

This book identifies matters found by the New York State Public Employment Relations Board (PERB), its Director of Public Employment Practices and Representation (Director), its Administrative Law Judges (ALJ) and the courts to be mandatory, nonmandatory, or prohibited subjects of negotiations. It is current through December 31, 2006.

This book is intended solely as a reference guide. The Director and ALJ decisions cited herein have not been appealed to the Board and are binding only on the parties to the particular case. It is recommended that the cited cases be read for their complete holdings. All citations are to paragraph numbers in the OFFICIAL DECISIONS OPINIONS AND RELATED MATTERS – PUBLIC EMPLOYMENT RELATIONS BOARD. (Board decisions begin with 30, 31 or 65, Director decisions begin with 45, 46 or 66, ALJ decisions begin with 45 or 46, court decisions begin with 70, 75 or 80).

Matters which are nonmandatory in nature may become mandatorily negotiable between the parties to a collective bargaining agreement that already contains such matters. This “conversion theory of negotiability” effectuates the fundamental policies of the Public Employees’ Fair Employment Act (Act) and avoids continuing litigation of disputes which should be resolved through good faith negotiations. *See City of Cohoes*, 31 PERB ¶3020 (1998), *confirmed sub nom. Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v Cuevas*, 32 PERB ¶7026 (Sup Ct Albany County 1999), *affd*, 276 AD2d 184, 33 PERB ¶7019 (3d Dept 2000); *lv denied*, 96 NY2d 711, 34 PERB ¶7018 (2001); *City of Utica*, 31 PERB ¶3075 (1998), *affd*, 32 PERB ¶7005 (Sup Ct Albany County 1999); *Greenburgh No 11 Union Free Sch Dist*, 32 PERB ¶3024 (1999).

This book was originally compiled by Kenneth J. Toomey, Esq., during his tenure at PERB as an Administrative Law Judge and, later, as Assistant Director of Public Employment Practices and Representation. The present volume updates content and revises the citation format.

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1. COMPENSATION

1.1 Initial Salary

Subject to later negotiations upon demand, an employer may unilaterally determine the compensation for a new position.

Churchville-Chili Cent Sch Dist, 17 PERB ¶3055 (1984); Board of Educ of the City Sch Dist of the City of New York, 22 PERB ¶3011 (1989).

For starting salary purposes, the credit to be given new employees for prior experience is mandatorily negotiable.

Franklin-Essex-Hamilton BOCES Teachers Assn, 17 PERB ¶4612 (1984).

Wages and salaries, or starting salaries of titles in the bargaining unit are the most basic of terms and conditions of employment and, therefore, mandatory subjects of negotiation

Bellmore Union Free Sch Dist, 34 PERB ¶3009 (2001); Town of Scriba, 35 PERB ¶4501 (2002); Sherburne-Earlville Cent Sch Dist, 36 PERB ¶3011 (2003); International Union of Operating Engineers, Local 409, 36 PERB ¶3034 (2003).

1.2 Decreases

A reduction in salary is a mandatory subject of negotiation.

County of Monroe, 10 PERB ¶3104 (1977).

A decrease in salary based on a reduction of hours caused by a decrease in services is, nonmandatory.

Vestal Cent Sch Dist, 15 PERB ¶3006 (1982); Schuylerville Cent Sch Dist, 14 PERB ¶3035 (1981).

A demand for a lower pay rate for probationary employees is a mandatory subject.

Old Brookville PBA, 16 PERB ¶3094 (1983).

1.3 Increases

A salary increase is a mandatory subject.

Huntington Union Free Sch Dist No. 3, 16 PERB ¶3061 (1983); County of Suffolk, 15 PERB ¶3021 (1982); Brookhaven-Comsewogue Union Free Sch Dist,

22 PERB ¶3037 (1989), *enfd*, 23 PERB ¶7009 (Sup. Ct. Albany County 1990); *Hempstead Union Free Sch Dist*, 9 PERB ¶3019 (1976), *affg* 8 PERB ¶4558 (1975); *Hempstead Union Free Sch Dist*, 7 PERB ¶3032 (1974); *Board of Educ Union Free Sch Dist No. 3 Town of Huntington v Associated Teachers of Huntington*, 30 NY2d 122, 5 PERB ¶7507 (1972) (salary increase in year before retirement); *Union Free Sch Dist No. 5, Levittown*, 5 PERB ¶3058 (1972). See also *Connetquot Cent Sch Dist*, 19 PERB ¶3045 (1986).

Salary increases for positions which are not occupied are mandatorily negotiable.

New Paltz United Teachers, 16 PERB ¶4552 (1983).

A demand that employees' salaries be increased for each position that is abolished is mandatory.

Niagara Falls Uniform Fire Fighters Assn, Local 714, 16 PERB ¶4553 (1983).

1.4 Incentive Pay

An incentive pay plan is not a gift of public funds and is mandatorily negotiable.

Board of Educ Union Free Sch Dist No. 11 Town of North Hempstead, Nassau County v Carle Place Teachers Assn, 6 PERB ¶7510 (Sup Ct Nassau County 1973).

The decision regarding whether to apply for Excellence in Teaching funds made available by statute to increase teachers' salaries is a nonmandatory subject of negotiation since the statutory language evidences such a legislative intent.

City Sch Dist City of Elmira v PERB, 74 NY2d 395, 22 PERB ¶7032 (1989), *affg* 144 AD2d 35, 22 PERB ¶7002 (3d Dept 1989).

A restriction on the distribution of Excellence in Teaching funds based on employees' attendance is not precluded by the enabling statute and is mandatorily negotiable.

Monroe-Woodbury Cent Sch Dist, 25 PERB ¶3074 (1992).

1.5 Longevity Pay

Salary increases based upon length of employment are mandatory.

TBTA, 5 PERB ¶3037 (1972); *Bridge and Tunnel Officers Benevolent Assn and TBTA*, 27 PERB ¶3076 (1994).

Longevity pay increases based on service of police officers with other employers is governed by Town Law §153 and is, therefore, nonmandatory.

Town of Mamaroneck PBA, Inc v PERB, 66 NY2d 722, 18 PERB ¶7015 (1985).

The elimination of longevity steps for new hires is mandatory.

Old Brookville PBA, 16 PERB ¶3094 (1983).

1.6 Merit Pay

Merit increases are a mandatory subject.

County of Ulster, 14 PERB ¶3008 (1981); *Jefferson County Bd of Supervisors*, 6 PERB ¶3031 (1973), *revd* on other grounds, 44 AD2d 893, 7 PERB ¶7009 (4th Dept 1974), *affd*, 36 NY2d 534, 8 PERB ¶7008 (1975).

1.7 Overtime Pay

Compensation for overtime work is a mandatory subject.

Town of Stony Point, 6 PERB ¶3030 (1973). *See also Bd of Educ of the City Sch Dist of the City of New York*, 6 PERB ¶3006 (1973); *Spring Valley PBA v Vil of Spring Valley*, 80 AD2d 910, 14 PERB ¶7515 (2d Dept 1981).

Compensation for overtime work is mandatorily negotiable.

City of Peekskill, 35 PERB ¶4509 (2002), *revd on other grounds*, 35 PERB ¶3016 (2002).

Overtime payment to a fire fighter who, after medical treatment, returns to assigned station between tours of duty is mandatory.

Professional Fire Fighters Assn Local 274, 10 PERB ¶3043 (1977).

Overtime pay for an employee called in to work for a union official who is out on union business is mandatory.

City of Yonkers, 10 PERB ¶3056 (1977).

Overtime pay for performance of "police duties" during off-duty time, outside the boundaries of the employer and while the police officer is not subject to supervision by the employer, is nonmandatory since it relates to duties performed outside the employer's control and therefore outside the employment relationship.

PBA Hempstead, 11 PERB ¶3072 (1978).

Overtime pay for attendance at disciplinary proceedings held during other than the regular tour of duty is mandatory.

City of Rochester, 12 PERB ¶3010 (1979).

Compensation for teachers who perform chaperone duties is mandatory.

Averill Park Cent Sch Dist, 10 PERB ¶4560 (1977).

Compensation for summer school sessions is mandatory.

Saugerties Cent Sch Dist, 10 PERB ¶4529 (1977); *SUNY*, 9 PERB ¶4534 (1976).

Compensation for teachers who are deprived of the opportunity to perform extra summer work is nonmandatory.

City Sch Dist of Newburgh, 14 PERB ¶4612 (1981).

A demand for payment for an overtime assignment lost due to employer error must be negotiated.

Uniform Firefighters of Cohoes, Local 2562, 26 PERB ¶4550 (1993).

A demand for compensation for a minimum number of hours when called into work is mandatorily negotiable.

PBA Newburgh, 30 PERB ¶3007 (1997); *Buchanan Police Assn*, 29 PERB ¶3061 (1996).

The decision to assign overtime is a management prerogative and is, thus, nonmandatory. The procedures by which overtime, once the employer determines that overtime is available, is to be assigned is a mandatory subject of negotiations.

City of Rochester, 36 PERB ¶3003 (2003).

1.8 Premium Pay

Premium pay for increased work load, such as for each student in excess of a stated number, is mandatory.

Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977); *West Irondequoit Teachers Assn v PERB*, 35 NY2d 46, 7 PERB ¶7014 (1974).

Premium pay for hazardous duty is mandatory.

Town of Haverstraw, 11 PERB ¶3109 (1978); *Intl. Assn of Firefighters, Local 274*, 11 PERB ¶3087 (1978) (pay related to the number of fire fighters assigned to apparatus); *Rochester Fire Fighters, Local 1071*, 12 PERB ¶3047 (1979), and *Vil of Spring Valley PBA*, 14 PERB ¶3010 (1981) (pay related to the number of employees on duty); *Town of Carmel*, 29 PERB ¶3026 (1996), *affd*, 29 PERB ¶7016 (Sup Ct Albany County 1996), *affd*, 246 AD2d 791, 31 PERB ¶7002 (3d Dept 1998) (pay for working with police officers on light duty); *City of Plattsburgh*, 32 PERB ¶3014 (1999).

Premium pay for difficulties faced while on duty is mandatory.

Village of Spring Valley PBA, 14 PERB ¶3010 (1981) (lack of portable radio or lack of air conditioning in vehicle).

Premium pay for special assignments is mandatory.

City of Yonkers, 10 PERB ¶3056 (1977); *Batavia Firefighters Intl. Assn of Firefighters, Local 896*, 17 PERB ¶3007 (1984) (out-of-title, nonunit work); *Town of Cheektowaga*, 12 PERB ¶3082 (1979) (out-of-title, unit work); *Windsor Teachers Assn*, 17 PERB ¶3062 (1984) (classroom supervision by teacher aides); *Town of Carmel*, 29 PERB ¶3026 (1996), *affd*, 29 PERB ¶7016 (Sup Ct Albany County 1996), *affd*, 246 AD2d 791, 31 PERB ¶7002 (3d Dept 1998) (police on light duty).

Premium pay if a request for a meal break is denied is mandatory.

County of Nassau, 15 PERB ¶3135 (1982), *affd*, 104 AD2d 365, 17 PERB ¶7018 (2d Dept 1984).

Premium pay for earned graduate credits is mandatory.

Whitney Point Cent Sch Dist, 12 PERB ¶3084 (1979).

Premium pay for a change in shift without reasonable notice is mandatory.

Corning Police Dept, 9 PERB ¶3086 (1976).

Premium pay for holiday work is a mandatory subject.

City of Rochester, 12 PERB ¶3010 (1979); *BOCES, Nassau County*, 9 PERB ¶3062 (1976); *Old Brookville PBA*, 16 PERB ¶3094 (1983) (new hires).

Premium pay for denial of an extra-pay assignment is pay for work not performed. It is in the nature of a penalty for such denial and is nonmandatory.

Lynbrook PBA, 10 PERB ¶3067 (1977).

Bonus pay for perfect attendance is mandatory.

Locust Valley Cent Sch Dist, 9 PERB ¶4529 (1976).

Premium pay for extra services is mandatory.

Board of Educ of the City Sch Dist of the City of New York, 6 PERB ¶3006 (1973).

A demand for premium pay if staffing levels are reduced is mandatorily negotiable.

Fulton Firefighters Assn, Local 3063, 30 PERB ¶3012 (1997).

1.9 Termination/Severance Pay

A lump sum payment upon termination of employment keyed to the number of years of service is mandatory.

Village of Lynbrook, 10 PERB ¶3065 (1977); *Lynbrook PBA*, 10 PERB ¶3067 (1977), *affd*, 48 NY2d 398, 12 PERB ¶7021 (1979); *PBA Hempstead*, 11 PERB ¶3072 (1978).

Payment for accumulated sick leave at termination of employment is mandatory.

Teachers Assn, Cent High Sch, Dist No. 3 v Board of Educ, Cent High Sch Dist No. 3, Nassau County, 34 AD2d 351, 3 PERB ¶8012 (2d Dept 1970); *Somers Faculty Assn*, 9 PERB ¶3014 (1976).

1.10 Supplemental Pay

A demand that unit employees have first priority in opportunities to earn extra compensation in related work areas is mandatory, unless it would limit the employer's right to make assignments in order to accomplish its mission

Orange County Community Coll, 9 PERB ¶3068 (1976); *Orange County Community Coll. Faculty Assn*, 10 PERB ¶3080 (1977).

Supplemental pay for new hires is mandatory.

Old Brookville PBA, 16 PERB ¶3094 (1983).

Rate of pay for certain transcripts produced by court reporters is mandatorily negotiable.

State of New York - UCS, 28 PERB ¶¶3003 and 3004 (1995); 33 PERB ¶3043 (2000); *vacated, Lippman v New York State Pub Emp Rel Bd*, 296 AD2d 199, 35 PERB ¶7014 (3d Dept 2002), *leave denied*, 99 NY2d 503, 35 PERB ¶7019 (2002).

1.11 Savings Bonds

A demand that an employer match U.S. Savings Bonds purchases by unit employees is for a form of compensation and is a mandatory subject.

Village of Spring Valley PBA, 14 PERB ¶3010 (1981).

1.12 Moving Expenses

Refund of employer-paid moving expenses by an employee who is involuntarily separated from service within one year of being hired is a term and condition of employment and a mandatory subject because, in such case, the moving expense payment was compensation for completion of one year's work. The requirement of a refund by an employee who voluntarily leaves service is a pre-hire inducement to accept a position and remain in it.

County of Tompkins, 10 PERB ¶3066 (1977).

1.13 Tuition/Exam Fees

Payment or reimbursement of the cost of education or training courses is a mandatory subject.

Board of Educ of Union Free Sch Dist No. 3 of Town of Huntington v Associated Teachers of Huntington, 30 NY2d 122, 5 PERB ¶7507 (1972); *New York State Professional Firefighters Assn, Local 461*, 9 PERB ¶3069 (1976); *Troy Uniformed Firefighters Assn, Local 2304*, 10 PERB ¶3015 (1977); *Local 343*, 17 PERB ¶3121 (1984); *City of Mount Vernon*, 18 PERB ¶3020 (1985); *Town of Henrietta*, 20 PERB ¶3013 (1987).

Since civil service open competitive examinations are for the public at large, the imposition of an application fee for such exams is not a mandatorily negotiable term

and condition of employment. However, an exemption for unit employees from the application fee is a financial benefit and a mandatory subject.

State of New York, 13 PERB ¶3099 (1980).

The funding of educational development grants is a mandatory subject.

Averill Park Cent Sch Dist, 10 PERB ¶4560 (1977).

1.14 Method of Payment

A lag payroll system, under which employees are not paid until, e.g., one week after performance of their services, is a mandatory subject of negotiations.

County of Orange, 12 PERB ¶3114 (1979), *affd*, 76 AD2d 878, 13 PERB ¶7009 (2d Dept 1980).

A change from an hourly wage rate to an annual salary is mandatorily negotiable.

Board of Educ of the City Sch Dist of the City of Buffalo, 6 PERB ¶3051 (1973), *affg* 6 PERB ¶4519 (1973); *County of Nassau*, 26 PERB ¶3006 (1993).

Payment of salary to an individual retirement account (IRA) is not a retirement benefit and is a mandatory subject.

Churchville-Chili Cent Sch Dist, 16 PERB ¶3103 (1983).

The date of payment of salary is mandatory.

City of White Plains, 8 PERB ¶4544 (1975); *Board of Educ of the City of Yonkers*, 6 PERB ¶4525 (1973). See also *County of Nassau*, 31 PERB ¶3032 (1998).

The availability of safe and proximate facilities for check cashing purposes relates to compensation procedures and is mandatorily negotiable.

NYCTA, 22 PERB ¶6601 (1989).

To the extent the police union's health and welfare fund proposal sought to require the city to make an additional annual contribution for each active and retired member, the demand was nonmandatory because it sought to advance a demand on behalf of current retirees.

Patrolmen's Benevolent Assn, 37 PERB ¶3033 (2004).

1.15 Uniform Allowance

Payment for the purpose of purchasing uniforms is mandatorily negotiable.

Locust Valley Cent Sch Dist, 9 PERB ¶4529 (1976); *City of Auburn*, 6 PERB ¶4512 (1973).

1.16 Business Expenses

Compensation for expenses (e.g., food and lodging) incurred by employees engaged in employer related business, including when it will be paid (advancement or reimbursement), is mandatorily negotiable.

County of Tompkins, 17 PERB ¶4575 (1984). See also *City of Oswego*, 39 PERB ¶4618 (2006) (procedures for such reimbursement are also mandatory).

Compensation for such expenses of clients is nonmandatory since the employer has no duty to negotiate regarding non-employees.

County of Tompkins, 17 PERB ¶4575 (1984).

A requirement that employees submit meal receipts in order to receive a contractual meal reimbursement allowance must be negotiated.

County of Chautauqua, 22 PERB ¶3060 (1989).

1.17 Deductions

The decision to recoup monies owed by employees from their salary and the procedures to do so are mandatory.

City of Albany, 23 PERB ¶4531 (1990); *Levitt v Board of Collective Bargaining City of New York, Office of Collective Bargaining*, 79 NY2d 120, 25 PERB ¶7514 (1992), *modifying* 171 AD2d 545, 25 PERB ¶7515 (1st Dept 1992).

Withholding of taxes from salary of correction officers receiving disability compensation is mandatorily negotiable.

County of Westchester, 33 PERB ¶3025 (2000), *affd*, PERB, 33 PERB ¶7016 (Sup Ct Albany County 2000).

1.18 Intellectual Property

The portions of an intellectual property policy which relate to compensation, dispute resolution and grievances are mandatorily negotiable.

Matter of City Univ. of New York, 36 PERB ¶ 4547 (2003), *revd in part* 37 PERB ¶ 3006 (2004), *revd and remanded sub nom. Matter of Professional Staff Congress-City Univ of New York v Pub. Empl Relations Bd.*, 21 AD3d 10, 38 PERB ¶ 7009 (1st Dept 2005), *motion to dismiss on the ground of mootness denied*, 7 NY3d 780, 39 PERB ¶ 7008, *revd* 7 NY3d 458, 39 PERB ¶ 7010 (2006).

1.19 Interest

The police union's demand to modify contract language to require the payment of interest at an annual rate of ten percent from the effective date of any monetary benefit until payment was mandatorily negotiable because it affected wages, a mandatory subject of negotiation under the Act.

Patrolmen's Benevolent Assn, 37 PERB ¶3033 (2004).

1.20 Relationship of Compensation to the State Constitutional Prohibition of Gifts

Gifts of public funds are violative of the NYS Constitution. However, a payment made to a retired employee after rendering a corresponding benefit or consideration to the public employer, is not a constitutionally prohibited "gift" of public monies.

Board of Educ of Union Free Sch Dist No. 3 of Town of Huntington v Associated Teachers of Huntington, 30 NY2d 122, 5 PERB ¶7507 (1972). *See also* *Chenango Forks Cent Sch Dist*, 39 PERB ¶ 4602 (2006); *City of Buffalo*, 35 PERB ¶6602 (Sup Ct Albany County 2002); *Town of Carmel*, 29 PERB ¶7016 (Sup Ct Albany County 1996, *affd* 31 PERB ¶7002 (3d Dept 1998); *Buffalo Sewer Auth*, 20 PERB ¶4538 (1987).

2. BENEFITS

2.1 Insurance

2.1.1 Health

Health insurance is a term and condition of employment and a mandatory subject.

Town of Haverstraw v PERB, 75 AD2d 874, 13 PERB ¶¶7006 (2d Dept 1980);
Aeneas McDonald PBA v City of Geneva, 92 NY2d 326, 31 PERB ¶¶7503 (1998).

Any change in the kind and level of health insurance benefits or plan administration must be negotiated.

City Sch Dist of Corning, 16 PERB ¶¶3056 (1983). *But see Unatego Cen Sch Dist*, 20 PERB ¶¶3004 (1987), *affd*, 134 AD2d 62, 21 PERB ¶¶7002 (3d Dept 1988), *appeal denied*, 71 NY2d 805, 21 PERB ¶¶7010 (1988). *Compare Genesee-Livingston-Steuben-Wyoming BOCES*, 29 PERB ¶¶3065 (1996), *affd*, 30 PERB ¶¶7009 (Sup Ct Livingston County 1997); *Town of Whitestown*, 34 PERB ¶¶4566 (2001).

An employer may not unilaterally alter the open period during which employees may change their health insurance options.

Suffolk County Legislature and County of Suffolk, 36 PERB ¶¶4516 (2003).

A demand that an employee be disqualified from health insurance coverage if eligible for comparable benefits under a spouse's health insurance plan is mandatory.

City of Mount Vernon, 18 PERB ¶¶3050 (1985), *affd*, 18 PERB ¶¶7018 (Sup Ct Albany County 1985), 126 AD2d 824, 20 PERB ¶¶7005 (3d Dept 1987).

Because of the fundamental differences between them, a change from a regulated, carrier-provided health plan to non-regulated "self-insurance" is a mandatory subject.

City of Batavia, 16 PERB ¶¶3092 (1983).

Changes in the amount of the premium to be paid by employees must be negotiated.

Town of Chili, 16 PERB ¶¶3110 (1983); *Newark Valley Cent Sch Dist*, 18 PERB ¶¶3056 (1985); *Bridge and Tunnel Officers Benevolent Assn and Triborough Bridge and Tunnel Auth*, 27 PERB ¶¶3076 (1994).

A change in the amount of employees' co-payments under a prescription drug rider is mandatorily negotiable.

County of Yates, 22 PERB ¶3017 (1989).

A demand that bills for medical services rendered to police employees injured on duty be paid by the employer is mandatory as the General Municipal Law provisions on the subject matter do not preempt negotiations.

City of Rochester, 12 PERB ¶3010 (1979).

Hospitalization benefits for current employees who may retire during or after expiration of a contract are a mandatory subject.

Cohoes Police Benevolent and Protective Assn, 27 PERB ¶3058 (1994); *Bridge and Tunnel Officers Benevolent Assn*, 29 PERB ¶3012 (1996) ("current" employees defined as those employed during the term of the contract being negotiated); *Uniform Firefighters of Cohoes, Local 2562*, 31 PERB ¶3020 (1998); *Town of Shawangunk PBA*, 34 PERB ¶4510 (2001).

Similarly, hospitalization benefits for beneficiaries of current employees who die after retirement is mandatory.

Lynbrook PBA, 10 PERB ¶3067 (1977), *affd*, 48 NY2d 398, 12 PERB ¶7021 (1979); *Police Assn New Rochelle*, 10 PERB ¶3042 (1977).

Hospitalization benefits for employees who retired before the expiration of the most recent collective bargaining agreement are nonmandatory because those retired employees are not in the negotiating unit.

Hudson Falls Permanent Firefighters, Local 2730, 14 PERB ¶3021 (1981); *City of Oneida PBA*, 15 PERB ¶3096 (1982); *Vil of Garden City*, 21 PERB ¶3027 (1988); *Vil of Mamaroneck PBA*, 22 PERB ¶3029 (1989); *Dobbs Ferry Police Assn*, 22 PERB ¶3039 (1989), *affg* 22 PERB ¶4516 (1989); *Johnstown PBA*, 25 PERB ¶3085 (1992); *Bridge and Tunnel Officers Benevolent Assn and Triborough Bridge and Tunnel Auth*, 27 PERB ¶3076 (1994) and 29 PERB ¶3012 (1996); *Aeneas McDonald PBA v City of Geneva*, 92 NY2d 326, 31 PERB ¶7503 (1998).

Health benefits for families of deceased employees are nonmandatory.

Village of Lynbrook, 10 PERB ¶3067 (1977); *Police Assn New Rochelle*, 10 PERB ¶3042 (1977); *City of Troy*, 10 PERB ¶3015 (1977).

Employer payments to a union health and welfare fund for the purpose of purchasing health insurance is a mandatory subject.

Local 456 IBT v Town of Cortlandt, 4 PERB ¶8021 (Sup Ct Westchester County 1971).

The right to change insurance carriers is a mandatory subject because it could affect the level of benefits.

PBA Newburgh, 18 PERB ¶4571 (1985).

The compensation of unit employees for nonuse of sick leave during any calendar year involves a mandatory subject of bargaining.

