. 97-37, 22 *NIPER* 379 (¶27200 1996); see also *Passaic Cty. Bd. of Ed.*, P.E.R.C. No. 89-98, 15 *NIPER* 257 (¶20106 1989). Nevertheless, deferral of the underlying contractual interpretation question to binding arbitration is the preferred mechanism for resolving such questions. *See Brookdale Comm. College*, P.E.R.C. 83-131, 9 *NIPER* 266 (¶14122 1983). Even if a case cannot be deferred, a pre-hearing summary judgment motion based on a contractual defense may be filed and supported by affidavits and exhibits. This procedure guarantees the parties an opportunity to present their legal arguments and permits summary judgment if no material facts are in dispute.

Where there is no successor contract proposal, demand to arbitrate a grievance, or any special circumstances warranting the Commission's scope of negotiations jurisdiction, the Commission will not entertain a scope petition seeking a determination that portions of an agreement are not mandatorily negotiable. *Lower Tp.*, P.E.R.C. No. 98-57, 23 *NIPER* 630 (¶28306 1997); *Rumson-Fair Haven Reg. H.S. Bd. of Ed.*, P.E.R.C. No. 98-25, 23 *NIPER* 506 (¶28246 1997).

Where grievances can legally be submitted to advisory arbitration, whether the parties have agreed to do so is an issue of contractual arbitrability outside the Commission's jurisdiction. *Rutgers, the State Univ.*, P.E.R.C. No. 98-23, 23 *NIPER* 504 (¶28244 1997).

Absent a showing that the charging party was prevented from filing a timely charge, no violation can be found based on any unfair practice occurring more than six months before the filing of the charge. *Borough of Sayreville*, P.E.R.C. No. 98-18, 23 *NIPER* 497 (¶28239 1997); *NJIT*, P.E.R.C. No. 97-123, 23 *NIPER* 296 (¶28134 1997).