

Is It Negotiable?

SUBJECT	DESCRIPTION	STATUS	CASE NAME
Contracts With Union Members	Employer proposed to establish merit-based incentive pay. While the proposal allowed the employer to offer employees a benefit and, in return, gives the employee an opportunity to accept it, "there is not room for negotiation between the individual and the employer because the conditions of acceptance are set by the employer and would be memorialized in the collective bargaining agreement."	Mandatory. Parties required to bargain over issue.	<i>Illinois State Police, 32 PERI ¶ 138 (Ill. LRB Gen. Counsel 2016).</i>
Disciplinary Standards	Employer announced that it would no longer follow the negotiated police disciplinary procedures culminating in the right of appeal to a neutral arbitrator as set forth in its contract with the police association. The Court found that state law governing collective bargaining supersedes law governing second-class cities.	Mandatory. Employer required to comply with the contract.	<i>City of Schenectady, 136 A.D.3d 1086 (A.D. 2016).</i>
Health Insurance	Employer imposed a "medical necessity" standard for the prescription of name-brand drugs. The ALJ found that "an employer's unilateral alteration of the <i>status quo</i> during negotiations for a successor agreement constitutes a refusal to negotiate in good faith."	Mandatory. Employer required to rescind change.	<i>City of Paterson, 42 NJPER ¶ 93 (N.J. PERC 2016).</i>
Union Leave	Employer unilaterally discontinued paying shift differential to employees using union leave. Past practice of paying differentials was not questioned, and contract did not unambiguously prohibit paying differentials.	Mandatory. Employer required to rescind change.	<i>Riverside County, 40 PERC ¶ 95 (Cal. PERB 2015).</i>
Use Of Force	New requirement that officers involved in deadly force be placed on administrative duty and undergo a psychological screening. The ALJ found that "it cannot be seriously contended that changing an employee's shift following an incident during which he discharged his service weapon during the course of his duties and having him perform administrative duties instead of his regular patrol duties is not rationally related to his terms and conditions of employment or germane to the work environment."	Not Mandatory. Employer not required to bargain over new requirement.	<i>Catasauqua Police Officers Association, 47 PPER ¶ 72 (Pa. LRB ALJ 2016).</i>

There are three categories of bargaining topics.

MANDATORY. Mandatory subjects must be negotiated if either side raises them during the negotiations process. If a past practice concerns a mandatory subject of bargaining, an employer may not make a change in the practice without first bargaining with the labor organization unless the labor organization has waived its right to negotiate over the subject.

PERMISSIVE. Permissive subjects need not be negotiated by either party, but can be negotiated if both sides voluntarily choose to do so. An employer is free to make changes in past practices affecting permissive subjects of bargaining without first bargaining with a labor organization.

PROHIBITED. Prohibited subjects are excluded from bargaining. A subject is often prohibited if it is "preempted" by another law covering the subject (e.g., a state law might preempt bargaining over the entire subject of pension benefits).