Town of Vestal, 35 PERB ¶4600 (2002)

2.1.2 Dental

Any change in benefits under a dental insurance plan must be negotiated.

City Sch Dist Corning, 16 PERB ¶3056 (1983).

A dental insurance plan for employees who retire during the life of a contract is a mandatory subject, but nonmandatory for retired employees.

Oneida PBA, 15 PERB ¶3096 (1982).

Employer payments to a union health and welfare fund for the purpose of purchasing dental insurance is a mandatory subject.

Local 456 IBT v Town of Cortlandt, 4 PERB ¶8021 (Sup Ct Westchester County 1971).

Reimbursement to employees for the cost of repair or the value of dentures destroyed or lost during the course of employment is mandatory.

Board of Educ of Union Free Sch Dist No 3 of Huntington v Associated Teachers of Huntington, 30 NY2d 122, 5 PERB ¶7507 (1972).

2.1.3 Optical

As optical benefits are a term and condition of employment, employer payments to a union health and welfare fund for the purpose of purchasing an optical insurance plan are mandatory.

Local 456 IBT v Town of Cortlandt, 4 PERB ¶8021 (Sup Ct Westchester County 1971).

Reimbursement to employees for the cost of repair or replacement of eyeglasses destroyed or lost during the course of employment is mandatory.

Board of Educ of Union Free Sch Dist No 3 of Huntington v Associated Teachers of Huntington, 30 NY2d 122, 5 PERB ¶7507 (1972).

An optical plan for employees who retire during the life of a contract is mandatory, but nonmandatory for previously retired employees.

City of Oneida PBA, 15 PERB ¶3096 (1982).

2.1.4 Life

Life insurance benefits are a mandatorily negotiable term and condition of employment.

Town of Haverstraw v PERB, 75 AD2d 874, 13 PERB ¶7006 (2d Dept 1980).

Employer payments to a union health and welfare fund for the purpose of purchasing life insurance is a mandatory subject.

Local 456 IBT v Town of Cortlandt, 4 PERB ¶8021 (Sup Ct Westchester County 1971).

2.1.5 Property Damage

Reimbursement to employees for the cost of repair or replacement of personal property damaged, lost or destroyed in the course of employment is a mandatory subject.

Board of Educ of Union Free Sch Dist No 3 of Huntington v Associated Teachers of Huntington, 30 NY2d 122, 5 PERB ¶7507 (1972).

2.1.6 Legal

Legal insurance is a term and condition of employment and a mandatory subject.

Town of Haverstraw, 11 PERB ¶3109 (1978), *affd*, 75 AD2d 874, 13 PERB ¶7006 (2d Dept 1980); *PBA Newburgh*, 18 PERB ¶3065 (1985), *affd*, 19 PERB ¶7005 (Sup Ct Albany County 1986).

Providing counsel or the payment of legal fees to employees in cases arising from actions in the performance of their duties is a mandatory subject.

Albany Police Officers Union, Local 2841, 16 PERB ¶3068 (1983); *Croton Police Assn*, 16 PERB ¶3007 (1983); *Cortland Paid Firefighters Assn, Local 2737*, 29 PERB ¶3037 (1996).

A demand that the employer indemnify the union and hold it harmless from claims and suits for damages relates solely to the internal economics of the union and is nonmandatory.

Local 343, IAFF, 17 PERB ¶¶4631 (1984).

2.1.7 Liability

Liability insurance is an economic benefit and a mandatory subject, even if it extends to employees' off-duty actions.

Police Assn New Rochelle, 13 PERB ¶¶3082 (1980); *Vil of Croton-on-Hudson*, 16 PERB ¶¶3007 (1983).

2.2 Death Benefits

Death benefits available under ¶¶360-b of the Retirement & Social Security Law are mandatory subjects for eligible employees but prohibited subjects for employees made ineligible for the benefits by that section.

City of Albany, 7 PERB ¶¶3078 and 3079 (1974), *affd*, 38 NY2d 778, 9 PERB ¶¶7005 (1976).

Benefits available under ¶¶208-b.2 of the General Municipal Law, being within the discretion of the employer, are a mandatory subject.

New York State Professional Firefighters Assn, Local 461, 9 PERB ¶¶3069 (1976).

Hospitalization benefits for beneficiaries of current employees who die while employed or after they retire is a mandatory subject.

Lynbrook PBA, 10 PERB ¶¶3067 (1977), *affd*, 48 NY2d 398, 12 PERB ¶¶7021 (1979); *Police Assn New Rochelle*, 10 PERB ¶¶3042 (1977).

Hospitalization benefits for beneficiaries of retired employees is nonmandatory since retirees are not public employees at the time of the negotiations.

Troy Uniformed Firefighters Assn, Local 2304, 10 PERB ¶¶3015 (1977); *Police Assn New Rochelle*, 10 PERB ¶¶3042 (1977); *Lynbrook PBA*, 10 PERB ¶¶3067 (1977).

2.3 Retirement

In general, retirement benefits are prohibited subjects of negotiation by virtue of ¶201.4 of the Taylor Law. However, retirement benefits already provided by state law, thus requiring no new enabling legislation, continue to be mandatory subjects by virtue of periodic legislation. [L.2007, c. __ extended the negotiability of such benefits to June 30, 2009.] Because of changes in retirement legislation enacted in 1973, 1976 and 1983, there are now four distinct "Tiers" of retirement system members: "First Tier" refers to employees who joined the system prior to July 1, 1973; "Second Tier" applies to employees who joined the system between July 1, 1973 and July 26, 1976; "Third Tier" applies to employees hired between July 27, 1976 (see *CSEA v Regan*, 129 AD2d 378, aff'd, 71 NY2d 653) and August 30, 1982; "Fourth Tier" includes employees who joined the system on or after September 1, 1983. Police and fire fighters are not covered by the "Third Tier" and "Fourth Tier".

Retirement benefits for teachers are provided under the statutorily established Teachers' Retirement System and are prohibited subjects.

Retirement proposal regarding Tier 2 equalization benefits was nonmandatory because legislature had specifically excluded such benefits from being the subject of interest arbitration.

Niagara Falls Police Club, Inc., 34 PERB ¶4506 (2001).

The additional benefit provided under Retirement & Social Security Law §443 (f) is mandatorily negotiable but pursuant to §443 (f-1) of that law, is not subject to compulsory interest arbitration.

Niagara Falls Police Captains and Lieutenants Assn, 33 PERB ¶3058 (2000), affg 33 PERB ¶4603 (2000).

The 20-year retirement plan authorized by ¶384-d of the Retirement & Social Security Law is a mandatory subject, and has not been found to be in conflict with the Federal Age Discrimination in Employment Act of 1967 by virtue of its age 62 retirement provision.

City of Batavia Firefighters, Intl. Assn of Firefighters, Local 896, 17 PERB ¶3007 (1984); *Watervliet PBA*, 16 PERB ¶3026 (1983). See also *City of Albany*, 7 PERB ¶¶3078 and 3079 (1974), aff'd, 48 AD2d 998, 8 PERB ¶7012 (3d Dept 1975), 38 NY2d 778, 9 PERB ¶7005 (1976); *New York State Professional Firefighters Assn, Local 461*, 9 PERB ¶3069 (1976).

The 2-year limitation on compulsory interest arbitration awards for police and fire fighters does not affect the negotiability of the ¶384-d, 20-year retirement plan.

Rockland County PBA, 12 PERB ¶3085 (1979), *affd*, 13 PERB ¶7008 (Sup Ct Rockland County 1980), 84 AD2d 970, 14 PERB ¶7028 (2d Dept 1981); *Fairport Police Billy Club*, 14 PERB ¶3079 (1981), *affd*, 90 AD2d 293, 15 PERB ¶7033 (4th Dept 1982).

A demand for an employer-paid Third Tier retirement plan is nonmandatory since this statutory plan requires a 3% employee contribution.

CSEA, Niagara Chapter, 14 PERB ¶3049 (1981).

A demand that employees pay any increase in costs of retirement plans is mandatory.

Old Brookville PBA, 16 PERB ¶3094 (1983).

Mandatory retirement of teachers who reach age 70 is a mandatory subject because by statute the employer has the discretion to request retirement at that age.

Board of Educ, Cent Sch Dist No 1, Harrison, 6 PERB ¶3017 (1973). *See also Board of Educ of the City Sch Dist of the City of New York*, 8 PERB ¶3065 (1975). *Compare to Palmer v Ticcione*, 576 F2d 459, *cert denied* 440 US 945 (1979); *Harren v Middle Island Sch Dist*, 49 AD2d 879 (2d Dept (1975).

The opportunity to earn extra compensation (part-time teaching) for faculty who retire during the life of the contract is a mandatory subject.

Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977).

A demand for a retirement plan for new employees different than that for current employees is mandatory.

Old Brookville PBA, 16 PERB ¶3094 (1983); *Vil of Fairport v New York State Pub Empl Rel Bd*, 90 AD2d 293, 15 PERB ¶7033 (4th Dept 1982).

A demand which would impair or diminish retirement benefits already achieved by employees requires a waiver of New York State constitutional rights and is nonmandatory.

Village of Garden City, 21 PERB ¶3027 (1988).

Benefits for retired employees are nonmandatory subjects because retired employees are no longer public employees and are therefore not entitled to representation in negotiations.

Troy Uniformed Firefighters Assn, Local 2304, 10 PERB ¶3015 (1977); Lynbrook PBA, 10 PERB ¶3067 (1977); Police Assn New Rochelle, 10 PERB ¶3042 (1977); Patrolmen's Benevolent Assn, 37 PERB ¶3033 (2004).

Inducements for early retirement are a mandatory subject, notwithstanding that some employees may not be eligible due to lack of a required number of years of service or prior disability retirement.

Windsor Assn of Office Personnel and School Aides, 17 PERB ¶3062 (1984).

A change in the method of determining years of service credit for retirement purposes must be negotiated.

City of Glens Falls, 24 PERB ¶4573 (1991).

The demand to bargain the elimination of the contractual provisions requiring all employees to retire after twenty years of service is a mandatory subject of bargaining based upon the conversion theory of negotiability as expressed by the Board in *City of Cohoes*.

Village of Huntington Bay, 37 PERB ¶4543 (2004).

2.4 Leave

2.4.1 General

As time off is a term and condition of employment, paid leave for such reasons as civic duty (appearance before a court or public body), military training, and civil service examinations must be negotiated.

City of Albany, 7 PERB ¶3078 (1974). See also Bridge and Tunnel Officers Benevolent Assn and TBTA, 27 PERB ¶3076 (1994).

An employer need not negotiate concerning the power to direct that employees be absent from work. However, whether employees are to charge directed absences to leave accruals or to leave without pay is a mandatory subject.

SUNY, 13 PERB ¶3044 (1980) and 16 PERB ¶3050 (1983), affd, 116 AD2d 827, 19 PERB ¶7002 (3d Dept 1986); County of Yates, 21 PERB ¶3008 (1988).

The granting of paid leave, on request, to participate in religious activities is unconstitutional and need not be negotiated.

Eastchester Union Free Sch Dist, 29 PERB ¶3041 (1996).

Notification time for an employer to grant or deny leave requests must be negotiated.

Town of Carmel, 29 PERB ¶3053 (1996).

Paid leave, whether for vacations, medical, or personal reasons, is a function of hours of work and, therefore, mandatorily negotiable. But pre-approval of leave for medical appointments affects staffing levels and is a nonmandatory subject of negotiation.

State of New York (DOCS), 37 PERB ¶4566 (2004).

The manner in which an employer maintains its leave records is nonmandatory.

County of Nassau, 31 PERB ¶3032 (1998).

2.4.2 Sick

Sick leave is a mandatory subject.

Village of Spring Valley PBA, 14 PERB ¶3010 (1981).

A demand that employees who are subject to a sick-leave monitoring program, while utilizing sick leave, would be confined to their residences until their next tour of duty was found to be nonmandatory due to ambiguity: the demand could require employees to be confined to home even during off-duty hours.

Village of Pelham, 34 PERB ¶4512 (2001).

A proposal for a sick leave incentive, without further explanation, is nonmandatory because of vagueness.

Village of Pelham, 34 PERB ¶4512 (2001).

The procedures and policy for granting or terminating sick leave are mandatory.

Plainedge Union Free Sch Dist, 7 PERB ¶3050 (1974); *Bridge and Tunnel Officers Benevolent Assn and TBTA*, 27 PERB ¶3076 (1994) (disability leave); *State of New York (DOCS)*, 31 PERB ¶3065 (1998); *State of New York (DOCS)*, 37 PERB ¶3023 (2004)

A requirement of proof of illness (e.g., doctor's note) is a mandatory subject.

Bridge and Tunnel Officers Benevolent Assn and TBTA, 15 PERB ¶4570 (1982); *CSEA, Niagara Chapter*, 14 PERB ¶4538 (1981).

The cost of obtaining doctor's certificates must be negotiated.

BOCES I, Suffolk County, 15 PERB ¶4622 (1982).

A policy that the lack of medical documentation for sick leave exceeding a set number of days will be considered sick leave abuse does not alter the number of sick leave days or mandate medical documentation. Rather, it merely announces the employer's standards in monitoring such abuse. It is nonmandatory.

Poughkeepsie City Sch Dist, 19 PERB ¶3046 (1986).

Sick leave for family illness is a mandatory subject.

Town of Haverstraw, 11 PERB ¶3109 (1978); Somers Faculty Assn, 9 PERB ¶3014 (1976).

The establishment of a "sick leave bank" is a term and condition of employment subject to negotiation.

Syracuse Teachers Assn v Board of Educ Syracuse City Sch Dist, 35 NY2d 743, 7 PERB ¶7513 (1974).

A demand for full pay while an employee is absent due to an on-the-job injury and that such absence not be charged against accrued leave is mandatory.

Croton Police Assn, 16 PERB ¶3007; Orange County Community Coll Faculty Assn, 9 PERB ¶3068 (1976). See also Bridge and Tunnel Officers Benevolent Assn and TBTA, 27 PERB ¶3076 (1994).

Cash payment for accumulated sick leave at termination of employment is mandatory.

Teachers Assn, Cent High Sch Dist No 3 v Board of Educ, Cent High Sch Dist No 3, Nassau County, 34 AD2d 351, 3 PERB ¶8012 (2d Dept 1970); Somers Faculty Assn, 9 PERB ¶3014 (1976).

A demand removing any employer restrictions on the activities of employees on sick leave impinges on management's right to control sick leave abuse and is nonmandatory.

City of Rochester, 12 PERB ¶3010 (1979).

The employer's memorandum reiterating the consequences of sick leave abuse is nonmandatory as the employer has the management right to establish the criteria to determine sick leave abuse.

City of New Rochelle, 39 PERB ¶4557 (2006).

The rescheduling of work for the purpose of controlling sick leave abuse is mandatory.

County of Nassau, 18 PERB ¶3034 (1985).

A procedure affecting the time when employees must notify their employer that they will be absent is mandatory.

Spencerport Cent Sch Dist, 16 PERB ¶3074 (1983).

A proposal which differentiates between maternity leave and leave for other physical conditions is violative of the Human Rights Law and is nonmandatory.

City of Rochester, 12 PERB ¶3010 (1979).

A demand that employees who become ill on vacation be allowed to use sick leave is a mandatory subject.

PBA Police Dept of Nassau County, 14 PERB ¶4557 (1981).

The use of accumulated sick leave for personal leave is mandatorily negotiable.

CSEA, Niagara Chapter, 14 PERB ¶4538 (1981).

Procedures for returning to work from sick/injury leave must be negotiated.

City of Schenectady, 24 PERB ¶3016 (1991).

Procedures for handling absences caused by recurrence of job-related injuries must be negotiated.

City of Schenectady, 24 PERB ¶3016 (1991).

Paid time off supplemental to Workers' Compensation benefits must be negotiated.

Great Neck Water Pollution Control Dist, 28 PERB ¶3030 (1995), affg 28 PERB ¶4505 (1995).

2.4.3 Union

Leave time for employees to engage in activities on behalf of their union, whether paid or unpaid, is a mandatory subject.

City of Albany, 7 PERB ¶3078 (1974), affd, 38 NY2d 778, 9 PERB ¶7005 (1976); City of Albany, 7 PERB ¶3079 (1974); Troy Uniformed Firefighters Assn, Local

2304, 10 PERB ¶3015 (1977); *Orange County Community Coll Faculty Assn*, 10 PERB ¶3080 (1977) (reduced work load for union president); *City of Buffalo*, 23 PERB ¶3054 (1990); *NYCTA*, 23 PERB ¶3016 (1990); *PBA of Newburgh*, 30 PERB ¶3007 (1997).

Paid release time for employees to attend arbitration hearings on behalf of the union is mandatorily negotiable.

County of Livingston, 30 PERB ¶3046 (1997).

2.4.4 Personal

As time off is a term and condition of employment, personal leave is a mandatory subject.

City of Albany, 7 PERB ¶3078 (1974), *affd*, 38 NY2d 778, 9 PERB ¶7005 (1976); *Somers Faculty Assn*, 9 PERB ¶3014 (1976); *Vil of Spring Valley PBA*, 14 PERB ¶3010 (1981). See also *Westbury Water and Fire Dist*, 13 PERB ¶3019 (1980) (time off to cash paychecks); *Board of Educ of the City Sch Dist of the City of New York*, 8 PERB ¶3066 (1975) (time off for Christmas shopping); *Wappingers Cent Sch Dist*, 18 PERB ¶3039 (1985) (religious observance) (*compare Eastchester Union Free Sch Dist*, 29 PERB ¶3041 (1996)).

A demand that personal leave be taken at the employee's discretion affects management's control over staffing and is nonmandatory.

PBA Newburgh, 18 PERB ¶3065 (1985). Compare *Vil of Lancaster Police Club*, 23 PERB ¶4606 (1990).

The amount of pay to be deducted for an employee's use of personal leave days beyond the number provided by contract is mandatorily negotiable.

Broadalbin Cent Sch Dist, 13 PERB ¶4595 (1980).

The restoration of personal leave days used to participate in a PERB proceeding is mandatorily negotiable.

City Sch Dist City of Newburgh, 14 PERB ¶4612 (1981).

2.4.5 Vacation

Vacation leave is a function of hours of work and, thus, a mandatory subject.

City of Albany v New York State Pub Empl Rel Bd, 38 NY2d 778, 9 PERB ¶7005 (1976).

Procedures applicable to the use of vacation time must be negotiated.

Village of Mamaroneck PBA, 22 PERB ¶3029 (1989).

Subject to staffing requirements, the manner in which vacation time is to be distributed is mandatory. However, the number of employees who may be on vacation at one time affects staffing and is nonmandatory.

Center Moriches Union Free Sch Dist, 28 PERB ¶3031 (1995); Fairview Professional Firefighters Assn, Local 1586, 12 PERB ¶3118 (1979); City of Yonkers, 10 PERB ¶3056 (1977); New York State Professional Firefighters Assn, Local 461, 9 PERB ¶3069 (1976); Town of Carmel, 31 PERB ¶3006 (1998), affd, 267 AD2d 858, 32 PERB ¶7028 (3d Dept 1999); Town of Mamaroneck, 34 PERB ¶4508 (2001).

The selection of vacation days at the discretion of the employee is nonmandatory.

Pipe Caulkers and Repairmen's, Local No. 18029, 23 PERB ¶4541 (1990).

Option by employees to receive pay in lieu of vacation time is mandatory.

Greenville Uniformed Firemen's Assn, Local 2093, 15 PERB ¶4501 (1982); Salamanca Police Unit, CSEA, 12 PERB ¶4503 (1979).

A requirement of notification of intention to take vacation leave is mandatory.

CSEA, Niagara Chapter, 14 PERB ¶4538 (1981).

Payment for accrued vacation leave is mandatorily negotiable.

CSEA, Niagara Chapter, 14 PERB ¶4538 (1981).

2.4.6 Bereavement

Time off for a death in an employee's family is a mandatory subject.

City of Albany, 7 PERB ¶3078 (1974).

2.4.7 Education

Sabbatical leave, including the conditions for its receipt, is a mandatory subject.

Board of Educ, Union Free Sch Dist No 3, Town of Hempstead, Nassau County, 4 PERB ¶3018 (1971); Mineola Union Free Sch Dist No 10, 6 PERB ¶3023 (1973).

As paid leave is a mandatory subject, whether or not the employer derives any benefit from it, paid time off for training, even if not job related, must be negotiated.

Local 343, 17 PERB ¶3121 (1984); Troy Uniformed Firefighters Assn, Local 2304, 10 PERB ¶3015 (1977).

2.4.8 Jury Duty

Paid leave time for jury duty is mandatory.

City of Albany, 7 PERB ¶3078 (1974).

The procedure for receiving authorization of leave for jury duty must also be negotiated.

County of Ulster, 16 PERB ¶4646 (1983).

2.4.9 Holiday

Provision of a holiday is a mandatory subject of negotiations.

Board of Educ of the City Sch Dist of the City of New York, 39 PERB ¶4621 (2006).

The elimination of paid holidays must be negotiated.

Farmingdale Union Free Sch Dist, 11 PERB ¶3055 (1978) (day after Thanksgiving); Wyandanch Union Free Sch Dist, 15 PERB ¶3069 (1982) (days off during Christmas season); Queens Borough Pub Library, 16 PERB ¶3002 (1983) (floating bonus holidays), revd on other grounds, 104 AD2d 993, 17 PERB ¶7020 (2d Dept 1984); New Berlin Cent Sch Dist, 25 PERB ¶3060 (1992) (extension of Memorial Day weekend for unused snow days).

A demand to increase the number of holidays is mandatory.

Buffalo PBA, 20 PERB ¶4584 (1987).

A demand that all employees who provide a particular service be off-duty on holidays would prevent the employer from providing that service on those days and is, therefore, nonmandatory.

Cortland Paid Firefighters Assn, Local 2737, 29 PERB ¶3037 (1996).

2.4.10 Compensatory Time

As the Fair Labor Standards Act precludes the use of compensatory time for overtime worked (unless within the same pay period), a demand for compensatory time off is nonmandatory.

PBA of Newburgh, 18 PERB ¶¶3065 (1985), *affd*, 19 PERB ¶¶7005 (Sup Ct Albany County 1986).

However, as the Fair Labor Standards Act now permits police officers to accumulate compensatory time off in lieu of overtime pay, a demand to allow police officers to make that election without the approval of the police chief is mandatory.

Village of Mamaroneck PBA, 22 PERB ¶¶3029 (1989). *See also NYCTA*, 22 PERB ¶¶6601 (1989).

2.4.11 Unpaid

The granting of leave without pay is mandatorily negotiable.

Waverly Cent Sch Dist, 20 PERB ¶¶3061 (1987).

The procedures and requirements for obtaining leave without pay are mandatorily negotiable.

Unatego Cent Sch Dist, 21 PERB ¶¶3039 and 3041 (1988).

2.4.12 Breaks

Coffee break time and restrictions on where it can be taken must be negotiated.

Village of Rockville Centre, 18 PERB ¶¶3082 (1985).

A lunch or relief period is a mandatory subject.

Bridge and Tunnel Officers Benevolent Assn, 13 PERB ¶¶4526 (1980); *Niagara-Wheatfield Cent Sch Dist*, 10 PERB ¶¶4503 (1977).

A demand that a lunch or relief break not be interrupted except in an emergency is mandatory.

Bridge and Tunnel Officers Benevolent Assn, 18 PERB ¶¶4622 (1985).

The consolidation of two coffee breaks into a single coffee break must be negotiated.

Town of Clarence, 30 PERB ¶3011 (1997).

A reduction in the length of a meal break is mandatory.

Addison Cent Sch Dist, 13 PERB ¶3060 (1980); *County of Nassau*, 24 PERB ¶3029 (1991).

A restriction on the place where a meal break may be taken is mandatory.

Hammondsport Cent Sch Dist, 18 PERB ¶4647 (1985); *County of Ulster*, 19 PERB ¶4524 (1986).

Time to use toilet facilities is mandatorily negotiable.

NYCTA, 22 PERB ¶6601 (1989).

A demand that employees be allowed, upon consent of the employer, to eat lunch together is mandatory as it relates to employee comfort. However, if the demand designates the employer's representative to grant such consent, it is nonmandatory.

PBA Police Dept of Nassau County, 14 PERB ¶4557 (1981).

A demand that lunch breaks be taken at the employee's discretion is nonmandatory.

Village of Lancaster Police Club, 23 PERB ¶4606 (1990).

2.4.13 Military

A change in a nonstatutory method used by an employer to compute charges to military leave must be negotiated.

State of New York (Div of Military and Naval Affairs), 24 PERB ¶3024 (1991), *affd*, 187 AD2d 78, 26 PERB ¶7001 (3d Dept 1993).

2.4.14 Religious

The granting of paid leave for religious activities violates the constitution and is not mandatorily negotiable.

Eastchester Union Free Sch Dist, 29 PERB ¶3041 (1996); *Auburn Enlarged City Sch Dist*, 30 PERB ¶3033 (1997); *Port Washington Union Free Sch Dist v Port Washington Teachers Assn*, 268 AD2d 523, 33 PERB ¶7502 (2d Dept 2000). But see *Binghamton City Sch Dist v Binghamton Teachers Assn*, 30 PERB ¶7504 (Sup Ct Broome County 1997).

2.5 Employee Services

2.5.1 Transportation

Employee use of employer-owned vehicles for personal purposes is an economic benefit and a mandatory subject.

County of Onondaga, 12 PERB ¶3035 (1979), *affd*, 77 AD2d 783, 13 PERB ¶7011 (4th Dept 1980); *County of Nassau*, 13 PERB ¶3095 (1980), *affd*, 14 PERB ¶7017 (Sup Ct Nassau County 1981), 87 AD2d 1006, 15 PERB ¶7012 (2d Dept 1982); *County of Cattaraugus*, 8 PERB ¶3062 (1975); *Westbury Water and Fire Dist*, 13 PERB ¶3019 (1980); *Town of Oyster Bay*, 14 PERB ¶3002 (1981); *County of Genesee*, 18 PERB ¶3016 (1985), *affd*, 122 AD2d 329, 19 PERB ¶7016 (3d Dept 1986); *County of Nassau*, 26 PERB ¶3040 (1993), *affd*, 215 AD2d 381, 28 PERB ¶7011 (2d Dept 1995); *County of Monroe*, 33 PERB ¶3044 (2000); *County of Nassau*, 35 PERB ¶3036 (2002); *County of Nassau*, 36 PERB ¶4507 (2003); *County of Nassau*, 37 PERB ¶3014 (2004); *County of Nassau*, 37 PERB ¶4570 (2004); *County of Nassau*, 37 PERB ¶4571 (2004); *County of Nassau*, 39 PERB ¶4570 (2006)..

Employee use of employer-owned vehicles that is conditioned upon the unit to which employees are assigned and the duties they are expected to perform may be withdrawn when an employee is transferred to a different unit with different duties.

County of Nassau, 35 PERB ¶4583 (2002)

Changes in vehicle assignments made wholly at the discretion of the employer and which are based upon vehicle availability need not be negotiated.

County of Nassau, 36 PERB ¶4541 (2003).

Employee use of employer-owned vehicles for travel to union meetings, negotiations and grievance proceedings raises questions of improper employer support of the union and is nonmandatory.

Brighton Fire Dist v Brighton Professional Firefighters Assn, Local 2223, 10 PERB ¶4545 (1977).

The use of an employee's personal vehicle for work, with reimbursement, is a mandatory subject.

City of Buffalo, 13 PERB ¶3093 (1980), 17 PERB ¶3090 (1984).

Free personal transportation on employer-owned facilities is a mandatory subject.

City of New York, 9 PERB ¶3076 (1976).

A demand that another employer which is not under the control of the employees' employer provide free transportation is nonmandatory.

Bridge and Tunnel Officers Benevolent Assn and TBTA, 15 PERB ¶4570 (1982).

2.5.2 Parking

The availability of free parking for employees while at work is an economic benefit and a mandatory subject.

County of Nassau (Dept of Drug and Alcohol Addiction), 14 PERB ¶3083 (1981), *affd*, 15 PERB ¶7002 (Sup Ct Nassau County 1982); *State of New York*, 6 PERB ¶3005 (1973); *County of Schenectady*, 18 PERB ¶3038 (1985) (location of parking); *NYCTA*, 24 PERB ¶3013 (1991).

The imposition of a vehicle registration fee on all vehicles using an employer's facilities is nonmandatory. A demand that unit employees be exempted from the fee is mandatory.

State of New York (SUNY Binghamton), 19 PERB ¶3029 (1986).

Replacement of multiple parking permits, which could be affixed to all vehicles of employees and used by family members, with one portable permit falls within management's prerogative to curtail parking abuses and parking lot overcrowding and is a nonmandatory subject.

Rockland Community Coll, 22 PERB ¶4563 (1989).

The decision to collect all parking fines levied by a court against those who violated an employer's parking regulations need not be negotiated, except as to unit employees who have received a waiver of those regulations.

County of Nassau, 28 PERB ¶3047 (1995).

2.5.3 Housing

Low cost, employer-owned housing and the expense of its maintenance are economic benefits relating directly to wages and salaries and are mandatory subjects.

County of Orange, 15 PERB ¶3017 (1982).

The amount of the rental charge for employer-provided housing is mandatory.

County of Erie, 23 PERB ¶4525 (1990).

2.5.4 Assistance

A demand that secretarial services be provided to unit employees directly involves terms and conditions of employment and is mandatory.

Onondaga Community Coll, 11 PERB ¶3045 (1978).

A demand that the current level of secretarial services be maintained is mandatory.

Fulmont Assn of Coll Educators, 15 PERB ¶4654 (1982).

A demand the teacher aides/assistants be provided to assist teachers in performing teaching duties relates to the basic aspects of the teaching function and is, therefore, nonmandatory.

Suffolk County BOCES, 17 PERB ¶4506 (1984).

A demand that the employer provide new staff with any assistance it is able to may obligate it to provide training or instruction and is nonmandatory.

New Paltz United Teachers, 16 PERB ¶4552 (1983).

2.5.5 Medical Exams

Free physical examinations constitute a substantial fringe benefit and are mandatory.

Onondaga-Madison BOCES, 13 PERB ¶3015 (1980).

Participation in a physical fitness program must be negotiated.

Police Assn New Rochelle, 13 PERB ¶3082 (1980).

Procedures (medical review board) for determining whether an injury or illness is job-related are mandatory.

Police Assn New Rochelle, 13 PERB ¶3082 (1980).

Medical examinations by the employer's physician may be imposed in conjunction with certain benefits under GML ¶207-c.

City of Schenectady, 28 PERB ¶3077 (1995). *But see City of Schenectady*, 25 PERB ¶3022 (1992), *revd in part, City of Schenectady v NYS Pub Empl Rel Bd*, 25 PERB ¶7009 (Sup Ct Albany County 1992), *modified*, 196 AD2d 171, 27 PERB ¶7001 (3d Dept 1994), *affd*, 84 NY2d 480, 28 PERB ¶7005 (1995).

Procedures relating to respirator fitness examinations for fire fighters are mandatorily negotiable.

City of Utica, 32 PERB ¶3056 (1999).

Provision of free medical services at nursing stations in employer facilities is mandatorily negotiable.

State of New York, 25 PERB ¶3053 (1992).

Employee Assistance Programs must be negotiated.

City of Oswego, 26 PERB ¶4644 (1993).

2.5.6 Use of Employer Facilities and Property

Being an economic benefit, the availability of employer tools and facilities for personal use is a mandatory subject.

Westbury Water and Fire Dist, 13 PERB ¶3019 (1980). See also *Sherburne-Earlville Cent Sch Dist*, 36 PERB ¶3011 (2003).

Free admission to school athletic events for employees and their families is an economic fringe benefit which must be negotiated.

Canajoharie Cent Sch Dist, 14 PERB ¶4617 (1981).

Free transportation on employer-owned facilities for employees and family members is an economic benefit and is therefore mandatorily negotiable.

City of New York, 9 PERB ¶3076 (1976); *NYCTA*, 22 PERB ¶6601 (1989).

Free tuition for families of nonresident employees is mandatorily negotiable.

Gananda Cent Sch Dist, 17 PERB ¶3095 (1984); *Carle Place Union Free Sch Dist*, 28 PERB ¶4667 (1995).

Lounge facilities for employees is a mandatory subject, as is use of the employer's facilities for break time.

Peekskill Faculty Assn, 16 PERB ¶4586 (1983); *County of Nassau*, 30 PERB ¶4704 (1997). See also *Great Neck Water Pollution Control Dist*, 36 PERB ¶3013 (2003).

A demand for separate, mirror-equipped lavatory facilities for men and women is mandatorily negotiable.

Peekskill Faculty Assn, 16 PERB ¶4586 (1983). *See also NYCTA*, 22 PERB ¶6601 (1989).

Use of the employer's facilities for child-care is an economic benefit and is mandatorily negotiable.

Otselic Valley Cent Sch Dist, 29 PERB ¶3005 (1996).

As it could relate to nonmandatory subjects and could interfere with the educational program, a demand that teachers have unlimited access to teachers' mailboxes and the intercom system is a nonmandatory subject.

Cincinnati Educ Assn, 13 PERB ¶4512 (1980).

The use of an employer's telephones while on-duty is an economic benefit that contributes to the comfort and convenience of employees and is, therefore, a mandatory subject of negotiations.

County of Saratoga and Saratoga County Sheriff, 37 PERB ¶4525, *affd* 37 PERB ¶3024 (2004), *revd sub nom. County of Saratoga v NYS Pub Empl Rel Bd*, 21 AD3d 1160, 38 PERB ¶7013 (3d Dept 2005).

Employees' ability to bring permissible personal items to their workstations is mandatorily negotiable because it directly affects their comfort and convenience while on the job. Likewise, the ability to carry those items in containers is equally negotiable, for the same reason.

State of New York (DOCS), 38 PERB ¶3008 (2005).

2.6 Miscellaneous

Employer-provided meals are a mandatory subject of negotiations.

City of Newburgh, 16 PERB ¶4516 (1983).

The availability of free coffee during breaks is mandatorily negotiable.

County of Nassau, 25 PERB ¶4555 (1992).

The availability of nighttime cafeteria services must be negotiated.

County of Erie, 30 PERB ¶4542 (1997); *County of Nassau*, 32 PERB ¶3005 (1999).

The replacement of a cafeteria operation with a vending machine must be negotiated.

County of Nassau, 32 PERB ¶3005 (1999).

The prohibition of heat-generating electrical devices (toasters, microwaves, etc.) at employee work stations in a hospital is nonmandatory.

County of Nassau, 32 PERB ¶3005 (1999).

The provision of free bottled spring water must be negotiated.

County of Nassau, 32 PERB ¶3034 (1999).

Employer-paid telephone service to employees' homes is an economic benefit and a mandatory subject of negotiations.

State of New York (DEC), 34 PERB ¶4508 (2001).

3. EMPLOYMENT/STAFFING

3.1 Qualifications

Qualifications for appointment and employment are a management prerogative and not mandatory.

PBA of Hempstead, 11 PERB ¶3072 (1978); *Onondaga Community Coll Fedn of Teachers, Local 1845 and Onondaga Community Coll*, 11 PERB ¶3045 (1978); *Niagara Falls Police Captains and Lieutenants Assn*, 33 PERB ¶3058 (2000).

The qualifications for a teacher's position may not be negotiated away by a school district or a community college.

Three Vil Teachers Assn v Three Vil Cent Sch Dist, 128 AD2d 626, 20 PERB ¶7503 (2d Dept 1987); *Meehan v Nassau Community Coll*, 152 AD2d 313, 23 PERB ¶7504 (2d Dept 1990).

A demand that the employer must hire a teacher's choice of available substitutes is nonmandatory.

Somers Faculty Assn, 9 PERB ¶3014 (1976).

[Note: The authority of superintendents of schools to transfer teachers from one school to another, or from one grade of the course of study to another grade in such course (Ed. Law ¶¶1711.5e and 2566.6), by virtue of L.1986, c.843, "may be modified by an agreement that is collectively negotiated...." (Ed. Law ¶¶1711.6 and 2566.9). See *Board of Educ Arlington Cent Sch Dist v Arlington Teachers Assn*, 78 NY2d 33, 24 PERB ¶7532 (1991).]

Unless reasonably related to performance of job functions, height/weight standards constitute a mandatory subject of negotiation.

City of White Plains, 18 PERB ¶3074 (1985); *Wappingers Cent Sch Dist*, 28 PERB ¶3016 (1995) (strength test).

While the qualifications for a position are within management's prerogative, the procedures to be used (e.g., seniority) in making assignments and transfers are mandatorily negotiable.

Dutchess County BOCES Faculty Assn, 17 PERB ¶3120 (1984), *affd* 122 AD2d 845, 19 PERB 7018 (2d Dept 1986); *White Plains PBA*, 9 PERB ¶3007 (1976); *Schenectady PBA*, 21 PERB ¶3022 (1988); *State of New York (Dept of Corr Serv-Collins Corr Fac)*, 37 PERB ¶4576 (2004).

A requirement that employees obtain a driver's license if operation of vehicles is part of their job is not mandatorily negotiable.

State of New York (SUNY Binghamton), 27 PERB ¶3018 (1994); *City of Glens Falls*, 29 PERB ¶3017 (1996).

An employer's requirement that employees report any criminal convictions to the employer does not affect a term and condition of employment and is not a mandatory subject of negotiations.

County of Nassau, 36 PERB ¶4537 (2003).

A fee imposed by state law upon all applicants for finger-printing and criminal history checks did not involve a mandatory subject of negotiations because it was applicable to all applicants and not just unit employees.

Newark Valley Cardinal Bus Drivers, Local 4360, AFT, AFL-CIO v PERB and Newark Valley Cent Sch Dist, 35 PERB ¶7015 (Sup Ct Albany County 2002), *affg* 35 PERB ¶3006 (2002).

A requirement that employees who have unsupervised or regular and substantial contact with minors be fingerprinted in furtherance of a criminal background check is nonmandatory.

County of Nassau, 39 PERB ¶4563 (2006).

A requirement that employees take a "trial" civil service test for the purpose of assisting in the establishment or verification of job qualifications is nonmandatory.

City of Rochester, 16 PERB ¶4619 (1983).

3.2 Residency

A residency requirement for initial appointment to or promotion to a position is not a term or condition of employment but a qualification for employment or promotion which is a managerial prerogative and a nonmandatory subject.

City of Peekskill, 12 PERB ¶3100 (1979); *Rensselaer City Sch Dist*, 13 PERB ¶3051 (1980), *affd* 87 AD2d 718, 15 PERB ¶7003 (3d Dept 1982); *City of Buffalo*, 9 PERB ¶3015 (1976); *Assn of Cent Office Administrators*, 4 PERB ¶3058 (1971), *affg* 4 PERB ¶4509 (1971).

Residency as a requirement for continuing employment is a mandatory subject of negotiation, except for employees subject to ¶30 of the Public Officers Law, for whom it is a statutory requirement and thus nonmandatory.

City of Mount Vernon, 18 PERB ¶3020 (1985); *Salamanca Police Unit, CSEA*, 12 PERB 3079 (1979); *Fairview Professional Firefighters Assn, Local 1586*, 12 PERB ¶3083 (1979); *City of Auburn*, 9 PERB ¶3085 (1976). See also *City of Watervliet*, 21 PERB ¶4589 (1988); *City of Schenectady*, 22 PERB ¶4527 (1989).

Imposition of a new residency requirement for the continued employment of current employees is a nonmandatory subject as to employees protected by ¶75 of the Civil Service Law, since it is precluded by statute, but is a mandatory subject as to employees not so protected.

City of Auburn, 9 PERB ¶3085 (1976); *Board of Educ of the City Sch Dist of the City of New York*, 13 PERB ¶3006 (1980); *Fairview Professional Firefighters Assn, Local 1586*, 12 PERB ¶3083 (1979); *Local No 650*, 9 PERB ¶3015 (1976).

A procedure to review the employer's determination that an employee does not satisfy a statutory residency requirement is a mandatory subject of negotiation.

City of Schenectady, 22 PERB ¶4527 (1989).

A requirement that employees fill out a substantially new residency form must be negotiated; but a requirement that they fill out another form acknowledging its receipt need not be negotiated as it has only a *de minimis* effect on terms and conditions of employment.

City of Schenectady, 26 PERB ¶3025 (1993).

Where city satisfied the statutory requirements of §30 of the New York State Public Officers Law, thereby rendering residency a statutory requirement, police union's proposal seeking to allow officers with 10 years of service to reside outside the city limits, was nonmandatory.

Niagara Falls Police Club, Inc., 34 PERB ¶4506 (2001).

3.3 Training

Whether and to what extent training will be provided is a management prerogative which need not be negotiated.

Dobbs Ferry Police Assn, 22 PERB ¶3039 (1989), *affg* 22 PERB ¶4516 (1989); *NYCTA.*, 22 PERB ¶6501 (1989). See also *Uniform Firefighters of Cohoes, Local 2562 and City of Cohoes*, 31 PERB ¶3020 (1998).

A requirement that statutorily mandated training be completed in less time than permitted by law is mandatory.

Local 589, Intl. Assn of Firefighters and City of Newburgh, 16 PERB ¶3030 (1983).

Attendance at teacher workshops on a voluntary basis is nonmandatory. If attendance is required and increases hours of work, it is a mandatory subject.

Gates-Chili Cent Sch Dist, 6 PERB ¶3065 (1973).

A process for the improvement of employee skills which is to be conducted by the union is a nonmandatory subject.

Chateaugay Cent Sch Dist, 12 PERB ¶3015 (1979).

While the extent of training may be a qualification for employment, the recoupment by the employer of the cost of training from employees who resign is a compensation issue and a mandatory subject of negotiation.

City of Mount Vernon, 18 PERB ¶3020 (1985).

A demand that employer facilities be provided to outside educational organizations which offer courses to unit members seeks to confer a benefit on such organization rather than on unit employees and is nonmandatory.

Peekskill Faculty Assn, 16 PERB ¶4586 (1983).

3.4 Hiring Procedures

Procedures relating to the makeup of the committee which is involved in the hiring of new staff and the manner in which it operates are management prerogatives and nonmandatory subjects.

Onondaga Community Coll Fedn of Teachers, Local 1845 and Onondaga Community Coll, 11 PERB ¶3045 (1978).

3.5 Job Security

Job security is not a mandatorily negotiable term or condition of employment. However, job security for a reasonable period of time is a "permissive" subject.

Burke v City of Long Beach, 40 NY2d 264, 9 PERB ¶7520 (1976); *Yonkers City Sch Dist v Yonkers Fedn of Teachers*, 40 NY2d 268, 9 PERB ¶7519 (1976).

A demand that current employees will continue employment for the life of the contract is nonmandatory.

City of Buffalo, 9 PERB ¶3015 (1976).

A demand to preclude the layoff of unit employees is a nonmandatory proposal for job security.

Hudson Valley Community Coll Faculty Assn and Hudson Valley Community Coll, 12 PERB ¶3030 (1979); *Onondaga Community Coll Fedn of Teachers, Local 1845 and Onondaga Community Coll*, 11 PERB ¶3045 (1978).

The length of individual employment contracts with noninstructional employees of a school district, and the issuance of notices that employment will continue after school vacation and closing periods, are nonmandatory subjects.

Spencerport Cent Sch Dist et al, 12 PERB ¶3074 (1979), *affd* 80 AD2d 704, 14 PERB ¶7007 (3d Dept 1981).

A demand that unit employees not be laid off as a result of the merger or consolidation of school districts is nonmandatory.

Monroe Woodbury Teachers Assn, 10 PERB ¶3029 (1977). *See also Somers Faculty Assn*, 9 PERB ¶3014 (1976) (no reduction in force unless student enrollment declines).

A demand that there be no reduction in the number of employees except by attrition or discipline is nonmandatory.

City of White Plains, 5 PERB ¶3008 (1972).

A demand which would preclude the termination of employees because of the subcontracting of unit work is mandatorily negotiable.

Fulton Assn of Coll Educators, 15 PERB ¶4654 (1982).

3.6 Elimination of Positions/Layoff/Retrenchment

The decision to eliminate jobs and curtail services is nonmandatory.

City Sch Dist City of New Rochelle and New Rochelle Fedn of Teachers, Local 280, 4 PERB ¶3060 (1971); *Burnt Hills-Ballston Lake Cent Sch Dist*, 25 PERB ¶3066 (1992) (abolition of position for economic reasons).

The decision to temporarily lay off employees due to lack of work is nonmandatory.
Vestal Cent Sch Dist, 15 PERB ¶3006 (1982).

A demand for reasonable notice of layoffs to the union is mandatory.

Hudson Valley Community Coll Faculty Assn and Hudson Valley Community Coll, 12 PERB ¶3030 (1979); City of Albany, 7 PERB ¶3078 (1974).

A demand for notice which would limit the employer's power to eliminate positions is nonmandatory.

City of Albany, 7 PERB ¶3078 (1974).

Demands regarding the order of retrenchment or layoff are mandatory.

Hudson Valley Community Coll Faculty Assn and Hudson Valley Community Coll, 12 PERB ¶3030 (1979).

A demand that an employer discuss possible staff reductions would involve the union in the decisional process and is nonmandatory.

General Brown Teachers Assn, 10 PERB ¶3041 (1977).

A demand that the employer assist in placing employees released due to staff reduction would include placement in nonunit and nonemployer positions and is, therefore, nonmandatory.

New Paltz United Teachers, 16 PERB ¶4552 (1983).

3.7 Vacancies

A demand that vacancies be filled, or be filled within a defined period of time, would restrict the employer's right to effect a staff reduction and is therefore nonmandatory.

City of Rochester, 12 PERB ¶3010 (1979); Scarsdale PBA, 8 PERB ¶3075 (1975) (30 days); City of Albany, 7 PERB ¶3079 (1974) (30 days); Professional Firefighters Assn, Local 274, 10 PERB ¶3043 (1977) (as soon as possible); Hudson Falls Permanent Firefighters, Local 2730, 14 PERB ¶3021 (1981) (as soon as feasible); City of Saratoga Springs, 16 PERB ¶3058 (1983) (immediately); Vil of Mamaroneck PBA, 22 PERB ¶3029 (1989); NYCTA, 22 PERB ¶6501 (1989); Town of Henrietta, 25 PERB ¶6501 (1992); Niagara Falls Police Captains and Lieutenants Assn, 33 PERB ¶3058 (2000) (10 days).

A demand to include unit employees in the screening and interviewing of candidates to fill vacancies is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976).

The creation and filling of positions is a nonmandatory subject.

Churchville-Chili Cent Sch Dist, 17 PERB ¶3055 (1984); *Town of Henrietta*, 25 PERB ¶6501 (1992); *Erie County Water Auth*, 27 PERB ¶3010 (1994).

A demand that the employer request the scheduling of civil service exams so as to insure the availability of a list for filling vacancies is mandatory.

Brighton Fire Dist and Brighton Professional Firefighters Assn, Local 2223, 10 PERB ¶4545 (1977).

Posting and bidding procedures for vacant positions are mandatorily negotiable.

City of Schenectady, 22 PERB ¶3018 (1989), *affg* 21 PERB ¶4605 (1988). *But see Cortland Paid Firefighters Assn, Local 2737*, 29 PERB ¶3037 (1996) (posting for minimum period before filling vacancy is nonmandatory). *See also Niagara Falls Police Captains and Lieutenants Assn*, 33 PERB ¶3058 (2000).

The rate of pay for employees temporarily filling vacant positions is a mandatory subject of negotiation.

City of Schenectady, 22 PERB ¶3018 (1989), *affg* 21 PERB ¶4605 (1988).

Although police union's proposal was mandatorily negotiable insofar as it sought to expand the required notice period from five to thirty days and to have vacancies filled on the basis of seniority, the remaining aspect of demand – that the city fill positions within ten days of expiration of the notice – was nonmandatory because it sought to curtail city's managerial prerogative in deciding when to fill a vacancy.

Niagara Falls Police Club, Inc., 34 PERB ¶4506 (2001).

3.8 Staffing Levels

A demand that an employer maintain a specific table of organization or organizational structure would interfere with its right to determine its staffing needs and staff deployment and is nonmandatory.

Troy Uniformed Firefighters Assn, Local 2304, 10 PERB ¶3015 (1977); *Scarsdale PBA*, 8 PERB ¶3075 (1975). *See also Town of Carmel*, 31 PERB ¶3006 (1998), *affd*, 267 AD2d 858, 32 PERB ¶7028 (3d Dept 1999).

The number of employees assigned to a piece of equipment raises a compelling safety issue, but that is outweighed by the employer's general right to fix staffing requirements unilaterally. The safety considerations should be dealt with outside the negotiating process. Thus, staffing per piece of equipment is nonmandatory.

City of White Plains, 9 PERB ¶3007 (1976), and *Local 294, IBT*, 10 PERB ¶3007 (1977) (2-person patrol cars); *Niagara Falls Uniformed Firefighters Assn, Local 714*, 9 PERB ¶3025 (1976) (5 fire fighters per apparatus); *State of New York (Dept of Transp)*, 27 PERB ¶3056 (1994) (2-person snow plows).

The number of employees on duty per piece of equipment or at a particular facility is a nonmandatory subject.

Intl. Assn of Firefighters City of Newburgh, 10 PERB ¶3001 (1977); *City of Saratoga Springs*, 18 PERB ¶3009 (1985); *State of New York-UCS*, 25 PERB ¶3061 (1992) (number of employees on a work assignment).

A demand that a minimum number of employees be on duty at all times is nonmandatory.

Village of Johnson City, 9 PERB ¶3042 (1976); *Local 294, IBT*, 10 PERB ¶3007 (1977); *City of Schenectady*, 18 PERB ¶3035 (1985); *City of Glens Falls*, 30 PERB ¶3047 (1997). See also *Schenectady PBA*, 21 PERB ¶3022 (1988); *Johnstown PBA*, 25 PERB ¶3085 (1992).

A demand regarding manning levels and increased compensation for firefighters was a mandatory subject of bargaining.

Niagara Falls Uniformed Firefighters Assn, AFL-CIO, Local 714, 37 PERB ¶4520 (2004).

A demand that a part-time employee not be used if the use of a full-time employee is justified extends to staffing policies and is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976).

The substitution of part-time employees for full-time employees, absent a change in the nature or level of services, must be negotiated.

County of Broome, 22 PERB ¶3019 (1989); *State of New York-UCS*, 28 PERB ¶3014 (1995). Compare *Marcellus Cent Sch Dist*, 32 PERB ¶4639 (1999).

The union's demand, which sought to include clauses governing work schedules, means, personals, and procedures for vacation selection in the parties' successor agreement addressed terms and conditions of employment, thereby rendering the demand a mandatory subject of negotiation. Contrary to the City's argument, the Board concluded the demand did not interfere with the City's right to determine staffing needs, deploy staff, or how to render services to the public.

Patrolmen's Benevolent Assn, 37 PERB ¶3033 (2004).

A bargaining demand requiring all employees who provide a particular service be off on holidays was not mandatorily negotiable because it affects staffing and would prevent the employer from providing that service on a holiday.

City of Cortland, 29 PERB ¶3037 (1996).

Compensatory time is a mandatory subject of bargaining. The level of staffing is a management prerogative, central to decisions regarding the delivery of service and, is, therefore, a nonmandatory subject of bargaining. A demand for specific levels of supervision is also a nonmandatory subject of negotiation.

City of New Rochelle and Police Assn of New Rochelle, 35 PERB ¶4523 (2002).

A change in the manner in which vacation relief officers bid on partial weeks is nonmandatory because it affects the State's manpower concerns in filling shift assignments due to vacations.

State of New York (DOCS-Elmira Corr Fac), 39 PERB ¶3004 (2006).

3.9 Call-Ins

A demand which would require the call-in of off-duty fire fighters is nonmandatory.

Local 589, Intl. Ass'n of Firefighters and City of Newburgh, 16 PERB ¶3030 (1983); Hudson Falls Permanent Firefighters, Local 2730, 14 PERB ¶3021 (1981); City of Saratoga Springs, 16 PERB ¶3058 (1983); City of Albany, 7 PERB ¶3078 (1974); City of Glens Falls, 30 PERB ¶3047 (1997).

A demand that work schedules not be changed without seven days notice is nonmandatory since it could preclude call-ins.

Scarsdale PBA, 8 PERB ¶3075 (1975).

The procedures to be used for call-ins (e.g., rotating) is mandatory.

Troy Uniformed Firefighters Assn, Local 2304, 10 PERB ¶3015 (1977).

A demand that a call-in must be on-duty a minimum number of days, whether or not needed, interferes with the employer's right to determine staffing needs and is nonmandatory.

Buchanan Police Assn, 29 PERB ¶3061 (1996).

A demand which would require an employer to suspend overtime assignments would abridge its ability to call in or reassign employees and is therefore nonmandatory.

Local 589, Intl. Assn of Firefighters and City of Newburgh, 16 PERB ¶4516 (1983).

Because captains used drive/commute time to transact business with subordinates, superiors and members of the public, on employer-provided pagers and cell phones, such time was at least the same as "on-call" time and was a mandatory subject of negotiations.

State of New York (DEC), 34 PERB ¶4526 (2001).

3.10 Tenure

A substantive limitation on the authority of a board of education to grant or deny tenure violates public policy that such boards have sole authority to make tenure decisions. It is not a term or condition of employment subject to mandatory negotiations. However, procedural safeguards preliminary to a tenure determination are mandatorily negotiable.

Cohoes City Sch Dist v Cohoes Teachers Assn, 40 NY2d 774, 9 PERB ¶7529 (1976); *Conte v Board of Educ Town of Hinsdale, Cattaraugus County*, 58 AD2d 219, 10 PERB ¶7532 (4th Dept 1977); *Board of Educ Elwood Union Free Sch Dist v Elwood Teachers' Alliance*, 94 AD2d 692, 16 PERB ¶7517 (2d Dept 1983).

Because of its tenure responsibility, it would be violative of public policy for a board of education to bargain away its right to have access to teachers' personnel files.

Board of Educ, Great Neck Union Free Sch Dist v Great Neck Teachers Assn, 41 NY2d 527, 10 PERB ¶7512 (1977).

3.11 Subcontracting

The transfer of exclusive unit work to nonunit personnel who perform duties which are substantially similar to those previously performed by unit employees is mandatorily negotiable if there has not been a significant change in the qualifications for the job. If there has been such a change in qualifications, the negotiability of the transfer rests on a balancing of the interests of the unit employees against the interests of the employer.

Niagara Frontier Transp Auth, 18 PERB ¶3083 (1985); *State of New York (DOCS)*, 27 PERB ¶3055 (1994), *affd*, 220 AD2d 19, 29 PERB ¶7008 (3d Dept 1996); *Fairview Fire Dist*, 29 PERB ¶3042 (1996); *Town of Mamaroneck*, 33 PERB ¶3010 (2000) (civilian substituted for uniformed officer); *City of Newburgh*, 32 PERB ¶3015 (1999), *affd*, 273 AD2d 626, 33 PERB ¶7009 (3d Dept 2000) (uniformed officer substituted for civilian); *Erie County Water Auth*, 35 PERB ¶3043 (2002); *County of Westchester*, 39 PERB ¶4588 (2006).

The subcontracting of work performed by unit employees to employees of a contractor who perform the same work under similar performance standards comes within the meaning of terms and conditions of employment and is a mandatory subject.

Saratoga Springs Sch Dist, 11 PERB ¶3037 (1978), *affd*, 68 AD2d 202, 12 PERB ¶7008 (3d Dept 1979), 47 NY2d 711, 12 PERB ¶7012 (1979) (bus services). *See also County of Allegany*, 33 PERB ¶3019 (2000).

The replacement of a unit position with a nonunit position having substantially the same duties does not involve a decision relating to the extent or nature of services to be rendered and is a mandatory subject.

Avoca Cent Sch Dist, 15 PERB ¶3128 (1982) (school nursing); *Hewlett-Woodmere Union Free Sch Dist*, 28 PERB ¶3039 (1995) (library media work).

A provision giving to the employer the right to subcontract any or all of its services is mandatory.

Town of Shawangunk PBA, 34 PERB ¶4510 (2001).

A demand that unit work will not be performed by nonunit employees is mandatory.

Somers Faculty Ass'n, 9 PERB ¶3014 (1976); *Local 650*, 9 PERB ¶3015 (1976); *PBA Newburgh*, 30 PERB ¶3007 (1997). *See City of Albany*, 7 PERB ¶3078 (1974); *NYCTA*, 22 PERB ¶6501 (1989).

See also Northport Union Free Sch Dist, 9 PERB ¶3003 (1976) (director of student activities); *East Ramapo Cent Sch Dist*, 10 PERB ¶3064 (1977) (library media specialist); *Deer Park Union Free Sch Dist*, 14 PERB ¶3028 (1981); *Hilton Cent Sch Dist*, 14 PERB ¶3038 (1981) (school lunch program); *Hannibal Cent Sch Dist*, 14 PERB ¶3076 (1981) (bus washing); *NYCTA*, 15 PERB ¶3129 (1982) (special investigations); *City of Poughkeepsie*, 15 PERB ¶3045 (1982) (parking services; waste water treatment); *City of Lackawanna*, 15 PERB ¶3013 (1982) (community development grant program); *Elba Cent Sch Dist*, 16 PERB ¶3003 (1983) (bus services); *Peekskill City Sch Dist*, 16 PERB ¶3080 (1983) (cafeteria services); *Greenville Cent Sch Dist*, 17 PERB ¶3060 (1984) (clerical duties); *Tonawanda City Sch Dist*, 17 PERB ¶3091 (1984) (nurse/teacher duties); *Town of Evans*, 18 PERB ¶3006 (1985) (blue-collar and clerical duties); *Town of West Seneca*, 19 PERB ¶3028 (1986) (work performed during a particular time frame); *Wappingers Cent Sch Dist*, 19 PERB ¶3037 (1986) (transportation of handicapped students); *NYCTA*, 19 PERB ¶3043 (1986) (bus maintenance); *County of Nassau*, 21 PERB ¶3038 (1988) (gun locker custodial duties); *City of Rochester*, 21 PERB ¶3040 (1988), *affd*, 155 AD2d 1003, 22 PERB ¶7035 (4th Dept 1989) (traffic control by police at construction site); *County of Chautauqua*, 21 PERB ¶3057 (1988) (job training program); *Vil of*

Buchanan, 22 PERB ¶3001 (1989) (police road-patrol duties); *County of Chautauqua*, 22 PERB ¶3016 (1989) (laundry services); *Middle Country Cent Sch Dist*, 23 PERB ¶3045 (1990) (custodial duties for special events); *County of Onondaga*, 24 PERB ¶3014 (1991), *affd*, 187 AD2d 706, 25 PERB ¶7015 (4th Dept 1992); *Hudson City Sch Dist*, 24 PERB ¶3039 (1991) (clerical work at one school); *City of Schenectady*, 25 PERB ¶3073 (1992) (traffic/crowd control by police at special events); *Town of Smithtown*, 25 PERB ¶3081 (1992), *Board of Educ of the City Sch Dist of the City of Long Beach*, 26 PERB ¶3065 (1993) (driver training); *City of Rochester*, 27 PERB ¶3031 (1994) (receipt of criminal complaints by telephone); *County of Onondaga*, 27 PERB ¶3048 (1994) (laboratory tests); *State of New York (DOCS)*, 27 PERB ¶3055 (1994), *affd*, 220 AD2d 19, 29 PERB ¶7008 (3d Dept 1996) (certain duties of correction officers); *County of Monroe*, 28 PERB ¶3025 (1995) (certain types of training); *County of Clinton*, 28 PERB ¶3041 (1995) (mowing and paving); *Vil of Malverne*, 28 PERB ¶3042 (1995) (leaf collection); *Hewlett-Woodmere Union Free Sch Dist*, 28 PERB ¶3039 (1995), *affd*, 232AD2d 560, 29 PERB ¶7019 (2d Dept 1996) (library media specialist); *Sidney Cent Sch. Dist*, 29 PERB ¶3021 (1996) (nurse/teacher duties); *Union-Endicott Cent Sch. Dist*, 29 PERB ¶3056 (1996), *revd on other grounds*, 250 AD2d 996, 31 PERB ¶7016 (3d Dept 1998) ballast and lamp replacement); *Clinton Community Coll*, 29 PERB ¶3066 (1996) (duties related to a distinct college program); *NYCTA*, 30 PERB ¶3004 (1997), *affd*, 251 AD2d 583, 31 PERB ¶7012 (2d Dept 1998) (routine bus repair); *County of Erie*, 30 PERB ¶3017 (1997) (supervision of a program); *Buffalo Sewer Auth*, 30 PERB ¶3018 (1997) (shift supervision); *County of Erie*, 30 PERB ¶3051 (1997) (guarding certain prisoners); *City of Niagara Falls*, 31 PERB ¶3085 (1998) (waste/refuse collection); *City of Rome*, 32 PERB ¶3058 (1999) (purchasing agent duties); *New York State Thruway Auth*, 33 PERB ¶3017 (2000) (road marking); *Board of Educ of the City Sch Dist of the City of New York*, 39 PERB ¶3014 (2006) (plumbing shop). *But see Germantown Cent Sch Dist v PERB*, 205 AD2d 961, 27 PERB ¶7009 (3d Dept 1994) (cafeteria services under austerity budget).

The transfer of work which had not been performed exclusively by unit members is not a mandatory subject.

Deer Park Union Free Sch Dist, 15 PERB ¶3104 (1982); *Ellenville Cent Sch Dist*, 13 PERB ¶3062 (1980); *Guilderland Cent Sch Dist*, 16 PERB ¶3038 (1983); *County of Erie*, 17 PERB ¶3067 (1984); *Otselic Valley Cent Sch Dist*, 19 PERB ¶3065 (1986); *NYCTA*, 20 PERB ¶3025 (1987) and 22 PERB ¶6501 (1989); *Indian River Cent Sch Dist*, 20 PERB ¶3047 (1987); *County of Nassau*, 21 PERB ¶3038 (1988); *City of Buffalo*, 24 PERB ¶3043 (1991); *Union-Endicott Cent Sch Dist*, 26 PERB ¶3075 (1993); *County of Allegany*, 27 PERB ¶3013 (1994); *State of New York (DMNA)*, 27 PERB ¶3027 (1994) (work performed out of unit for one year); *Town of Brookhaven*, 27 PERB ¶3063 (1994) (transportation of trash: duties, not type of trash, define boundary of unit work); *County of Erie (Erie*

County Med Ctr, 28 PERB ¶¶3015 and 3053 (1995); *Hammondsport Cent Sch Dist*, 28 PERB ¶3059 (1995) (pizza preparation); *City of Batavia*, 28 PERB ¶3076 (1995); *County of Suffolk*, 29 PERB ¶3002 (1996); *Town of Lloyd*, 29 PERB ¶3040 (1996) (certain police investigations); *State of New York (SUNY Buffalo)*, 29 PERB ¶3067 (1996), *aff'd*, 264 AD2d 660, 31 PERB ¶7006 (2d Dept 1998); *Town of East Hampton*, 29 PERB ¶3043 (1996); *County of Erie*, 29 PERB ¶3044 (1996); *Warrensburg Cent Sch Dist*, 30 PERB ¶3056 (1997); *Town of Southampton*, 30 PERB ¶3069 (1997); *County of Westchester*, 31 PERB ¶¶3033, 3034, 3035 (1998); *United Fedn of Teachers*, 30 PERB ¶3048 (1997); *Board of Educ of the City Sch Dist of the City of New York*, 39 PERB ¶4588 (2006); *Manhasset Union Free Sch Dist*, 39 PERB ¶4610 (2006).

The replacement of a unit position with a nonunit position which, while performing some of the duties of the abolished position, is substantially different from it, is not a mandatory subject.

North Shore Union Free Sch Dist, 11 PERB ¶3011 (1978); *Hewlett-Woodmere Union Free Sch Dist*, 29 PERB ¶4617 (1996) (change in nature of program); *County of Westchester*, 31 PERB ¶¶3033, 3034, 3035 (1998) (change in supervisory responsibilities). See also *Niagara Frontier Transit Metro Sys*, 30 PERB ¶3068 (1997).

The transfer to nonunit employees of duties which, although exclusive unit work, are peripheral to "core component" duties which are not exclusive to the unit, is nonmandatory.

County of Westchester, 31 PERB ¶¶3034 and 3035 (1998).

Pursuant to legislative intent, the replacement of unit employees with electronic devices to record court proceedings need not be negotiated.

State of New York-UCS, 28 PERB ¶3044 (1995).

The Education Law also manifests a legislative intention that the decision by a school district to subcontract certain programs and services to a BOCES is a nonmandatory subject of negotiation.

Webster Cent Sch Dist v PERB, 75 NY2d 619, 23 PERB ¶7013 (1990). See also; *Marcus Whitman Cent Sch Dist*, 27 PERB ¶4508 (1994); *Lackawanna City Sch Dist*, 28 PERB ¶3023 (1995); *Scio Cent Sch Dist*, 29 PERB ¶4525 (1996); *Vestal Cent Sch Dist*, 30 PERB ¶3029 (1997), *aff'd*, 94 NY2d 409, 33 PERB ¶7005 (2000) (printing services).

Even absent a direct and immediate detriment to individual unit employees, since the transfer of unit work to nonunit employees is detrimental to unit employees as a group,

it is mandatorily negotiable, unless job tasks or qualifications are so substantially changed as to outweigh the employees' interests.

Niagara Frontier Transp Auth, 18 PERB ¶3083 (1985); *Town of West Seneca*, 19 PERB ¶3028 (1986). Compare *County of Suffolk*, 12 PERB ¶3123 (1979); *City of Albany*, 13 PERB ¶3011 (1980); *City of New Rochelle*, 13 PERB ¶3045 (1980); *Fairview Fire Dist*, 29 PERB ¶3042 (1996) (fire dispatching).

The assignment of unit work outside the unit is nonmandatory if done because of a compelling need to upgrade the quality of the services provided.

West Hempstead Union Free Sch Dist, 14 PERB ¶3096 (1981); *Town of Brookhaven*, 17 PERB ¶3087 (1984); *County of Erie*, 29 PERB ¶3045 (1996) (medical services). But see *Town of Smithtown*, 25 PERB ¶3081 (1992).

A prohibition on the use of volunteers to replace unit employees on leave would restrict the services that the employer chooses to provide, e.g., in an emergency, and is, therefore, nonmandatory.

City of Saratoga Springs, 16 PERB ¶3058 (1983). But see *County of Niagara*, 26 PERB 4582 (1993).

A demand that only unit members be assigned to new programs would impose on the employer's right to formulate new programs and on its utilization of appropriate resources, and is nonmandatory.

Queensbury Union Free Sch Dist, 9 PERB ¶3057 (1976).

If the duties transferred are supervisory in nature, weight must be accorded the employer's right to deploy its supervisory responsibilities, and the duties transferred cannot be considered in isolation from the employer's supervisory system.

Hyde Park Cent Sch Dist, 21 PERB ¶3011 (1988).

4. EVALUATION, DISCIPLINE, PROMOTION

4.1 Evaluation

4.1.1 Procedures

Procedures for the evaluation of employees are a mandatory subject.

Monroe-Woodbury Teachers Assn and Monroe-Woodbury Bd of Educ, 3 PERB ¶3104 (1970); Suffolk BOCES, Second Supervisory Dist, 17 PERB ¶3043 (1984); City of Yonkers, 39 PERB ¶4580 (2007). See also Chateaugay Cent Sch Dist, 12 PERB ¶3015 (1979).

Procedural aspects of an evaluation system are mandatorily negotiable, especially where the implementation of the evaluation system involves employee participation.

County of Nassau, 35 PERB ¶4566 (2002).

A demand for union approval of evaluation forms is a mandatory subject since it relates to evaluation procedures.

Somers Faculty Assn, 9 PERB ¶3014 (1976).

Requirements of a written statement of evaluation criteria and of written rationale for denial of promotion, reappointment or tenure are mandatory subjects.

Orange County Community Coll, 9 PERB ¶3068 (1976).

A demand that unit employees determine their own evaluation system is a nonmandatory subject; due process in the application of an evaluation system is a mandatory subject.

Orange County Community Coll, 9 PERB ¶3068 (1976).

The identity of persons or members of a committee who will evaluate is not a term and condition of employment of the employees to be evaluated and, therefore, their designation is a nonmandatory subject.

Board of Educ of the City Sch Dist of the City of New York, 5 PERB ¶3054 (1972);, Board of Educ of the City Sch Dist of the City of New York, 7 PERB ¶3028 (1974); Orange County Community Coll, 9 PERB ¶3068 (1976), Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977); Onondaga Community Coll Fedn of Teachers, Local 1845 and Onondaga Community Coll, 11 PERB ¶3045 (1978).

Advance notice of when formal observations of employee performance will be conducted is a mandatory subject.

BOCES Second Supervisory Dist Suffolk County, 15 PERB ¶4590 (1982).

The timing and the form an evaluation is to take involve matters of procedure which have long been held to be mandatorily negotiable.

Town of Shawangunk, 34 PERB ¶4510 (2001).

The procedures for evaluating employees are mandatory subjects of negotiations, but where new procedures do not vary the terms of the negotiated evaluation procedure, there is no violation.

Roswell Park Cancer Institute, 34 PERB ¶4582 (2001).

4.1.2 Criteria

Standards or criteria for evaluation are nonmandatory subjects.

Somers Faculty Assn, 9 PERB ¶3014 (1976); Elwood Union Free Sch Dist, 10 PERB ¶3107 (1977); Roswell Park Cancer Institute, 36 PERB ¶4518 (2003).

A change in the method by which evaluation criteria are determined is a nonmandatory subject.

North Shore Union Free Sch Dist, 11 PERB ¶3011 (1978).

4.1.3 Supervision

While a demand for adequate supervision is mandatory, as it relates to safety, a demand that supervisors of specified rank be assigned, even if in the unit, is nonmandatory.

City of White Plains, 5 PERB ¶3008 (1972); Troy Uniformed Firefighters Assn, 10 PERB ¶3015 (1977); Amherst Police Club, 12 PERB ¶3071 (1979).

A demand for shift rotation for all ranks and grades, including supervisors, would restrict the employer's right to determine the rank of supervisors on each shift and is nonmandatory.

Croton Police Assn, 16 PERB ¶3007 (1983).

4.2 Discipline

4.2.1 Procedures

Disciplinary procedures are mandatorily negotiable, absent legislative intent to the contrary.

State of New York, 37 PERB ¶6601 (2004).

Discipline and discharge procedures are mandatory subjects, even as an alternative to or replacement for the procedures provided in Civil Service Law ¶75.

City of Albany, 7 PERB ¶3078 (1974); *Scarsdale PBA*, 8 PERB ¶3075 (1975); *Auburn Police Local 195 v PERB*, 91 Misc. 2d 909, 10 PERB ¶7016 (1977), *affd*, *Auburn Police Local 195*, 62 AD2d 12, 11 PERB ¶7003 (1978), 46 NY2d 1034, 12 PERB ¶7006 (1979); *PBA City of White Plains*, 12 PERB 3046 (1979); *City of Albany*, 9 PERB ¶3009 (1976), *affd*, 56 AD2d 976, 10 PERB ¶7006 (3d Dept 1977); *Police Assn New Rochelle*, 13 PERB ¶3082 (1980); *City of Utica*; 31 PERB ¶3045 (1998); *NYCTA*, 39 PERB ¶4539 (2006). *See also Granville Cent Sch Dist v Granville Non-Instructional Employees' Assn*, 110 AD2d 626, 19 PERB ¶7503 (3d Dept 1986). *But see City of Sherrill*, 25 PERB ¶3054 (1992).

The provisions of Civil Service Law ¶76 (4) notwithstanding, alternatives to disciplinary procedures provided by local law or city charter are mandatorily negotiable.

Police Assn City of Mount Vernon, 32 PERB ¶3030 (1999), *revd*, 33 PERB ¶7015 (Sup Ct Albany County 2000), *affd* 34 PERB ¶7038 (3d Dept 2001), *motion for leave to appeal denied*, 35 PERB ¶7005 (2002). *But see PBA of the Town of Bedford*, 34 PERB ¶4556 (2001) (alternatives to extant disciplinary schemes which predates the enactment of CSL§75 or §76 are nonmandatory).

A bill of rights for employees under disciplinary investigation is a mandatory subject.

Amherst Police Club, 12 PERB ¶3071 (1979); *City of Schenectady*, 22 PERB ¶3018 (1989), *affg* 21 PERB ¶4605 (1988).

A requirement that employees participate in an investigatory meeting with their supervisor which could lead to disciplinary charges against them must be negotiated.

Patchogue-Medford Union Free Sch Dist, 30 PERB ¶3041 (1997).

Disciplinary procedures involving members of town police departments in Westchester County and Rockland County are prohibited subjects because the Westchester County Police Act and the Rockland County Police Act establish disciplinary procedures for such employees. The New York City Code and City charter are special laws that leave

the discipline of police officers to the discretion of the Police Commissioner. The express language of Executive Law § 215(3) evinces a "plain and clear" legislative intent to vest the Superintendent of the State Police with the authority over police officer discipline, effectively removing the subject of discipline from collective bargaining

Town of Greenburgh v Assn Town of Greenburgh, 94 AD2d 771, 16 PERB ¶7510 (2d Dept 1983); *Rockland County PBA v Town of Clarkstown*, 149 AD2d 516, 22 PERB ¶7516 (2d Dept 1989). See also *City of New York v MacDonald*, 201 AD2d 258, 27 PERB ¶7503 (1st Dept 1994) and *City of New York*, 35 PERB ¶3034 (2002), *affd*, 36 PERB ¶7014 (Sup Ct Albany County 2003) and *Patrolmen's Benevolent Association of the City of New York v PERB*, 37 PERB ¶7012 (3d Dept 2004), *affd*, 39 PERB ¶7006 (2006), regarding disciplinary procedures for New York City police officers. See also *State of New York (Div of State Police)*, 38 PERB ¶3007 (2005), *affd*, 39 PERB ¶ 7013 (Sup Ct Albany County 2006) regarding disciplinary procedures for New York State Police Officers, where a legislative intent was found to prevent long-established statutory disciplinary provisions from being supplanted, thereby rendering the State Police disciplinary procedures a prohibited subject of negotiations. See also *State of New York (Div of State Police)*, 39 PERB ¶3023 (2006).

Procedures pertaining to preliminary investigations are a nonmandatory subject.

Scarsdale PBA, 8 PERB ¶3075 (1975); *City of Rochester*, 12 PERB ¶3010 (1979). *But see Erie County Water Auth*, 24 PERB ¶3046 (1991), *affg* 24 PERB ¶4539 (1991); *Cortland Paid Firefighters Assn, Local 2737*, 29 PERB ¶3037 (1996).

Procedures also relating to criminal investigations are a nonmandatory subject.

City of Rochester, 12 PERB ¶3010 (1979); *Town of Haverstraw*, 11 PERB ¶3109 (1978); *PBA Newburgh*, 18 PERB ¶3065 (1985); *Schenectady PBA*, 21 PERB ¶3022 (1988); *Amherst Police Club*, 12 PERB ¶3071 (1979); *PBA City of White Plains and City of White Plains*, 33 PERB ¶3051 (2000), *affg* 33 PERB ¶4588 (2000). See also *City of Rochester v New York State Pub Empl Rel Bd*, 39 PERB ¶7003 (1st Dept 2006).

A demand that negative comments about an employee can be made only in a private conversation is a mandatory subject, as it involves discipline procedures.

Somers Faculty Assn, 9 PERB ¶3014 (1976).

A demand that limits the way in which the employer may receive complaints about employees from the public is nonmandatory.

Triborough Bridge and Tunnel Auth and Bridge and Tunnel Officers Benevolent Assn, 27 PERB ¶4595 (1994), *affd*, 27 PERB ¶3076 (1994).

Payment of wages to employees who are under disciplinary charges is a mandatory subject.

PBA City of White Plains, 12 PERB ¶3046 (1979).

Since the Education Law does not require that teachers be paid while on suspension, a demand to withhold pay during a period of suspension is mandatory.

Plainview-Old Bethpage Cent Sch Dist, 15 PERB ¶3061 (1982), *affd*, 16 PERB ¶7012 (Sup Ct Albany County 1983).

A monetary penalty for tardiness is a mandatory subject.

City of Albany, 9 PERB ¶3009 (1976), *affd*, 56 AD2d 976, 10 PERB ¶7006 (3d Dept 1977).

Arbitration as the last step of disciplinary procedures relating to tenured teachers is a mandatory subject.

Board of Educ of Union Free Sch Dist No. 3 Town of Huntington v Associated Teachers of Huntington, 30 NY2d 122, 5 PERB ¶7507 (1972).

The period of time of service after which employees become subject to removal only under ¶75 of the Civil Service Law is mandatory.

City of Buffalo, 9 PERB ¶3024 (1976).

A demand that a police officer not be compelled to give a statement during questioning on a criminal charge or be notified of the results of any investigation is nonmandatory.

Scarsdale PBA, 8 PERB ¶3075 (1975); *Police Assn New Rochelle*, 10 PERB ¶3042 (1977); *Police Assn City of Mount Vernon*, 13 PERB ¶3071 (1980).

Prohibition against subsection to offensive language or threats during an investigation is a mandatory subject.

City of Saratoga Springs, 16 PERB ¶3058 (1983).

The procedure for designating hearing officers in disciplinary proceedings is a mandatory subject.

Police Assn New Rochelle, 13 PERB ¶3082 (1980); *Town of Hempstead*, 19 PERB ¶3002 (1986), *affd*, 137 AD2d 378, 21 PERB ¶7013 (3d Dept 1988), *on remand*, 22 PERB ¶4522 (1989). *But see City of Sherrill*, 25 PERB ¶3054 (1992).

A demand that a teacher not be disciplined or “deprived of any professional advantage without cause” could restrict managerial prerogatives, such as assignment of duties inherent to the position, and, therefore, is nonmandatory.

Mohonasen Teachers Assn, 14 PERB ¶4604 (1981).

A demand that disciplinary procedures be stayed until related criminal charges are completely processed would unduly delay the employer from fulfilling its administrative responsibilities and is, therefore, nonmandatory.

Rye Police Assn, 17 PERB ¶4645 (1984).

Penalties to be imposed are mandatorily negotiable.

NYCTA, 20 PERB ¶3037 (1987), *affd*, 147 AD2d 574, 22 PERB ¶7001 (2d Dept 1989), *enfd*, 156 AD2d 689, 23 PERB ¶7002 (2d Dept 1990); *Solvay Teachers Assn*, 28 PERB ¶3024 (1995).

The introduction of a system of progressive discipline is mandatorily negotiable.

State of New York (OMH-Central New York Psychiatric Center), 31 PERB ¶3051 (1998); *County of Niagara*, 19 PERB ¶4607 (1986); *County of Orange*, 19 PERB ¶4579 (1986); *Western Regional OTB*, 15 PERB ¶4635 (1982).

The procedure for docking the pay of tardy employees is a disciplinary work rule and must be negotiated.

County of Niagara, 19 PERB ¶4607 (1986); *City of Tonawanda*, 14 PERB ¶4575 (1981).

A demand that employees be accorded a union representative of choice “at any time” is nonmandatory.

New Paltz United Teachers, 16 PERB ¶4552 (1983) and 13 PERB ¶4503 (1980).

The introduction of an employee assistance program, in lieu of discipline, to provide rehabilitative assistance to employees with work-related problems due to, e.g., alcohol or substance abuse, is mandatory.

Buffalo Professional Firefighters Assn, 20 PERB ¶4576 (1987).

A requirement that the union be notified when disciplinary charges are brought against unit employees is a mandatory subject.

PBA Newburgh, 30 PERB ¶3007 (1997); *Greenville Uniformed Firemen's Assn, Local 2093*, 15 PERB ¶4501 (1982).

A demand that employees be notified when entries affecting employment status are added to their personnel files is mandatory.

Schenectady PBA, 21 PERB ¶3022 (1988).

Employees' access to their own personnel files is mandatorily negotiable; but if the demand allows access to files pertaining to, e.g., non-employment misconduct, it is nonmandatory.

PBA Police Dept of Nassau County, 14 PERB ¶4557 (1981). See also *Batavia PBA*, 15 PERB ¶4540 (1982).

A demand that derogatory material be removed from an employee's personnel file after one year would limit the employer's right to apply the criteria it has developed in deciding, e.g., to promote or discipline, and is, therefore, nonmandatory.

CSEA, 15 PERB ¶4545 (1982); *Vil of Lancaster Police Club*, 23 PERB ¶4606 (1990).

A demand that unfounded complaints against an employee be removed from the employee's file within a defined period of time is mandatory.

Triborough Bridge and Tunnel Auth and Bridge and Tunnel Officers Benevolent Assn, 27 PERB ¶4595 (1994), *affd*, 27 PERB ¶3076 (1994).

A change in the frequency of disciplinary hearings and the location where they are normally held are matters within the disciplinary procedure and are mandatory subjects of negotiation.

New York City Transit Auth, 37 PERB ¶4539 (2004).

The use in disciplinary proceedings of security tapes from security cameras installed by the employer is a mandatory subject of negotiations. (The installation of a camera system by an employer to maintain security of its property is a nonmandatory subject of negotiations. See §7.3, *City of Syracuse*, 14 PERB ¶4645 (1981).

Niagara Frontier Transit Metro System, Inc, 36 PERB ¶3036 (2003).

A public employer must provide information that is relevant and necessary for the administration of a collective bargaining agreement, including the investigation of disciplinary grievances.

Town of Evans, 37 PERB ¶3016 (2004).

4.2.2 Criteria

The standard which an employer may apply in determining whether to initiate discipline (e.g., number of undocumented sick days used) is nonmandatory.

Poughkeepsie City Sch Dist, 19 PERB ¶3046 (1986).

Grounds for the imposition of discipline are mandatorily negotiable.

City of Buffalo, 23 PERB ¶3050 (1990); *City of Glens Falls*, 24 PERB ¶3015 (1991); *Triborough Bridge and Tunnel Auth and Bridge and Tunnel Officers Benevolent Assn*, 27 PERB ¶3076 (1994) (imposition of new duties with disciplinary implications); *Solvay Teachers Assn*, 28 PERB ¶3024 (1995); *Patchogue-Medford Union Free Sch Dist*, 30 PERB ¶3041 (1997); *NYCTA*, 30 PERB ¶3030 (1997), *affd*, 276 AD2d 702, 33 PERB ¶7020 (2d Dept 2000) (driving record); *Town of Cortlandt*, 30 PERB ¶3031 (1997), *affd*, 30 PERB ¶7012 (Sup Ct Westchester County 1997) (termination after one year on GML ¶207-c leave).

4.2.3 Drug/Polygraph Tests, etc.

Random drug testing infringes upon public employees' constitutional right to protection from unreasonable searches and seizures. The waiver of such rights can only occur upon the consent of represented employees through their bargaining agent, which cannot be compelled to negotiate such waiver. Thus, the issue of random drug testing is a permissive subject of negotiation.

City of Buffalo (Police Dept), 20 PERB ¶3048 (1987). See also *Patchogue-Medford Congress of Teachers v Board of Educ Patchogue-Medford Union Free Sch Dist*, 70 NY2d 57, 20 PERB ¶7505 (1987). But see *Arlington Cent Sch Dist*, 25 PERB ¶3001 (1992). Compare *PBA City of New York v Police Dept City of New York*, 72 NY2d 432, 21 PERB ¶7520 (1988); *Delaraba v Nassau County Police Dept*, 83 NY2d 367, 27 PERB ¶7507 (1994). See also *NYCTA*, 25 PERB ¶4628 (1992).

A proposal which left to the chief of police the determination as to the timing and frequency of drug tests subjects police officers' expectation of privacy to unregulated discretion and was unconstitutional.

City of Schenectady, 34 PERB ¶4505 (2001).

The use of polygraph tests as part of internal investigation procedures is a mandatory subject.

City of Saratoga Springs, 16 PERB ¶3058 (1983); *Buffalo PBA v New York State Pub Empl Rel Bd*, 9 PERB ¶7020 (Sup. Ct. Erie County 1976).

A restriction on the use of polygraph (chemical or breathalyzer) tests for any reason is nonmandatory since it encompasses matters beyond the employment relationship and could preclude criminal investigations.

Troy Uniformed Firefighters Assn, Local 2304, 10 PERB ¶3015 (1977); *PBA Hempstead*, 11 PERB ¶3072 (1978); *PBA City of White Plains*, 12 PERB ¶3046 (1979).

Whether an employer's decision to subject an employee in a safety-sensitive position to compulsory drug (alcohol) testing is mandatorily negotiable depends upon a balancing of the employer's managerial interests, e.g., the safe transportation of students, and the employee's interests, e.g., personal privacy, reputation and job security. Drug testing based on a suspicion of off-duty drug (alcohol) use which is not "reasonably proximate to the employee's job performance" is not "reasonably related" to the delivery of services and is, therefore, mandatorily negotiable.

Arlington Cent Sch Dist, 25 PERB ¶3001 (1992).

Testing procedures and consequences are mandatorily negotiable.

County of Nassau (Police Dept), 27 PERB ¶3054 (1994); *City of Cohoes*, 25 PERB ¶3042 (1992); *City of Utica*, 25 PERB ¶4641 (1992); *County of Erie (Erie County Medical Center Corp)*, 39 PERB ¶3096 (2006).

Requiring employee participation in record-keeping is mandatory, as is a requirement that employees notify the employer in writing of a criminal drug violation in the workplace and complete a return-to-work agreement, which includes a discipline component, drug-testing and a requirement that all expenses not covered by the employee's insurance are the employee's responsibility.

County of Nassau, 39 PERB ¶4619 (2006).

A requirement that job applicants submit to drug testing need not be negotiated.

City of Utica, 25 PERB ¶4641 (1992).

The implementation of a psychological testing program for police officers involved in traumatic incidents is a mandatory subject.

City of Buffalo (Police Dept), 23 PERB ¶4569 (1990).

4.3 Promotion

4.3.1 Procedures

Procedures for intra-unit promotion within the civil service noncompetitive class are a mandatory subject but procedures for promotion to positions outside the unit are a nonmandatory subject. Procedures for the promotion of competitive class employees are a mandatory subject only insofar as they are not governed by statute.

Monroe-Woodbury Teachers Assn and Monroe-Woodbury Bd of Educ, 3 PERB ¶3104 (1970); West Irondequoit Bd of Educ, 4 PERB ¶3070 (1971); City of Albany, 7 PERB ¶3078 (1974)

A demand that the employer request the scheduling of civil service promotional exams does not affect the discretion of the civil service commission to do so or the decision of the employer whether to promote and, being procedural in nature, is mandatory.

Elmira Professional Firefighters Assn, Local 709, 16 PERB ¶4565 (1983).

A demand to fix the duration of a promotional list impinges upon the discretion of the civil service commission and is nonmandatory.

Elmira Professional Firefighters Assn, Local 709, 16 PERB ¶4565 (1983).

The definition of "promotion units", i.e., geographic areas within which employees are tested, ranked and selected for promotion, is related to employment qualifications and staff deployment and is therefore not mandatorily negotiable.

State of New York-UCS, 25 PERB ¶3065 (1992).

An employer's agreement to appoint the top ranking unit employee on the civil service promotional eligibility list to a vacant position is not contrary to public policy, the "one-of-three" rule notwithstanding, and is mandatory.

Professional Clerical, Technical Employees Assn v Buffalo Bd of Educ 90 NY 2d 364, 30 PERB ¶7503 (1997).

4.3.2 Criteria

Qualifications and criteria for promotion are nonmandatory subjects.

Monroe-Woodbury Teachers Assn and Monroe-Woodbury Bd of Educ, 3 PERB ¶3104 (1970); *West Irondequoit Bd of Educ*, 4 PERB ¶3070 (1971); *Onondaga Community Coll Fedn of Teachers, Local 1845 and Onondaga Community Coll*, 11 PERB ¶3045 (1978); *Caruso v Anderson*, 21 PERB ¶7503 (Sup Ct NY County 1988); *City of Buffalo*, 29 PERB ¶3023 (1996); and *Town of West Seneca (Police Dept)*, 29 PERB ¶3024 (1996) (first person on civil service eligible list).

A demand that fire fighters' promotions be made from within the department and that employees under consideration for promotion be examined by a psychologist relates to qualifications for promotion and is a nonmandatory subject.

Fairview Professional Firefighters Assn, Local 1586, 12 PERB ¶3083 (1979).

5. JOB CONTENT

5.1 Job Description

The content of a job description setting forth the essential duties, functions and related tasks of an employment category or position is a nonmandatory subject.

Waverly Cent Sch Dist, 10 PERB ¶3103 (1977); Dobbs Ferry Police Assn, 22 PERB ¶3039 (1989), affg 22 PERB ¶4516 (1989).

5.2 Duties

The performance of duties which are not within the inherent nature of the employment involved is a mandatory subject.

Scarsdale PBA, 8 PERB ¶3075 (1975) (no auto repairs for police); Fairview Professional Firefighters Assn, Local 1586, 12 PERB ¶3083 (1979) (no skilled craftsman's work for fire fighters); East Meadow Union Free Sch Dist, 37 PERB ¶4547 (2004) (literacy program).

The assignment of duties which are an aspect of the essential duties and functions of the position is nonmandatory.

Waverly Cent Sch Dist, 10 PERB ¶3103 (1977); Enlarged City Sch Dist of Troy, 11 PERB ¶4538 (1978) (submission of lesson plans and tests by teachers); Town of Oyster Bay, 12 PERB ¶3086 (1979) (bundled newspaper pick-up by sanitation workers); PBA Police Dept Nassau County, 14 PERB ¶4557 (1981) (transportation of bodies by police); Plainedge Union Free Sch Dist, 15 PERB ¶4602 (1982) (maintaining textbook inventory and requisitioning course materials by teachers); City of Saratoga Springs, 16 PERB ¶3058 (1983) (snow removal by fire fighters); City of Rochester, 17 PERB ¶3082 (1984) (training new employees); Local 343 and City of Saratoga Springs, 17 PERB ¶4631 (1984) (mechanical work by fire fighters); County of Schenectady, 18 PERB ¶3038 (1985) (male detention functions by female correction officers); City of Rochester, 18 PERB ¶3062 (1985) (duties also performed by non-fire fighters); PBA Newburgh, 18 PERB ¶3065 (1985) (detective duties for police officers); Oyster Bay-E. Norwich Administrators Assn, 18 PERB ¶3075 (1985) (administrative duties for school principals); Town of Rye, 18 PERB ¶4501 (1985) (lawn mowing by maintenance workers); Vestal PBA, 19 PERB ¶4545 (1986) (dispatching by police); Wallkill Cent Sch Dist, 21 PERB ¶4506 (1988) (hallway and bus loading supervision by teachers); Seneca Falls Teachers Assn, 23 PERB ¶3032 (1990) (type of teaching duties for teachers); City of Glens Falls, 29 PERB ¶3017 (1996) (driving dump truck by mechanic); Buffalo Sewer Auth, 30 PERB ¶3018 (1997) (even if the assignment results in loss of overtime for other unit employees); Uniform Firefighters of Cohoes, Local 2562 and City of

Cohoes, 31 PERB ¶3020 (1998) (training); *Town of Carmel*, 31 PERB ¶3023 (1998) (supervisory functions); *Auburn Enlarged City Sch Dist*, 31 PERB ¶3037 (1998) (attendance at after-school events by administrators); *Triborough Bridge and Tunnel Auth*, 32 PERB ¶3078 (1999) (light duty toll collecting by bridge and tunnel officers); *State of New York (SUNY Stony Brook)*, 33 PERB ¶3045 (2000) (tutoring by teaching assistants).

If the performance of even inherent duties lengthens the workday, it is mandatory.

Sackets Harbor Cent Sch Dist, 13 PERB ¶3058 (1980) (extracurricular activities for teachers); *South Jefferson Cent Sch Dist*, 13 PERB ¶3066 (1980) (coaching); *Utica City Sch Dist*, 35 PERB ¶4585 (2002) (attendance at Board of Education meetings)

Where there has been no increase in workday or scheduled hours of work occasioned by the assignment of duties that are inherent to the job title, the assignment of such duties is nonmandatory.

Capital Region BOCES, 36 PERB ¶3004 (2003).

A demand for faculty input into the courses they will teach is nonmandatory.

Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977).

Faculty attendance at student activities is a management prerogative and nonmandatory.

Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977).

The assignment of responsibility for two operations, both of which are appropriate duties for the position, is nonmandatory; however, demands regarding the impact of such dual assignments are mandatory.

Bridge and Tunnel Officers Benevolent Assn, 15 PERB ¶3124 (1982).

A change in assigned duties which does not alter the essential character of the position is nonmandatory.

Norwich City Sch Dist, 14 PERB ¶3059 (1981) (teaching time of department chairpersons reduced and observation time increased). *Savona Cent Sch Dist*, 20 PERB ¶3055 (1987) (instruction time increased and time for instruction-related activities decreased); *State of New York-UCS*, 25 PERB ¶3061 (1992) (duties during previously "unassigned" work time); *NYCTA*, 25 PERB ¶3080 (1992) (reassignment from a labor-management program job assignment to normal duties). But see *Bridge and Tunnel Officers Benevolent*

Assn v Triborough Bridge and Tunnel Auth, 27 PERB ¶3076 (1994) (disciplinary implication's of new duties).

A demand that the performance of duties be dependent on weather conditions is nonmandatory.

Rochester Firefighters, Local 1071, 12 PERB ¶3047 (1979); *Fairview Professional Firefighters Assn*, 12 PERB ¶3083 (1979).

A decision to limit the number of court appearances assigned to state police officers is nonmandatory.

State of New York (Div of State Police), 35 PERB ¶4530 (2002).

5.3 Transfers

Transfers are, in general, a mandatory subject.

Buffalo PBA, 9 PERB ¶3024 (1976).

Demands relating to employee transfers that would interfere with an employer's prerogative to deploy staff in accordance with its judgment as to how they could be assigned most usefully are nonmandatory.

Pearl River Union Free Sch Dist, 11 PERB ¶3085 (1978). *But see Dutchess County BOCES Faculty Assn*, 17 PERB ¶3120 (1984), *affd*, 122 AD2d 845, 19 PERB ¶7018 (2d Dept 1986) (transfer of qualified teachers).

The determination of qualifications of police officers for special assignments is nonmandatory.

Caruso v Anderson, 21 PERB ¶7503 (Sup Ct New York County 1988).

The authority to transfer teachers for the purpose of maintaining classroom standards may not be bargained away.

Monroe-Woodbury Cent Sch Dist v Monroe-Woodbury Teachers Assn, 105 AD2d 786, 17 PERB ¶7531 (2d Dept 1984).

[Note: The authority of superintendents of schools "to transfer teachers from one school to another, or from one grade of the course of study to another grade in such course" (Ed Law §§1711.5e and 2566.6), by virtue of L. 1986, c.843, "may be modified by an agreement that is collectively negotiated...." (Ed Law §§1711.6 and 2566.9) See *Board of Educ Arlington Cent Sch Dist v Arlington Teachers Assn*, 78 NY2d 33, 24 PERB ¶7532 (1991); *Board of Educ of the Greenburgh Cent Sch Dist No 7 v Greenburgh*

Teachers Fedn, Local 1788, 82 NY2d 77, 26 PERB ¶7517 (1993); Steuben-Alleghany BOCES v Steuben-Alleghany BOCES Teachers' Assn, 153 Misc2d 414, 25 PERB ¶7538 (Sup Ct Steuben County 1992).]

Transfers to a position outside the negotiating unit are a nonmandatory subject.

Board of Educ of the City Sch Dist of the City of New York, 12 PERB ¶3037 (1979).

5.4 Work Load

Employee work load is a term and condition of employment and a mandatory subject.

Yorktown Faculty Assn and Yorktown Cent Sch Dist, 7 PERB ¶3030 (1974); Onondaga Community Coll Fedn of Teachers, Local 1845 and Onondaga Community Coll, 11 PERB ¶3045 (1978). See also New Rochelle Housing Auth, 21 PERB ¶3054 (1988); Edgemont Union Free Sch Dist at Greenburgh, 21 PERB ¶3067 (1988).

The number of students assigned to a class is nonmandatory.

Somers Faculty Assn, 9 PERB ¶3014 (1976) (new teachers hired if maximum class size exceeded); Queensbury Union Free Sch Dist, 9 PERB ¶3057 (1976) (number of students per day/week); Orange County Community Coll, 9 PERB ¶3068 (1976); Pearl River Union Free Sch Dist, 11 PERB ¶3085 (1978) (appropriate size for subject and class level); Hudson Valley Community Coll Faculty Assn and Hudson Valley Community Coll, 12 PERB ¶3030 (1979); Onteora Cent Sch Dist, 16 PERB ¶3098 (1983); Seneca Falls Teachers Assn, 23 PERB ¶3032 (1990).

The number of cases assigned to administrative law judges is nonmandatory.

State of New York (Workers' Compensation Bd), 14 PERB ¶4534 (1981).

The case load of school psychologists, social workers and guidance counselors is nonmandatory.

Nassau BOCES Cent Council of Teachers, 16 PERB ¶4540 (1983). See also Board of Educ of the City Sch Dist of the City of New York, 20 PERB ¶4550 (1987).

A demand which includes class size as one of several factors or options in determining work load is mandatory.

Yorktown Faculty Assn and Yorktown Cent Sch Dist, 7 PERB ¶3030 (1974); *Hudson Valley Community Coll Faculty Assn and Hudson Valley Community Coll*, 12 PERB ¶3030 (1979).

The impact of a change in class size (e.g., compensation, benefits, work load related to class size) is a mandatory subject.

West Irondequoit Teachers Assn v. PERB, 35 NY2d 46, 7 PERB ¶7014 (1974); *Orange County Community Coll Faculty Assn*, 10 PERB ¶3080 (1977).

An increase in student contact (teaching) time which does not affect the amount of working time in the workday is nonmandatory.

Onteora Cent Sch Dist, 16 PERB ¶3098 (1983); *Wyandanch Union Free Sch Dist*, 16 PERB ¶3012 (1983); *East Ramapo Cent Sch Dist*, 17 PERB ¶3001 (1984); *Greece Cent Sch Dist*, 22 PERB ¶3005 (1989), *affd*, 22 PERB ¶7017 (Sup Ct Albany County 1989).

If the number of student contact hours (teaching periods) is determinative of the extent of the workday, it is a mandatory subject.

State of New York (SUNY), 14 PERB ¶3068 (1981), *affd*, 91 AD2d 718, 15 PERB ¶7031 (3d Dept 1982).

The number of periods for which a teacher must prepare is a mandatory subject.

Troy Teachers Assn Local 3060 and Enlarged City Sch Dist of Troy, 11 PERB ¶4538 (1978).

A demand that work load for all unit members shall be equitable is so vague as to include nonmandatory matters and is itself nonmandatory.

Churchville-Chili Cent Educ Assn, 17 PERB ¶4615 (1984).

It is a management prerogative to decide the time span during which work is to be performed, but the distribution of work during that time span, whether equally or otherwise, is a mandatory subject of negotiation.

Onondaga-Cortland-Madison BOCES, 37 PERB ¶3025 (2004).

Where BOCES relied upon teachers to perform work outside of their scheduled workday to meet the requirements of the program, the addition of an hour of weekly instructional time and two hours of companion preparation time represented a significant increase in workload that required negotiations.

Capital Region BOCES, 35 PERB ¶4579 (2002). See also *State of New York (SUNY Oswego)*, 32 PERB ¶4604 (2001) and *Southold Union Free Sch Dist*, 34 PERB ¶4562 (2001).

6. SCHEDULING HOURS

6.1 Tours of Duty (Shifts)

While it is an employer's prerogative to determine the number of employees on duty at a particular time, there are many ways to manipulate schedules to satisfy the employer's staffing needs. The scheduling of shifts to do so is a mandatory subject.

City of White Plains, 5 PERB ¶3008 (1972); *Vil of Malone*, 8 PERB ¶3045 (1975); *City of Schenectady*, 22 PERB ¶3018 (1989), *affg* 21 PERB ¶4605 (1988); *Town of Blooming Grove*, 21 PERB ¶3032 (1988); *County of Rockland*, 27 PERB ¶3019 (1994); *Vil of Johnson City*, 39 PERB ¶4631 (2006). See *State of New York (DOCS)*, 39 PERB ¶3033 (2206).

The amount of time between shifts and the starting time of shifts are mandatorily negotiable.

Triborough Bridge and Tunnel Auth and Bridge and Tunnel Officers Benevolent Assn, 27 PERB ¶3076 (1994) and 12 PERB ¶4614 (1979).

The rescheduling of work to discourage sick leave abuse is mandatory.

County of Nassau, 18 PERB ¶3034 (1985).

A change in tours of duty (rotating to fixed) which does not interfere with an employer's right to determine its manpower needs is a mandatory subject.

City of Buffalo, 14 PERB ¶3053 (1981).

A demand that posted work schedules not be altered except in emergencies would interfere with management's right to determine manpower needs and is nonmandatory.

Police Assn City of Mount Vernon, 13 PERB ¶3071 (1980).

A demand that the yearly work schedule be posted in January is nonmandatory.

Vestal PBA, 19 PERB ¶4545 (1986).

A demand relating to shift scheduling which would restrict management's right to determine the number of employees/supervisors on duty at any time is nonmandatory.

Corning Police Dept, Steuben County Chapter CSEA, 9 PERB ¶3086 (1976); *Buffalo PBA*, 13 PERB ¶3084 (1980); *City of Oneida*, 14 PERB ¶3095 (1981). See also *Town of Blooming Grove*, 21 PERB ¶3032 (1988).

Absent a compelling need, the implementation of new work schedules is mandatorily negotiable.

Starpoint Cent Sch Dist, 23 PERB ¶3012 (1990); *Union-Endicott Cent Sch Dist*, 25 PERB ¶3083 (1992).

The availability of long weekends on a rotating basis is mandatory if restricted to a rotation that doesn't interfere with the employer's staffing requirements.

Buffalo PBA, 9 PERB ¶3024 (1976). See also *Corning Police Dept, Steuben County Chapter CSEA*, 9 PERB ¶3086 (1976) (rotation of days off).

The scheduling of days off so as to meet the employer's staffing needs is mandatory.

Town of Blooming Grove, 21 PERB ¶3032 (1988).

An employee's right to refuse to work overtime by giving advance notice is mandatory.

Pipe Caulkers and Repairmen's Local No 18029, 23 PERB ¶3047 (1990).

A demand that would grant employees the right to work overtime on request affects staffing levels and is nonmandatory.

PBA City of White Plains and City of White Plains, 33 PERB ¶3051 (2000), *affg* 33 PERB ¶4588 (2000).

Reasonable notification of a change in shifts is a mandatory subject.

Corning Police Dept, Steuben County Chapter CSEA, 9 PERB ¶3086 (1976); *Intl. Union of Operating Engrs., Local 71-71A*, 23 PERB ¶3048 (1990).

A demand that management have the authority to determine shifts is mandatory.

Local 589, Intl. Assn of Firefighters and City of Newburgh, 16 PERB ¶3030 (1983).

Seniority as a factor in the selection of tours of duty is mandatory.

Niskayuna PBA, 14 PERB ¶3067 (1981).

A demand for shift rotation for all ranks, including supervisors, would restrict the employer's right to determine the rank of supervisors on each shift and is nonmandatory.

Croton Police Assn, 16 PERB ¶3007 (1983).

The right to exchange shifts with another unit employee is a mandatory subject.

Greenville Uniformed Firemen's Assn, Local 2093, 15 PERB ¶14501 (1982).

The right of employees to select work shifts based on seniority is a mandatory subject.

Lackawanna PBA, 16 PERB ¶14604 (1983).

Reporting time before the start of a shift is mandatorily negotiable.

Vil of Chittenango, 14 PERB ¶14594 (1981).

6.2 Hours/Work Year

As the Taylor Law requires negotiations over hours of work, a demand which would have the effect of reducing the number of hours in the workweek is mandatory.

Local 294, IBT, 10 PERB ¶13007 (1977).

The length of the workday is a mandatory subject.

Enlarged City Sch Dist of Troy, 11 PERB ¶13056 (1978); *Parishville-Hopkinton Cent Sch Dist*, 12 PERB ¶13036 (1979); *County of Nassau*, 26 PERB ¶13083 (1993).

The length of the employees' work year and tours of duty are mandatory subjects of bargaining. A demand that seeks to set the number of days worked per year, as well as the hours of the shifts, is mandatorily negotiable, if alternative ways of providing coverage exist.

Town of Yorktown Police Benevolent Assn, Inc, 35 PERB ¶13017 (2002).

The scheduling of shorter "summer hours" is mandatorily negotiable.

Peekskill City Sch Dist, 12 PERB ¶14517 (1979).

Due to a statutory restriction (L. 1911, c.360, §1), an employer's demand to assign overtime work to police officers is nonmandatory.

Spring Valley PBA v Vil of Spring Valley, 80 AD2d 910, 14 PERB ¶17515 (2d Dept 1981); *Follett v Chief of Police City of Binghamton*, 17 PERB ¶17513 (Sup Ct Broome County 1984).

A reduction of hours to correspond with management's reduction of services it provides is nonmandatory.

Lackawanna City Sch Dist, 13 PERB ¶3085 (1980); *Vestal Cent Sch Dist*, 15 PERB ¶3006 (1982). See also *Schuylerville Cent Sch Dist*, 14 PERB ¶3035 (1981).

A reduction in duty-free time is mandatory.

Addison Cent Sch Dist, 13 PERB ¶3060 (1980) (lunch hour); *Addison Cent Sch Dist*, 16 PERB ¶3099 (1983) (cafeteria supervision during free period); *Frankfurt-Schuylerville Cent Sch Dist*, 26 PERB ¶3057 (1993) (classroom supervision prior to start of class).

A change in the number of hours for parent-teacher conferences is mandatory.

Board of Educ Enlarged City Sch Dist City of Jamestown, 6 PERB ¶3075 (1973).

A change in employees' dismissal time is mandatory.

Gouverneur Cent Sch Dist, 12 PERB ¶3098 (1979); *Cohoes City Sch Dist*, 12 PERB ¶3113 (1979).

An assignment of extracurricular duties which increases the length of the workday is mandatory.

Sackets Harbor Cent Sch Dist, 13 PERB ¶3058 (1980); *South Jefferson Cent Sch Dist*, 13 PERB ¶3066 (1980).

A demand that employees not be required to work evenings or on weekends, as it deals with the type of work to be assigned and when it may be required, would restrict the nature of the employer's services and is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976); *Rochester Firefighters, Local 1071*, 12 PERB ¶3047 (1979).

A reduction in the length of the work year, without a corresponding reduction in work load or services, is a mandatory subject.

City Sch Dist of the City of Oswego, 5 PERB ¶3011 (1972), *affd*, 42 AD2d 262, 6 PERB ¶7008 (3d Dept 1973); *East Irondequoit Cent Sch Dist*, 13 PERB ¶3030 (1980); *Schuylerville Cent Sch Dist*, 14 PERB ¶3035 (1981). (But see *Lackawanna City Sch Dist*, 13 PERB ¶3085 (1980)).

An increase in the length of the work year must be negotiated.

Addison Cent Sch Dist, 17 PERB ¶3076 (1984); *State of New York (Dept of Transp)*, 23 PERB ¶3005 (1990), *affd*, 174 AD2d 905, 24 PERB ¶7014 (3d Dept 1991) (workweek).

A demand to set a limit on the annual number of workdays of unit employees is mandatorily negotiable.

Vil of Mamaroneck PBA, 22 PERB ¶3029 (1989).

A requirement that employees be "on call" to perform duties during other than normal working hours is mandatory.

County of Tompkins, 18 PERB ¶4635 (1985); *County of Genesee*, 20 PERB ¶4630 (1987).

A demand that part-time employees be made full-time limits the manner in which the employer provides its services and is nonmandatory.

City of Yonkers, 17 PERB ¶4651 (1984).

The police union's demand, seeking to introduce a new work schedule that required the adoption of a chart providing for 10- or 12-hour appearances for patrol officers was a mandatory subject of negotiations.

Patrolmen's Benevolent Assn, 37 PERB ¶3033 (2004).

6.3 Overtime scheduling

The procedure for assigning overtime work is mandatorily negotiable.

City of Peekskill, 35 PERB ¶4509 (2002), *revd on other grounds*, 35 PERB ¶3016 (2002).

7. WORK RULES

7.1 Procedures for Issuance

A mandatorily negotiable work rule is one which affects employees' delivery of services and has employment consequences. If an employer's action does not implicate the employment relationship, it is not a term and condition of employment and is not mandatorily negotiable.

State of New York (Div for Youth), 31 PERB ¶3052 (1998) (agency responsible for foster care program preclusion of its employees from serving as foster parents).

Since disagreements over the specifics of a spoken command, violation of which may result in discipline, may be difficult to resolve, a demand that verbal orders concerning work rules or regulations later be reduced to written form is mandatory.

Rochester Firefighters, Local 1071, 12 PERB ¶3047 (1979); Cortland Paid Firefighters Assn, Local 2737, 29 PERB ¶3037 (1996).

As work rules are a mandatory subject, a demand to establish a committee to review existing work rules and regulations and to reduce them to written form for distribution to unit employees is mandatory.

City of Albany, 7 PERB ¶3078 (1974), affd, 48 AD2d 998, 8 PERB ¶7012 (3d Dept 1975), 38 NY2d 778, 9 PERB ¶7005 (1976).

A demand that an employer issue no "new rules, regulations or general orders" unless the union agrees is not limited to work rules and is nonmandatory.

City of Rochester, 12 PERB ¶3010 (1979).

7.2 Attendance

A demand that employees be permitted to sign in and sign out by telephone has a more direct impact on terms and conditions of employment than on management's right to administrative control over its employees' attendance and is therefore a mandatory subject.

Police Assn New Rochelle, 13 PERB ¶3082 (1980).

A rule which adds a requirement that employees record, in addition to their work arrival time, the time they depart from work and their lunch hour departure and return times must be negotiated.

Newburgh Enlarged City Sch Dist, 20 PERB ¶3053 (1987).

A rule placing a time restriction on how long before or after a shift time clocks may be punched does not change existing terms and conditions of employment and is nonmandatory.

Triborough Bridge and Tunnel Auth, 21 PERB ¶3065 (1988).

A new requirement that employees sign in and out or record their arrival and departure times is mandatory.

Port Jefferson Union Free Sch Dist, 33 PERB ¶3047 (2000); *County of Nassau*, 13 PERB ¶4612 (1980); *East Quogue Union Free Sch Dist*, 12 PERB ¶4555 (1979); *Hampton Bays Sch Dist*, 10 PERB ¶4596 (1977).

However, a change in the method used by employees to record their arrival and departure times is nonmandatory.

Island Trees Union Free Sch Dist, 10 PERB ¶4590 (1977).

The expansion of a sign in/sign out requirement to include not only arrival at and departure from the employer's property but also all arrivals at and departures from the work station is mandatory.

Buffalo Sewer Auth, 18 PERB ¶4615 (1985). See also *Port Jefferson Union Free Sch Dist*, 21 PERB ¶4595 (1988); *Sewanhaka Cent High Sch Dist*, 26 PERB ¶4558 (1993).

Similarly, a requirement that employees fill out a work log of their daily activities must be negotiated.

Town of Ramapo, 32 PERB ¶3072 (1999).

7.3 Security Procedures

The implementation of a procedure for inspecting employees' parcels is not so intrusive as to outweigh the employer's right to the security of its property and is nonmandatory.

State of New York (GOER), 18 PERB ¶3064 (1985).

If the inspection procedure includes an employee pass system, the intrusion on employee rights is such as to make its implementation mandatory.

County of Rensselaer, 13 PERB ¶3080 (1980).

The installation of a camera surveillance system in a work area relates to the employer's management prerogative to maintain the security of its premises and, as it

requires no employee participation, is nonmandatory. (See §4.2.1. The use of security tapes from security cameras installed by the employer in a disciplinary proceeding is a mandatory subject of negotiations. *Niagara Frontier Transit Metro System, Inc*, 36 PERB ¶3036 (2003).)

City of Syracuse, 14 PERB ¶4645 (1981).

A policy which subjects all persons, vehicles and packages to search is nonmandatory since it applies equally to nonunit employees and the public as well. But, the imposition of discipline based on such policy is a mandatory subject.

State of New York (South Beach Psychiatric Center), 19 PERB ¶¶4550 and 4601 (1986).

A surveillance policy which carries no threat of discipline, does not require employee participation, and clearly applies to a group much broader than unit members is nonmandatory.

Roswell Park Cancer Institute, 34 PERB ¶4582 (2001).

An automobile trunk search is mandatorily negotiable if an overwhelming majority of those affected are employees and less intrusive means are available.

Buffalo Sewer Auth, 27 PERB ¶3002 (1994).

A rule requiring employees to obtain a special permit to drive the employer's vehicles and setting procedures for its loss and retention, while related to safe operation and efficient use of vehicles, is mandatory because of its extensive impact on terms and conditions of employment.

County of Montgomery, 18 PERB ¶3077 (1985). Compare *State of New York (SUNY Binghamton)*, 27 PERB ¶3018 (1994). See also *NYCTA*, 30 PERB ¶3030 (1997).

A requirement that employees fill out personal and financial disclosure questionnaires is nonmandatory insofar as it seeks information required by statute. However, because the employees' privacy rights outweigh the employer's right to protect itself from corruption, any extension of the use of such questionnaires beyond the statutory requirement must be negotiated.

Board of Educ of the City Sch Dist of the City of New York, 19 PERB ¶¶3015 and 3026 (1986), *affd*, 21 PERB ¶7001 (Sup Ct Albany County 1988).

7.4 Smoking

By and large this topic has been pre-empted by the Clean Indoor Air Act (Public Health Law Article 13-e, §1399-o). (See L.2003, c.13, §2).

A ban on smoking by employees must be related to the furtherance of the employer's mission. Thus, although a ban on smoking in a medical facility in areas frequented by patients is nonmandatory, a ban on smoking in areas not used by patients is mandatory.

County of Niagara (Mount View Health Facility), 21 PERB ¶¶3014 (1988);
Massena Memorial Hospital, 25 PERB ¶¶3023 (1992).

A rule limiting smoking by unit employees to specified areas is a mandatory subject.

Steuben-Allegany BOCES, 13 PERB ¶¶3096 (1980).

A smoking policy which is more restrictive than required by statute must be negotiated.

Oneonta City Sch Dist, 24 PERB ¶¶3025 (1991); *Clarkstown Cent Sch Dist*, 24 PERB ¶¶3047 (1991); *State of New York (Dept of Law)*, 25 PERB ¶¶3024 (1992).
See also Rush-Henrietta Cent Sch Dist, 21 PERB ¶¶3023 (1988), *affd in pertinent part*, 151 AD2d 1001, 22 PERB ¶¶7016 (4th Dept 1989). *See County of Cayuga*, 26 PERB ¶¶3084 (1993).

A ban on smoking on school buses at all times is mandatorily negotiable.

Newark Valley Cent Sch Dist, 24 PERB ¶¶3037 (1991), *affd*, 189 AD2d 229, 26 PERB ¶¶7005 (3d Dept 1993), *affd*, 83 NY2d 315, 27 PERB ¶¶7002 (1994). *But see Rush-Henrietta Cent Sch Dist v PERB*, 151 AD2d 1001, 22 PERB ¶¶7016 (4th Dept 1989).

A rule prohibiting the use of chewing tobacco by coaches in the presence of students is a management prerogative.

Camden Cent Sch Dist, 19 PERB ¶¶3047 (1986).

7.5 Off-Duty Conduct

A demand that all outside employment (moonlighting) be approved by the employer is a mandatory subject.

Local 589, Intl. Assn of Firefighters and City of Newburgh, 16 PERB ¶¶3030 (1983). *See also Ulster County Sheriff*, 27 PERB ¶¶3028 (1994) (prohibition against outside law-enforcement employment by deputy sheriffs).

A work rule precluding the supervisors and administrators in a school district from engaging for compensation in private tutoring sessions with students outside of the workday of the teachers whom they supervise is a mandatory subject of negotiations. Balancing the employee interest in use of off-duty time against the employer's interest in avoiding the appearance of impropriety, the employee's interest was found to dominate.

Hewlett-Woodmere Union Free Sch Dist, 38 PERB ¶3006 (2005). See also *Town of Southold*, 39 PERB ¶4612 (2006) (off-duty fishing business operated by an employee who is responsible for regulating such businesses gives rise to a conflict of interest or the appearance thereof).

A requirement that employees, rather than the employer, complete reports regarding their "moonlighting" activities is a mandatory subject.

City of White Plains, 12 PERB ¶4607 (1979).

A demand that "police action" taken while off-duty would entitle unit employees to contract benefits is nonmandatory as it extends to actions outside the scope of employment.

City of Rochester, 12 PERB ¶3010 (1979).

A demand that an employer make employment available with other employers is nonmandatory.

City of Albany, 7 PERB ¶3078 (1974).

A demand which would preclude an employer from requiring that police carry service revolvers while off-duty is nonmandatory.

Buffalo PBA, 9 PERB ¶3024 (1976).

A requirement that a police officer carry a service revolver while off-duty, while detracting from the enjoyment of time off, is nonmandatory.

Buffalo PBA, 9 PERB ¶3024 (1976); *Old Brookville PBA*, 16 PERB ¶3094 (1983).

A demand that off-duty time may be used in any way the employee wishes is nonmandatory.

Greenville Uniformed Firemen's Assn, Local 2093, 15 PERB ¶4501 (1982).

A ban on the storage of lawful alcoholic beverages in employees' cars parked in a school parking lot is mandatorily negotiable.

Elmira City Sch Dist, 25 PERB ¶¶4666, 4667 and 4668 (1992).

7.6 Health/Physical Fitness

Unless reasonably related to performance of job functions, a rule requiring employees to meet height/weight standards must be negotiated.

City of White Plains, 18 PERB ¶3074 (1985).

A demand relating to procedures for a physical fitness (for respirators) examination is mandatorily negotiable.

City of Utica, 32 PERB ¶3056 (1999).

7.7 Dress Code

The implementation of a dress code is, generally, a mandatory subject of negotiation.

State of New York (Dept of Taxation and Finance), 30 PERB ¶3028 (1997) (office attire for nonuniformed and nonparamilitary employees); *County of Suffolk*, 20 PERB ¶4539 (1987), and *County of Putnam*, 18 PERB ¶4565 (1985) (all nonuniformed and nonmaintenance employees); *Catskill Cent Sch Dist*, 18 PERB ¶4612 (1985), and *Caledonia-Mumford Cent Sch Dist*, 25 PERB ¶4624 (1992) (teachers).

An office attire policy, not involving uniformed or para-military personnel, is a mandatory subject of negotiations.

State of New York (Dept of Labor), 35 PERB ¶4557 (2002).

A requirement that nameplates be worn by uniformed officers is nonmandatory.

County of Suffolk, 39 PERB ¶4603 (2006).

7.8 Ethics

A rule precluding an employee who oversees public auctions of the employer's vehicles from participating in the auctions need not be negotiated because the employer's interest in avoiding the appearance of a conflict of interest outweighs the impact of the rule on terms and conditions of employment.

New York State Thruway Auth, 21 PERB ¶¶3058 (1988). *But see State of New York (Div for Youth)*, 31 PERB ¶¶3052 (1998).

The means for enforcing provisions of a code of ethics must be negotiated.

County of Suffolk, 22 PERB ¶¶3015 (1989), *affd*, 173 AD2d 618, 24 PERB ¶¶7012 (2d Dept 1991).

Requirement that employees fill out personal and financial disclosure questionnaires is nonmandatory insofar as it seeks information required by statute. However, any extension of the use of such questionnaires beyond the statutory requirements must be negotiated.

Board of Educ of the City Sch Dist of the City of New York, 19 PERB ¶¶3015 and 3026 (1986), *affd*, 75 NY2d 660, 23 PERB ¶¶7012 (1990); *City of Auburn*, 23 PERB ¶¶3044 (1990); *State of New York (Dept of Health)*, 25 PERB ¶¶3002 (1992). *See also Personnel Director City of New York v Board of Collective Bargaining City of New York Office of Collective Bargaining*, 79 NY2d 120, 25 PERB ¶¶7514 (1992), *modifying* 171 AD2d 545, 25 PERB ¶¶7515 (1st Dept 1992); *PERB v City of Buffalo*, 28 PERB ¶¶7008 (Sup Ct Albany County 1995).

An anti-nepotism rule which precludes school district custodians, who themselves employ custodial workers who are not employees of the district, from hiring relatives is a nonmandatory subject of negotiation since it does not affect their term and conditions of employment as public employees.

Conlin v Board of Educ of the City Sch Dist of the City of New York, 11 PERB ¶¶7540 (Sup Ct Kings County 1978).

A rule precluding an employee from serving as a member of the employer's legislative body is nonmandatory. However, a rule precluding an employee from off-duty political activities must be negotiated.

City of Glens Falls, 24 PERB ¶¶3015 (1991).

8. MATERIALS AND SUPPLIES

8.1 Equipment

Demands that relate to the employees' comfort are mandatory.

Scarsdale PBA, 8 PERB ¶3075 (1975), *Police Assn New Rochelle*, 10 PERB ¶3042 (1977); *Local 294, IBT*, 10 PERB ¶3007 (1977) (air conditioned patrol cars and split bench seats in patrol cars); *Croton Police Assn*, 15 PERB ¶4644 (1982) (AM/FM radios in cars); *NYCTA*, 22 PERB ¶6601 (1989) (toilet facilities).

A demand that equipment required by the employer be provided by the employer is mandatory.

Police Assn New Rochelle, 10 PERB ¶3042 (1977).

A requirement that newly-hired employees furnish their own tools is a term and condition of employment and mandatorily negotiable.

Nassau Chapter, CSEA v PERB, 54 AD2d 925, 9 PERB ¶7022 (2d Dept 1976).

A requirement that employees be charged for missing, employer-provided tools is mandatory.

Nassau County BOCES, 14 PERB ¶4521 (1981).

Since it relates to the manner and means by which an employer renders its services to the public, the determination of the equipment which will be used by employees is nonmandatory.

City of Albany, 7 PERB ¶3078 (1974) (shotguns in police cars); *White Plains PBA*, 9 PERB ¶3007 (1976) (number of police cars on patrol, shotguns); *Local 294, IBT*, 10 PERB ¶3007 (1977) (type or freshness of ammunition); *Police Assn New Rochelle*, 10 PERB ¶3042 (1977) (shotguns, type of service revolver, grill lights); *Bridge and Tunnel Officers Benevolent Assn*, 12 PERB ¶4614 (1979) and 18 PERB ¶4622 (1985) (employees to be armed while on duty); *Police Assn New Rochelle*, 13 PERB ¶4540 (1980) (bulletproof vests); *Auburn Teachers' Assn*, 13 PERB ¶4614 (1980) (text books); *NYCTA*, 22 PERB ¶6601 (1989) (two-way radios on buses). *See also Town of Wallkill PBA*, 24 PERB ¶4566 (1991) (screen between front and back seats in police cars).

Police union's proposal, seeking to add requirement that officers be provided with night sights and three magazines for their duty weapons, was mandatorily negotiable under the *Cohoes* supplemental theory of negotiability because proposal merely sought the

modification of language already contained in the parties' collective bargaining agreement.

Town of Shawangunk PBA, 34 PERB ¶4510 (2001).

Demand that police vehicles be replaced when they exceeded 90,000 miles of use, which required Town to place orders for new vehicles in advance of the 90,000 miles threshold, was nonmandatory as it impinged upon the employer's prerogative to determine the manner and means by which the public would be served.

Town of Shawangunk PBA, 34 PERB ¶4510 (2001).

The level of funds for purchase of materials and supplies is a budgetary matter more closely related to the level and quality of services than to terms and conditions of employment and is a nonmandatory subject.

Chateaugay Cent Sch Dist, 12 PERB ¶3015 (1979).

Employee involvement in decisions regarding modification of facilities or major equipment purchases is a nonmandatory subject.

Chateaugay Cent Sch Dist, 12 PERB ¶3015 (1979).

A demand for an employee workroom or lounge and for separate lavatory facilities is mandatory.

Peekskill Faculty Assn, 16 PERB ¶4586 (1983).

While related to employee comfort, a demand which would limit the painting or repair of classrooms to nonschool hours more directly affects the employer's responsibility for the upkeep of its facilities and is nonmandatory.

Peekskill Faculty Assn, 16 PERB ¶4586 (1983).

The means by which the employer's equipment will be identified (insignia on cars) is nonmandatory.

Bridge and Tunnel Officers Benevolent Assn, 18 PERB ¶4622 (1985).

A financial penalty for loss, destruction or damage of equipment is mandatory.

County of Onondaga, 14 PERB ¶4503 (1981).

Employee right to carry cellular phones during work time for purpose of receiving emergency calls is mandatorily negotiable.

Village of Blasdell, 30 PERB ¶4551 (1997).

8.2 Textbooks

A demand that textbooks and other teaching materials be selected by unit employees deals with educational policy and is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976).

A demand that time limits be set on the promulgation of required textbooks to give teachers preparation time for their usage is mandatory.

Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977).

8.3 Uniforms

The cost of cleaning and repairing uniforms is mandatory.

Town of Haverstraw, 11 PERB ¶3109 (1978).

When it does not affect employee comfort, the design of a uniform is not mandatory.

County of Onondaga, 14 PERB ¶3029 (1981) (badge); *City of Buffalo*, 15 PERB ¶3027 (1982) (hat band); *Rye Police Assn*, 17 PERB ¶4645 (1984) (distinctive style).

The material used to make uniforms relates to employee comfort and must be negotiated.

NYCTA, 22 PERB ¶6601 (1989).

The provision of uniforms and work clothing is mandatorily negotiable.

New York State Canal Corp, 30 PERB ¶3070 (1997).

9. UNION RIGHTS

9.1 Maintenance of Membership

Maintenance of membership in a union for the duration of the contract is a prohibited subject since it infringes on an employee's statutory right to refrain from joining or participating in a union.

County of Erie, 5 PERB ¶3021 (1972).

A clause providing that an employee's authorization of dues check-off be irrevocable for the duration of a contract or setting a time limit for revocation is a prohibited subject both by virtue of GML ¶93 (b), which provides that such authorization may be withdrawn at any time, and because it interferes with the statutory right not to join a union.

Local 294, IBT, 10 PERB ¶3007 (1977); Rochester City Sch Dist, 10 PERB ¶3097 (1977).

9.2 Access to Employer Facilities/Employees

Except for access related to and limited to its representation duties, a union's use of the employer's property is not a term and condition of employment. The needs of the union in this regard must be weighed against the right of the employer to control the use of its property. While the use of bulletin boards and mail boxes has minimal impact on the employer's property rights, the use of a room on the employer's premises for regular union meetings is a nonmandatory subject.

Charlotte Valley Cent Sch Dist, 18 PERB ¶3010 (1985). See also Orange County Community Coll, 9 PERB ¶3068 (1976); Amherst Police Club, 12 PERB ¶3071 (1979); Police Assn City of Mt Vernon, 13 PERB ¶3071 (1980); County of Erie, 13 PERB ¶3105 (1980).

A demand that the employer provide the union with office space on its property and office equipment is nonmandatory.

Lackawanna Police Benevolent Assn, 16 PERB ¶4604 (1983); Scarsdale PBA, 16 PERB ¶4652 (1983); Westchester County CSEA, Local 860, 21 PERB ¶4617 (1988).

Permission for union officers to post notices and distribute literature on the employer's premises is mandatory.

Local 2561, 23 PERB ¶3054 (1990).

A demand for union access to trainees to advise them of their rights as unit members is mandatorily negotiable.

PBA of Newburgh, 30 PERB ¶3007 (1997).

Union attendance at internal meetings of the employer is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976) (board meetings); *New Paltz United Teachers*, 13 PERB ¶4503 (1980) (superintendent's meetings).

A demand that employees be given keys to buildings in which they work may affect the security of the employer's premises and is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976). See also *Chateaugay Cent Sch Dist*, 12 PERB ¶3015 (1979).

Use of employer facilities to duplicate and distribute copies of the contract to unit members is not a term or condition of employment and is thus nonmandatory.

Addison Cent Sch Dist, 11 PERB ¶3107 (1978).

The use of employer-owned vehicles for transportation to union meeting, negotiations and grievance proceedings is nonmandatory.

Brighton Fire Dist and Brighton Professional Firefighters Assn, Local 2223, 10 PERB ¶4545 (1977).

9.3 Union Officials

A demand that union officials receive assignments which will facilitate the performance of union activities is mandatory.

Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977); *PBA Newburgh*, 18 PERB ¶3065 (1985), *affd*, 19 PERB ¶7005 (Sup Ct Albany County 1986)

A demand that union officers receive specific job assignments is nonmandatory.

Buffalo PBA, 9 PERB ¶3024 (1976).

9.4 Employer Support

A demand which would involve the employer in the fund-raising activities of the union seeks employer assistance in the operation of the union and is therefore nonmandatory.

Greenville Uniformed Firemen's Assn, Local 2093, 15 PERB ¶4501 (1982).

A demand for payment of money to the union in lieu of time off for solicitation purposes is nonmandatory.

Police Assn City of Yonkers, 14 PERB ¶4516 (1981).

A union's demand for money to purchase ammunition for a union sponsored pistol team is nonmandatory.

Croton Police Assn, 15 PERB ¶4644 (1982).

A demand that the employer indemnify or hold harmless the union from claims and suits for damages relates only to the union's internal economics and is nonmandatory.

Local 343 and City of Saratoga Springs, 17 PERB ¶4631 (1984).

9.5 Information

A public employer must provide information that is relevant and necessary for the administration of a collective bargaining agreement, including the investigation of disciplinary grievances.

Town of Evans, 37 PERB ¶3016 (2004).

10. MANAGEMENT PREROGATIVES

10.1 Mission/Policies

A public employer exists to provide certain services to its constituents, be it police protection, sanitation or education. Of necessity, the public employer, acting through its executive or legislative body, must determine the manner and means by which such services are to be rendered and the extent thereof, subject to the approval or disapproval of the public so served, as manifested in the electoral process. Decisions of a public employer with respect to the carrying out of its mission, such as a decision to eliminate or curtail a service, are matters that a public employer should not be compelled to negotiate with its employees.

City Sch Dist City of New Rochelle and New Rochelle Fedn of Teachers, Local 280, 4 PERB ¶¶3060 (1971); *City of Albany*, 7 PERB ¶¶3078 (1974); *Yorktown Faculty Assn and Yorktown Cent Sch Dist*, 7 PERB ¶¶3030 (1974); *State of New York*, 31 PERB ¶¶3053 (1998). See also *Town of Brookhaven*, 28 PERB ¶¶3010 (1995) (service taken over by private agency with only *de minimis* control by employer).

A contract clause that authorizes the employer to alter by-laws or policies respecting a term and condition of employment, after giving the union notice and an opportunity to consult, but not requiring the union's consent, is a mandatory subject of negotiations.

CUNY, 36 PERB ¶¶ 4547 (2003), *revd in part* 37 PERB ¶¶ 3006 (2004), *revd and remanded sub nom. Professional Staff Congress-CUNY v New York State Pub Emp Rel Bd*, 21 AD3d 10, 38 PERB ¶¶ 7009 (1st Dept 2005), *motion to dismiss on the ground of mootness denied*, 7 NY3d 780, 39 PERB ¶¶ 7008, *revd* 7 NY3d 458, 39 PERB ¶¶ 7010 (2006).

The source from which an employer chooses to fund a benefit is a management prerogative and a nonmandatory subject of negotiation.

Malverne Union Free Sch Dist, 37 PERB ¶¶4551 (2004).

Demands which would restrict the exercise of an employer's right to formulate new programs are nonmandatory.

Queensbury Union Free Sch Dist, 9 PERB ¶¶3057 (1976) (only unit employees to staff new programs). See also *Port Washington Union Free Sch Dist v Port Washington Teachers Assn*, 59 AD2d 530, 10 PERB ¶¶7526 (2d Dept 1977), *Port Washington Union Free Sch Dist v Port Washington Teachers Assn*, 45 NY2d 411, 11 PERB ¶¶7536 (1978).

A decision to create combination grade classes falls within the area of the nondelegable responsibility of boards of education to maintain classroom standards, which may not be negotiated.

Board of Educ of Yonkers City Sch Dist v Yonkers Fedn of Teachers, 129 AD2d 702, 20 PERB ¶7514 (2d Dept 1987).

The creation and filling of new positions is a management prerogative and not mandatorily negotiable.

Churchville-Chili Cent Sch Dist, 17 PERB ¶3055 (1984).

Courses (curriculum) to be offered relates to educational policy and are nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976); *Yorktown Faculty Assn and Yorktown Cent Sch Dist*, 7 PERB ¶3030 (1974).

Whether faculty should be available to advise students on academics is an aspect of educational policy and is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976).

A demand restricting changes in managerial policies which may impact on terms and conditions of employment is nonmandatory, although the impact of such policy changes is mandatory.

Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977).

A demand that changes in programs, curricula, methods and schedules be decided by the employees affected relates to the nature and extent of services and is nonmandatory.

Somers Faculty Assn, 9 PERB ¶3014 (1976); *State of New York*, 33 PERB ¶3045 (2000).

Whether police employees should be allowed to obtain pistol permits relates to the performance of official duties and, thus, to the employer's mission; it is nonmandatory.

City of Albany, 7 PERB ¶3078 (1974).

A demand that an employer maintain only one personnel file would inhibit its right to choose the manner in which it will maintain personnel files and is nonmandatory.

PBA Newburgh, 18 PERB ¶3065 (1985).

The number of parent/teacher conferences is a matter of educational policy and is nonmandatory.

Peekskill Faculty Assn, 16 PERB ¶4586 (1983).

The scheduling of a conference day to be used at the teachers' discretion affects the employer's ability to assign work and determine when instruction will take place and is nonmandatory.

Churchville-Chili Cent Educ Assn, 17 PERB ¶4615 (1984).

A demand which would limit the use of police at school crossings is nonmandatory.

PBA Police Dept Nassau County, 14 PERB ¶4557 (1981).

10.2 Hours/Days of Operation

A demand which would preclude employees from working on weekends or at night would restrict the nature of the services offered by the employer, i.e., when they would be offered, and is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976) and Orange County Community Coll Faculty Assn 10 PERB ¶3080 (1977). See also Onondaga-Madison BOCES, 17 PERB ¶3109 (1984).

The designation of the days of school recess, when instructional services will not be provided, is nonmandatory.

West Babylon Public Sch, 11 PERB ¶3012 (1978).

The definition of "normal workweek" is a mandatory subject since it can be used to determine overtime, call backs, etc.

CSEA, Niagara Chapter, 14 PERB ¶4538 (1981).

While a school calendar may include matters which are mandatorily negotiable, a demand to include employees in the promulgation of the entire calendar is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976).

The schedule of classes for students is nonmandatory.

Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977).

A demand that particular services not be provided on weekends or in inclement weather relates to the performance of mission and is nonmandatory.

Rochester Firefighters, Local 1071, 12 PERB ¶3047 (1979).

The number of hours of instruction for students, i.e., student attendance time, is a nonmandatory subject of negotiation.

Somers Faculty Assn, 9 PERB ¶3014 (1976); *Cohoes City Sch Dist*, 12 PERB ¶3113 (1979). See also *NYC Sch Boards Assn v Board of Educ of the City Sch Dist of the City of New York*, 39 NY2d 111, 9 PERB ¶7512 (1976).

It is a management prerogative to decide the time span during which work is to be performed, but the distribution of work during that time span, whether equally or otherwise, is a mandatory subject of negotiation.

Onondaga-Cortland-Madison BOCES, 37 PERB ¶3025 (2004).

10.3 Work Location

A demand that employees not be required to work off-campus would restrict where the employer provides its services and is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976).

The basis upon which an employer will decide whether to consolidate locations of its operation relates to its organizational structure and is nonmandatory.

Western Regional OTB, 16 PERB ¶3028 (1983). See also *State of New York (Div for Youth – Masten Park Secure Ctr)*, 23 PERB ¶4526 (1990).

A change in the location where employees must report to work, which, while resulting in a cost reduction, does not affect the nature or level of services, but impairs employees' economic benefits, is a mandatory subject.

State of New York (DOCS), 20 PERB ¶3003 (1987).

A change in reporting location which does not affect terms and conditions of employment is nonmandatory.

Board of Educ of the City Sch Dist of the City of New York, 21 PERB ¶3068 (1988).

Advance notice to employees of changes in building assignments in non-emergency situations is mandatory.

Intl. Union of Operating Engrs., Local 71-71A, 23 PERB ¶3048 (1990).

Nepotism as a factor in making assignments must be negotiated.

State of New York (Div of New York State Police), 23 PERB ¶4563 (1990).

10.4 Grade Allocation

As allocation to salary grade is an essential aspect of the level and quality of services to be provided and primarily related to mission, it is a nonmandatory subject.

State of New York – UCS v PERB, 71 AD2d 240, 12 PERB ¶7022 (3d Dept 1979), affd, 49 NY2d 904, 13 PERB ¶7004 (1980); County of Tompkins, 15 PERB ¶3092 (1982); State of New York (OMH), 24 PERB ¶3004 (1991); County of Monroe, 29 PERB ¶3060 (1996), affd, 248 AD2d 882, 31 PERB ¶7007 (3d Dept 1998).

10.5 Position Classification

The classification of positions is a personnel management tool which facilitates the ascertainment of staffing needs within particular areas of an employer's operation. It is allied to the setting of job qualifications, the promulgation of job descriptions characterizing employees' essential duties and functions, and the creation of a table of organization, all of which are nonmandatory, and is, therefore, itself a nonmandatory subject.

Bartlett and New York State Court Employees Assn, 12 PERB ¶3075 (1979). See also State of New York, 31 PERB ¶3018 (1998), affd, 272 AD2d 764, 33 PERB ¶7008 (3d Dept 2000).

The "broadbanding" of several titles into one title, even if it results in the performance of new duties, is a management prerogative and nonmandatory.

State of New York (Office of Parks, Recreation and Historic Pres and Office of Employee Relations), 18 PERB ¶4514 (1985).

Whether employees should be accorded peace officer status is nonmandatory.

City of Yonkers, 17 PERB ¶4651 (1984).

10.6 Impact

If "impact" issues are "inherently and inextricably entwined" with an employer's implementation of a contractual provision, it need not accede to a demand to negotiate such impact.

County of Nassau (Police Dept), 31 PERB ¶3064 (1998) (safety issues resulting from reduction of staffing levels to contract limits); *County of Nassau*, 32 PERB ¶3052 (1999) (impact of contract right to implement schedule and leave changes).

The impact of the exercise of a management prerogative on terms and conditions of employment of employees affected by it is a mandatory subject.

City Sch Dist City of New Rochelle, 4 PERB ¶3060 (1971); *West Irondequoit Teachers Assn v PERB*, 35 NY2d 46, 7 PERB ¶7014 (1974); *Port Washington Union Free Sch Dist*, 8 PERB ¶3047 (1975); *Somers Faculty Assn*, 9 PERB ¶3014 (1976); *Buffalo PBA*, 9 PERB ¶3024 (1976); *Baldwinsville Cent Sch Dist*, 15 PERB ¶3032 (1982); *Suffolk BOCES II*, 17 PERB ¶¶3048 and 3111 (1984); *City of New Rochelle*, 18 PERB ¶3021 (1985). See also *Wappingers Cent Sch Dist*, 26 PERB ¶3014 (1993); *Vil of Johnson City*, 39 PERB ¶4631 (2007).

An employer cannot unilaterally determine that its action had no impact and thereby refuse to negotiate.

North Babylon Union Free Sch Dist, 7 PERB ¶3027 (1974).

11. GENERAL PROVISIONS

11.1 Duration

A clause providing for the continuation of contractual benefits beyond the expiration date of the contract until a new contract is reached is not violative of public policy and is a mandatory subject.

Lynbrook PBA, 10 PERB ¶3067 (1977), *affd*, 48 NY2d 398, 12 PERB ¶7021 (1979); *Local 294, IBT*, 10 PERB ¶3007 (1977); *Troy Uniformed Firefighters Assn, Local 2304*, 10 PERB ¶3015 (1977); *Niagara Wheatfield Administrators Assn v Niagara Wheatfield Cent Sch Dist*, 44 NY2d 68, 11 PERB ¶7512 (1978); *Hudson Valley Community Coll Faculty Assn and Hudson Valley Community Coll*, 12 PERB ¶3030 (1979). (These decisions predate the 1982 enactment of ¶209-a.1(e) of the Taylor Law.)

A demand that nonmandatory contractual provisions be discontinued upon expiration of a contract is nonmandatory.

Onondaga-Madison BOCES, 18 PERB ¶3040 (1985). *But see Uniform Firefighters of Cohoes, Local 2562 and City of Cohoes*, 31 PERB ¶3020 (1998); *City of Utica*, 31 PERB ¶3075 (1998).

A demand that a contract be annually self-renewed absent timely notice of termination merely sets forth a formula for determining the duration of the contract and is a mandatory subject.

Old Brookville PBA, 16 PERB ¶3094 (1983).

11.2 Retroactivity

Retroactivity of benefits is a mandatory subject unless it would require changes in terms and conditions of employment to be effective prior to the time when a duty to negotiate arose through certification or recognition.

Uniformed Firefighters Assn, Mount Vernon, Local 107, 11 PERB ¶3095 (1978); *Hudson Valley Coll Faculty Assn*, 12 PERB ¶3030 (1979); *Police Superior Officers Assn of Newburgh and City of Newburgh*, 20 PERB ¶3017 (1987).

11.3 Unit Definition

The inclusion in a contract of a provision defining the existing negotiating unit is a mandatory subject.

Hudson Falls Permanent Firefighters, Local 2730, 14 PERB ¶3021 (1981).

However, a change in the makeup of a negotiating unit, which may be sought by the institution of a representation proceeding before PERB, is nonmandatory.

City of Binghamton and Binghamton Firefighters, Local 729, 10 PERB ¶3092 (1977); *Onondaga-Cortland-Madison BOCES*, 25 PERB ¶3044 (1992), *revd on other grounds*, 198 AD2d 824, 26 PERB ¶7015 (4th Dept 1993).

11.4 Zipper Clause

Zipper clauses are mandatory subjects of negotiation.

City of Albany, 7 PERB ¶3078 (1974). See also *Onondaga-Madison BOCES*, 18 PERB ¶3040 (1985); *Vil of Huntington Bay*, 37 PERB ¶4543 (2004).

A demand that the employer shall have the right to modify by policy any and all terms and conditions of employment that are not specifically set forth in the terms of the agreement is a zipper clause and is mandatory.

Town of Shawangunk PBA, 34 PERB ¶4510 (2001).

11.5 Continuation of Benefits

A demand that contractual provisions according benefits to unit members be continued is mandatory.

PBA Newburgh, 18 PERB ¶3065 (1985), *affd*, 19 PERB ¶7005 (Sup Ct Albany County 1986).

A demand to modify or delete provisions of a contract which include nonmandatory items may be mandatorily negotiable.

Uniform Firefighters of Cohoes, Local 2562 and City of Cohoes, 31 PERB ¶3020 (1998); *City of Utica*, 31 PERB ¶3075 (1998).

A demand that all current benefits be continued is nonmandatory. (This holding was, in effect, overruled by *Cohoes, supra*.)

Police Assn City of Mount Vernon, 13 PERB ¶3071 (1980). See also *Brighton Fire Dist and Brighton Professional Firefighters Assn, Local 2223*, 10 PERB ¶4545 (1977).

A demand that present terms and conditions of employment be continued in effect during the life of the contract is mandatory.

Schenectady PBA, 16 PERB ¶4519 (1983); *Bridge and Tunnel Officers Benevolent Assn and TBTA*, 15 PERB ¶4570 (1982).

A proposal that present standards affecting terms and conditions of employment be maintained is nonmandatory, when the proposal was not clearly limited to mandatory subjects of negotiation. For the same reason, a demand that professional benefits or employment advantages continue in effect is also nonmandatory.

Waterloo Cent Sch Dist, 26 PERB ¶6501 (1993).

11.6 Grievance Procedures

Grievance procedures are terms and conditions of employment and, thus, mandatorily negotiable.

County of Monroe, 10 PERB ¶3104 (1977); *Hoosick Valley Cent Sch Dist*, 11 PERB ¶3065 (1978); *PBA Newburgh*, 18 PERB ¶3065 (1985), *affd*, 19 PERB ¶7005 (Sup Ct Albany County 1986) (grievance granted if procedural time limits not met). *But see Board of Educ Malone Cent Sch Dist*, 8 PERB ¶3043 (1975); *Port Chester-Rye Union Free Sch Dist*, 10 PERB ¶3079 (1977); *Greenburgh #11 Union Free Sch Dist*, 33 PERB ¶3018 (2000) (location of hearing; security measures).

A grievance definition which is so broad as to extend the grievance procedure to nonmandatory matters is a nonmandatory subject.

Pearl River Union Free Sch Dist, 11 PERB ¶3085 (1978); *Schenectady PBA*, 21 PERB ¶3022 (1988). *Compare Hauppauge Schools Office Staff Assn and Hauppauge Union Free Sch Dist*, 22 PERB ¶4570 (1989). *But see Uniform Firefighters of Cohoes, Local 2562 and City of Cohoes*, 31 PERB ¶3020 (1998); *City of Utica*, 31 PERB ¶3075 (1998).

A provision that benefits which may to some extent be provided by statute shall be subject to grievance arbitration is mandatory.

City of Rochester, 12 PERB ¶3010 (1979).

A demand that grievances be considered promptly is mandatory.

Schenectady PBA, 21 PERB ¶3022 (1988).

The police union's demand requiring that arbitrators selected by the parties commit to sufficient consecutive days in order to complete a particular arbitration hearing, was a mandatory subject of negotiation. The demand merely required the city to abide by the new selection process.

Patrolmen's Benevolent Assn, 37 PERB ¶3033 (2004).

A demand that arbitration be conducted without a stenographic record is mandatory.

Bridge and Tunnel Officers Benevolent Assn and TBTA, 15 PERB ¶4570 (1982).

The right to representation at all steps of the grievance procedure is mandatorily negotiable.

Town of Blooming Grove PBA, 13 PERB ¶4550 (1980).

11.7 Negotiations Procedures

Procedures and ground rules for the conduct of negotiations are preliminary and subordinate to substantive negotiations and should not interfere with the commencement or progress of negotiations. They are nonmandatory subjects.

Town of Shelter Island and Shelter Island PBA, 12 PERB ¶3112 (1979); *CSEA, Local 832*, 15 PERB ¶3101 (1982) (tape recording); *County of Saratoga and Local 846, CSEA*, 17 PERB ¶3033 (1984), *affd*, 17 PERB ¶7010 (Sup. Ct. Saratoga County 1984) (public negotiations); *Marcellus Faculty Assn and Marcellus Cent Sch Dist*, 21 PERB ¶3035 (1988) (observers; transcription of negotiations); *Western Regional OTB*, 22 PERB ¶3007 (1989) (coalition negotiations); *Madison Cent Sch Dist*, 22 PERB ¶3057 (1989).

The designation of who may or may not serve as a party's representative in negotiations is a nonmandatory subject.

County of Nassau and County of Suffolk, 12 PERB ¶3090 (1979); *City of New Rochelle and Uniformed Firefighters Assn, Local 273*, 8 PERB ¶3071 (1975).

A demand that a contract include a provision for binding interest arbitration is nonmandatory.

Teamsters, Local 687, 19 PERB ¶3050 (1986); *Teamsters, Local 687*, 19 PERB ¶3053 (1986).

The police union's demand requiring that arbitrators selected by the parties commit to sufficient consecutive days in order to complete a particular arbitration hearing, was a mandatory subject of negotiation. The demand merely required the city to abide by the new selection process.

Patrolmen's Benevolent Assn, 37 PERB ¶3033 (2004).

11.8 Seniority

Although the use of seniority as a standard in taking personnel actions may inhibit the flexibility of employers to act, it involves terms and conditions of employment and is a mandatory subject.

White Plains PBA, 9 PERB ¶3007 (1976); *Niskayuna PBA*, 14 PERB ¶3067 (1981) (tours of duty); *Dutchess County BOCES Faculty Assn*, 17 PERB ¶3120 (1984), *affd*, 122 AD2d 845, 19 PERB ¶7018 (2d Dept 1986) (assignments); *Schenectady PBA*, 21 PERB ¶3022 (1988). See also *City of Albany*, 7 PERB ¶3079 (1974); *Cortland Paid Firefighters Assn, Local 2737*, 29 PERB ¶3037 (1996); *State of New York (DOCS-Collins Correctional Facility)*, 37 PERB ¶4576 (2004).

Seniority as the sole factor in assigning teachers to courses is a prohibited subject of negotiation.

Meehan v Nassau Community Coll, 152 AD2d 313, 23 PERB ¶7504 (2d Dept 1990).

Methods for determining seniority are mandatorily negotiable.

City Sch Dist City of Newburgh, 14 PERB ¶4612 (1981).

The police union's demand that seniority be used as the primary factor in shift selection, overtime, discretion assignments and vacation picks was mandatory because the demand did not restrict management in the delivery of services but merely required that seniority be one of the factors considered when filling vacancies in job titles.

Patrolmen's Benevolent Assn, 37 PERB ¶3033 (2004).

11.9 Parity

A parity demand, i.e., a demand that benefits negotiated by another union be automatically granted to the union seeking the parity provision, is not per se a prohibited subject of negotiation. Nevertheless, a parity provision would be subject to nullification by the third party union through its filing of an improper practice charge. PERB has held:

A parity agreement is improper only to the extent that it trespasses upon the negotiation rights of a union that is not a party to the agreement. It does so by making it more difficult for the nonparty union to negotiate some benefits for employees it represents while imposing upon it a burden of negotiating for employees it does not represent.

Thus, if the affected third-party union consents to a parity provision relating to an otherwise mandatory subject of negotiation, such as salary, a demand for parity is a permissive subject of negotiation.

Plainview-Old Bethpage Cent Sch Dist, 17 PERB ¶3077, at 3119 (1984), *affd*, 17 PERB ¶7022 (Sup Ct Nassau County 1984). See also *City of Schenectady v City Firefighters Union, Local 28*, 85 AD2d 116, 15 PERB ¶7510 (3d Dept 1982); *Niagara Wheatfield Administrators Assn v Niagara Wheatfield Cent Sch Dist*, 44 NY2d 68, 11 PERB ¶7512 (1978).

A demand for an increase in salary "patterned" after that of another union is a mandatory subject as it does not impinge upon the negotiation of the issue.

Lynbrook PBA, 10 PERB ¶3067 (1977).

A demand linking a salary increase to a percentage of salary increases granted by other employers in the area is not truly a demand for parity and is mandatorily negotiable.

Plainedge Fedn of Teachers, 31 PERB ¶3015 (1998).

A "favored nations clause", i.e., a provision for reopening of negotiations if another union receives more favorable contractual benefits, is a mandatory subject, since no automatic increase in benefits is involved.

Intl. Assn of Firefighters, Local 189, 11 PERB ¶3087 (1978); *Mutual Aid Assn of the Paid Fire Dept of the City of Yonkers, Local 268*, 10 PERB ¶3048 (1977).

11.10 Committees

A demand for the creation of a committee made up of employee and employer representatives to discuss mandatorily negotiable matters is a mandatory subject; however, a demand specifying the other party's representatives on a committee is nonmandatory.

Somers Faculty Assn, 9 PERB ¶3014 (1976).

11.11 Safety

Safety as a general subject is a mandatory subject. But as it would be futile to cover all aspects of safety in a contract, and as the balancing of nonmandatory management rights (e.g., staffing) against the union's right to negotiate safety standards for the protection of employees against dangers beyond the normal hazards inherent in their work would unduly burden the negotiations process, the parties could create a joint

safety committee, operating under general guidelines, with the process subject to grievance arbitration. A demand to establish such a safety committee is mandatory.

City of Albany, 7 PERB ¶3078 (1974); *White Plains PBA*, 9 PERB ¶3007 (1976); *Niagara Falls Uniformed Firefighters Assn, Local 714*, 9 PERB ¶3025 (1976); *Vill of Johnson City*, 9 PERB ¶3042 (1976); *Uniformed Firefighters Assn, Local 273*, 10 PERB ¶3078 (1977), *affd*, 61 AD2d 1031, 11 PERB ¶7002 (2d Dept 1978); *Intl. Assn of Firefighters of the City of Newburgh, Local 589*, 10 PERB ¶3001 (1977); *Troy Uniformed Firefighters Assn, Local 2304*, 10 PERB ¶3105 (1977); *City of Mount Vernon*, 11 PERB ¶3049 (1978); *Intl. Assn of Firefighters, Local 189*, 11 PERB ¶3087 (1978); *White Plains Professional Firefighters Assn, Local 274*, 11 PERB ¶3089 (1978). See also *County of Nassau (Police Dept)*, 31 PERB ¶3064 (1998).

While safety, as a general subject, is a mandatory subject of bargaining, it does not follow that all demands that have safety related impact are mandatorily negotiable. A demand that there should be increased compensation to firefighters when fewer than four firefighters are assigned to a piece of equipment and that there must be at least four firefighters assigned to each ladder company and engine company, is nonmandatory because staffing is a nonmandatory subject of bargaining and that aspect of the demand cannot be severed from the compensation demand.

Niagara Falls Uniformed Firefighters Assn, AFL-CIO, Local 714, 36 PERB ¶4553 (2003).

A safety policy committee without employer representation is a nonmandatory subject.

Croton Police Assn, 16 PERB ¶3100 (1983).

A union-appointed safety committee with authority to investigate complaints about equipment adequacy or safety and to certify the condition of the equipment to the employer is mandatory.

Schenectady PBA, 21 PERB ¶3022 (1988).

A safety committee empowered to decide nonmandatory matters (e.g., staffing, supervision) is nonmandatory.

Rye Police Assn, 17 PERB ¶4645 (1984).

A demand that would authorize a safety committee to investigate complaints by a police officer that he/she was being required to use unsafe or inadequate equipment is mandatory because all the committee was authorized to do was address specific circumstances and not make generalized findings about manning or equipment removal generally.

Village of Spring Valley, 36 PERB ¶¶6602 (2003).

A demand that disputes regarding the serviceability of equipment be resolved by binding arbitration is mandatory.

Corning Intl. Assn of Firefighters, Local 932, 15 PERB ¶¶4663 (1982).

A demand that employees not be required to use unsafe equipment is mandatory.

Scarsdale PBA, 8 PERB ¶¶3075 (1975); *PBA City of White Plains*, 12 PERB ¶¶3046 (1979). *But see Fairview Professional Firefighters Assn, Local 1586*, 12 PERB ¶¶3083 (1979).

A demand that the employer establish safety standards for employee protection commensurate with those in the private sector, and maintain safe and healthful working conditions and practices so as to safeguard employees, while broadly phrased, is nonetheless a mandatory subject.

CSEA, Niagara Chapter, 14 PERB ¶¶3049 (1981).

Insulation of teachers from acts of violence by students is a mandatory subject as is the procedure for temporary removal from the classroom of disruptive students and a teacher-management conference before their return.

Somers Faculty Assn, 9 PERB ¶¶3014 (1976).

A requirement of teacher approval as a condition for the students to return to the classroom is nonmandatory.

Auburn Teachers' Assn, 13 PERB ¶¶4614 (1980).

Demands for a comprehensive procedure for maintaining student discipline and for the use of physical restraints on students are nonmandatory.

New Paltz United Teachers, 13 PERB ¶¶4503 (1980); *Windsor Cent Sch Dist, et al.*, 17 PERB ¶¶4542 (1984).

Employer maintenance of, and employee access to, a record of student disciplinary cases is nonmandatory.

Auburn Teachers' Assn, 13 PERB ¶¶4614 (1980).

A prohibition against certain types of footwear and shorts in any construction operation relates to employee safety and is mandatorily negotiable.

County of Ulster, 16 PERB ¶4646 (1983).

11.12 Preamble

A provision in the nature of general prefatory affirmations of mutual responsibility is not a proposal for terms and conditions of employment and is nonmandatory.

Orange County Community Coll, 9 PERB ¶3068 (1976); *Onondaga Community Coll Fedn of Teachers, Local 1845 and Onondaga Community Coll*, 11 PERB ¶3045 (1978); *Schenectady PBA*, 21 PERB ¶3022 (1988).

However, prefatory language which helps identify the terms and conditions of employment which follow is mandatorily negotiable.

City of Schenectady, 22 PERB ¶3018 (1989), *affg* 21 PERB ¶4605 (1988); *Cortland Paid Firefighters Assn, Local 2737*, 29 PERB ¶3037 (1996); *Uniform Firefighters Cohoes, Local 2562 and City of Cohoes*, 31 PERB ¶3020 (1998).

11.13 Management Rights

A demand that terms and conditions of employment not covered by the contract be subject to employer control is mandatory.

Onondaga-Madison BOCES, 18 PERB ¶3040 (1985).

A demand which would insure that the employer's exercise of rights in a management rights clause would not constitute a waiver of Taylor Law rights is mandatorily negotiable.

NYCTA, 22 PERB ¶6501 (1989).

12. MISCELLANEOUS

12.1 Nonunit Matters

Benefits for employees not in the bargaining unit are nonmandatory.

Yorktown Faculty Assn and Yorktown Cent Sch Dist, 7 PERB ¶3030 (1974); *Addison Cent Sch Dist*, 13 PERB ¶3060 (1980); *Bridge and Tunnel Officers Benevolent Assn*, 15 PERB ¶3124 (1982); *Dunkirk City Sch Dist*, 17 PERB ¶3064 (1984); *City of Utica*, 25 PERB ¶4641 (1992) (job applicants).

A demand to restrict or impose duties performed by nonunit employees is nonmandatory.

Yorktown Faculty Assn and Yorktown Cent Sch Dist, 7 PERB ¶3030 (1974); *Somers Faculty Assn*, 9 PERB ¶3014 (1976); *Amherst Police Club*, 12 PERB ¶3071 (1979).

A fee imposed by state law upon all applicants for a competitive civil service examination did not involve a mandatory subject of negotiations because it was applicable to the public at large and not just unit employees.

Newark Valley Cardinal Bus Drivers, NYSUT/AFT/AFL-CIO, 35 PERB ¶3006 (2002).

Since retirees are not in the bargaining unit, benefits for retirees are nonmandatory.

Troy Uniformed Firefighters Assn, Local 2304, 10 PERB ¶3015 (1977); *Lynbrook PBA*, 10 PERB ¶3067 (1977); *Police Assn New Rochelle*, 10 PERB ¶3042 (1977); *Hudson Falls Permanent Firefighters, Local 2730*, 14 PERB ¶3021 (1981); *City of Oneida PBA*, 15 PERB ¶3096 (1982); *Vil of Mamaroneck PBA*, 22 PERB ¶3029 (1989); *Dobbs Ferry Police Assn*, 22 PERB ¶3039 (1989), *affg* 22 PERB ¶4516 (1989); *NYCTA*, 22 PERB ¶6501 (1989); *TBTA and Bridge and Tunnel Officers Benevolent Assn*, 27 PERB ¶3076 (1994); *Aeneas McDonald PBA v City of Geneva*, 92 NY2d 326, 31 PERB ¶7503 (1998).

The transfer of employees from positions in one unit to positions in another unit is a nonmandatory subject.

Board of Educ of the City Sch Dist of the City of New York, 12 PERB ¶3037 (1979).

Benefits to be provided by another (e.g., successor) employer are nonmandatory.

Monroe-Woodbury Teachers Assn, 10 PERB ¶3029 (1977).

A demand which would bind an entity which is not a party to the negotiations is nonmandatory.

Dobbs Ferry Police Assn, 22 PERB ¶3039 (1989), *affg* 22 PERB ¶4516 (1989).

12.2 Unitary Demands

A demand consisting of various parts, some of which are mandatory and some of which are nonmandatory, which is presented in such a manner as to reasonably indicate that it was to be negotiated as a single entity, is nonmandatory in its entirety.

Pearl River Union Free Sch Dist, 11 PERB ¶3085 (1978); *CSEA, Niagara Chapter*, 14 PERB ¶3049 (1981); *City of Oneida PBA*, 15 PERB ¶3096 (1982). See also *Town of Haverstraw*, 11 PERB ¶3109 (1978); *City of Rochester*, 12 PERB ¶3010 (1979); *Amherst Police Club*, 12 PERB ¶3071 (1979); *Town of Cheektowaga*, 12 PERB ¶3083 (1979); *Bartlett and New York State Court Employees Assn*, 12 PERB ¶3075 (1979); *PBA Newburgh*, 18 PERB ¶3065 (1985); *Schenectady PBA*, 21 PERB ¶3022 (1988); *Vill of Mamaroneck PBA*, 22 PERB ¶3029 (1989); *TBTA and Bridge and Tunnel Officers Benevolent Assn*, 27 PERB ¶3076 (1994), *affg* 27 PERB ¶4595 (1994); *PBA City of White Plains and City of White Plains*, 33 PERB ¶3051 (2000), *affg* 33 PERB ¶4588 (2000); *Niagara Falls Police Captains and Lieutenants Assn*, 33 PERB ¶3058 (2000).

A multiple demand including a nonmandatory subject as an alternative is a mandatory subject.

Orange County Community Coll Faculty Assn, 10 PERB ¶3080 (1977).

12.3 Vague/Ambiguous/Broad Demands

Where, because of vagueness or ambiguity, it cannot be determined whether a demand relates only to mandatory subjects of negotiation, it is nonmandatory.

Fairview Professional Firefighters Assn, Local 1586, 12 PERB ¶3083 (1979); *City of Rochester*, 12 PERB ¶¶3010 and 3047 (1979); *Newburgh Teachers Assn and Newburgh Enlarged City Sch Dist*, 21 PERB ¶4521 (1988), *affd*, 21 PERB ¶3036 (1988), *affd*, 22 PERB ¶7009 (Sup Ct Albany County 1989).

A demand which is so broad as to include nonmandatory subjects is nonmandatory.

Uniformed Firefighters of Cohoes, Local 2562 and City of Cohoes, 31 PERB ¶3020 (1998) (hearing procedures for all matters requiring a due process hearing.)

A demand that employees who are subject to sick leave monitoring program, while utilizing sick leave, would be confined to their residence until their next tour of duty was found to be nonmandatory due to ambiguity: the demand could require employees to be confined to home even during off-duty hours.

Village of Pelham, 34 PERB ¶4512 (2001).

A proposal for a sick leave incentive, without further explanation, is nonmandatory because of vagueness.

Village of Pelham, 34 PERB ¶4512 (2001).

12.4 Statutory Requirements/Rights

A demand for a contract provision which reiterates statutory benefits may provide additional and different rights and remedies and is mandatorily negotiable if not against public policy.

Uniformed Firefighters of Cohoes, Local 2562 and City of Cohoes, 31 PERB ¶3020 (1998), *affd*, 32 PERB ¶7026 (Sup Ct Albany County 1999), *affd*, 276 AD2d 184, 33 PERB ¶7019 (3d Dept 2000); *Poughkeepsie Professional Firefighters' Assn, Local 596*, 33 PERB ¶3029 (2000).

Demands concerning matters which by law are not within the employer's discretion are nonmandatory.

Professional Firefighters Assn, Local 274, 10 PERB ¶3043 (1977), and *Board of Educ of the City Sch Dist of the City of Buffalo*, 22 PERB ¶3047 (1989) (contractual remedy for improper practices-discrimination/interference); *Town of Greenburgh v Assn Town of Greenburgh*, 94 AD2d 771, 16 PERB ¶7510 (2d Dept 1983) (disciplinary procedures governed by state law applicable to the municipality); *Peekskill Faculty Assn*, 16 PERB ¶4586 (1983) (probationary period for teachers).

Demands which would require contravention of law are nonmandatory.

City of Rochester, 12 PERB ¶3010 (1979), and *PBA City of White Plains and City of White Plains*, 33 PERB ¶3051 (2000) (different treatment for pregnancy/childbirth); *Board of Educ City of Yonkers*, 10 PERB ¶3089 (1977) (elimination of social security coverage); *Old Brookville PBA*, 16 PERB ¶3094 (1983) (imposed retirement on disabled police); *PBA Newburgh*, 18 PERB ¶3065 (1985), *affd*, 19 PERB ¶7005 (Sup Ct Albany County 1986) (compensatory time off for overtime worked); *City of Plattsburgh v Local 788 American Fedn of State, County and Municipal Employees*, 108 AD2d 1045, 18 PERB ¶7510 (3d Dept 1985) (demotion to be based on hiring date instead of date

of permanent appointment); *Szumigala v Hicksville Union Free Sch Dist Bd of Educ*, 148AD2d 621, 22 PERB ¶7521 (2d Dept 1989) (layoff order of teachers based on seniority outside tenure area rather than within tenure area); *City of Newburgh v. Potter*, 168 AD2d 779, 24 PERB ¶7550 (2d Dept 1991) (requirement that an employee who is offered a higher level civil service position accept it and perform its duties); *State of New York-UCS*, 26 PERB ¶3039 (1993) (extension of provisional appointments; infringement on authority of supreme court justice to appoint and remove certain employees); *City of New York v MacDonald*, 201 AD2d 258, 27 PERB ¶7503 (1st Dept 1994) (infringement on authority of police commissioner and personnel director regarding, respectively, discipline and probationary employees); *Eastchester Union Free Sch Dist*, 29 PERB ¶3041 (1996), and *Auburn Enlarged City Sch Dist*, 30 PERB ¶3033 (1997), and *Port Washington Union Free Sch Dist v Port Washington Teachers Assn*, 268 AD2d 523, 33 PERB ¶7502 (2d Dept 2000) (paid time off for religious observance); *Vil of Ellenville*, 26 PERB ¶4546 (1993) (FLSA standards). See also *Town of Southold*, 26 PERB ¶4590 (1993).

A demand for inclusion in a contract of language mandated by CSL ¶204-a.1 is a nonmandatory subject.

City of Albany, 7 PERB ¶3078 (1974).

An employer's demand for the waiver of constitutional rights is a nonmandatory subject.

City of Buffalo (Police Dept), 20 PERB ¶3048 (1987) (constitutional search and seizure rights). See *City of Utica*, 31 PERB ¶3075 (1998).

A demand for waiver or modification of a statutory right or privilege which otherwise constitutes a term and condition of employment is mandatorily negotiable unless it is against public policy or contrary to a clear legislative intent.

Uniform Firefighters Cohoes, Local 2562 and City of Cohoes, 31 PERB ¶3020 (1998), *affd*, 32 PERB ¶7026 (Sup. Ct. Albany County 1999), *affd*, 276 AD2d 184, 33 PERB ¶7019 (3d Dept 2000); *City of Utica*, 31 PERB ¶3075 (1998); *City of Utica*, 31 PERB ¶3045 (1998) (waiver of CSL ¶75 procedures is mandatorily negotiable); *City of Cohoes*, 32 PERB ¶3046 (1999), *affd*, 32 PERB ¶7026 (Sup. Ct. Albany County 1999), *affd*, 276 AD2d 184, 33 PERB ¶7019 (3d Dept 2000) (waiver of GML ¶207-a rights is not mandatorily negotiable); *PBA City of White Plains and City of White Plains*, 33 PERB ¶3051 (2000) (waiver of CSL §58(4)(c) rights is nonmandatory); *Town of Orangetown*, 39 PERB ¶4611 (2006) (procedures which extend beyond the statutory language of GML §207-c and could result in the loss of benefits are mandatory).

Contract language which would waive a union's (or employee's) right to file an improper practice charge with PERB if it elected to file a contract grievance on the same issue is a nonmandatory, but not a prohibited, subject of negotiation.

Board of Educ of the City Sch Dist of the City of Buffalo, 22 PERB ¶3047 (1989).

While a statute may preclude an employer from assigning overtime work to police officers, a union is not precluded from negotiating the issue.

Spring Valley PBA v Vil of Spring Valley, 80 AD2d 910, 14 PERB ¶7515 (2d Dept 1981); *Follett v Chief of Police City of Binghamton*, 17 PERB ¶7513 (1984) (Sup Ct Broome County).

A union cannot be compelled to negotiate an employer's demand to waive the statutory overtime restrictions.

City of Schenectady, 18 PERB ¶3035 (1985).

A demand to seek a change in the content of legislation is nonmandatory.

Rochester Firefighters, Local 1071, 12 PERB ¶3047 (1979).

Procedures for the implementation of statutory rights are mandatory.

City of Schenectady, 19 PERB ¶3051 (1986), *affd*, 19 PERB ¶7023 (Sup Ct Albany County 1986), and *Town of Cortlandt*, 30 PERB ¶3031 (1997), *affd*, 30 PERB ¶7012 (Sup. Ct. Westchester County 1997) (benefits for police officers under G.M.L. ¶207-c); *Local 589, Intl. Assn of Firefighters v City of Newburgh*, 17 PERB ¶7506 (Sup Ct Orange County 1984) (benefits for fire fighters under GML ¶207-a); *City of Schenectady*, 24 PERB ¶3016 (1991) and 25 PERB ¶3022 (1992); *County of Greene*, 25 PERB ¶3045 (1992); *City of Cohoes*, 32 PERB ¶3046 (1999), *affg* 32 PERB ¶4561 (1999); *City of Utica*, 32 PERB ¶3056 (1999); *City of Syracuse*, 32 PERB ¶3029 (1999), *affd*, 279 AD2d 98, 33 PERB ¶7022 (4th Dept 2000); *Watertown PBA*, 30 PERB ¶3072 (1997), *affd*, 95 NY2d73, 33 PERB ¶7007 (2000) (procedure to review employer's initial determination of eligibility for GML §207-c benefits). *Compare Poughkeepsie Professional Firefighters' Assn Local 596*, 33 PERB ¶3029 (2000) (*de novo* arbitration of such initial determination is nonmandatory; designation of person who will make initial eligibility determinations is nonmandatory) and *Poughkeepsie Professional Firefighters' Assn, Local 596, IAFF v PERB*, 36 PERB ¶7016 (Sup Ct Albany County 2003), finding that nothing in the statute or in the decisions of the Court of Appeals on this issue can be construed to limit the permissible procedures for challenging initial determinations pursuant to GML §207-a. In the absence of such plain and clear limitations, the nature of the review of

such determinations is subject to mandatory bargaining.

A procedure which affords an employee de novo review rather than arbitral review of the employer's determination of initial eligibility for GML §207-a benefits is a redetermination procedure and is nonmandatory.

Poughkeepsie Professional Firefighters' Assn, Local 596, IAFF, AFL-CIO-CLC, 35 PERB ¶4616 (2002), *revd* 36 PERB 3014 (2003), *revd sub nom. Poughkeepsie Professional Firefighters' Assn, Local 596 v New York State Pub Empl Rels Bd*, 36 PERB ¶7016 (Sup Ct Albany County 2003), *revd* 16 AD3d 797, 38 PERB ¶7005 (3rd Dept 2005), *affd* 6 NY3d 514, 39 PERB ¶7005 (2006).

A proposal to use the arbitral process to dispute eligibility determinations is mandatory. Also mandatory is a proposal that restates those portions of GML §207-c which are themselves mandatory.

PBA of the Town of Bedford, 34 PERB ¶4556 (2001).

A proposal to modify existing contractual provisions regarding GML §207-c is mandatory under the *Cohoes* analysis.

City of Schenectady, 34 PERB ¶4505 (2001).

An employer has the authority to make a determination that an officer who is receiving GML §207-c benefits must accept a "light duty" assignment to continue to be eligible to receive those benefits. Once such a determination is made, the procedures by which such determinations may be reviewed and the procedures by which such assignments are made are mandatory subjects of negotiations. However, an employer's withdrawal of its offer of a "light-duty" assignment is not negotiable.

PBA of the Town of Bedford, 34 PERB ¶4556 (2001); *Vil of Hamburg*, 36 PERB ¶3030 (2003).

Employer's right to recoupment of monies improperly paid under GML §207-c is, like its right to initially determine eligibility for such monies, not mandatorily negotiable.

County of Westchester v Westchester County Correction Officers Benevolent Assn, Inc. 278 AD2d 414, 33 PERB ¶7507 (2d Dept 2000).

Certain procedures to review GML §207-a and §207-c benefits are mandatorily negotiable, depending on the nature of the procedure involved and the language of the particular demand.

City of Hornell and New York State Conference of Mayors and Municipal Officials, 36 PERB ¶6603 (2003).

A demand that local legislation be brought into conformance with the contract is nonmandatory.

City of Schenectady and Schenectady PBA, 20 PERB ¶¶4636 (1987).

A demand for notification to the union of the introduction by the employer of legislation affecting terms and conditions of employment is mandatory.

PBA Police Dept Nassau County, 14 PERB ¶¶4557 (1981).

A demand which would prohibit a union from engaging in a strike and set penalties therefor is nonmandatory since it seeks to preempt the Taylor Law and PERB's jurisdiction in those regards. But see *Cohoes, supra*.

Town of Kent, 16 PERB ¶¶4502 (1983).

12.5 Public Policy

Contractual provisions which are violative of public policy will not be enforced and are prohibited subjects of negotiation.

Cohoes City Sch Dist v Cohoes Teachers Assn, 40 NY2d 774, 9 PERB ¶¶7529 (1976) (tenure); *Board of Educ, Great Neck Union Free Sch Dist v Great Neck Teachers Assn*, 41 NY2d 527, 10 PERB ¶¶7512 (1977) (employer access to employee personnel files); *Monroe-Woodbury Cent Sch Dist v Monroe-Woodbury Teachers Assn*, 105 AD2d 786, 17 PERB ¶¶7531 (2d Dept 1984) (classroom standards); *Meehan v Nassau Community Coll*, 152 AD2d 313, 23 PERB ¶¶7504 (2d Dept 1990) (qualifications of a teacher for assignment to a position). See also *Babylon Union Free Sch Dist v Babylon Teachers Assn*, 168 AD2d 614, 24 PERB ¶¶7548 (2d Dept 1991), holding that the transfer of students falls within the nondelegable duty of a school board to maintain classroom standards.

Regulations of the Commissioner of Education cannot render nonmandatory a subject (e.g., teacher evaluation procedures) which has been determined by PERB and the courts to be mandatorily negotiable.

Newburgh Teachers Assn and Newburgh Enlarged City Sch Dist, 21 PERB ¶¶3036 (1988), *affd*, 22 PERB ¶¶7009 (Sup Ct Albany County 1989).

