

D.U.P. NO. 96-8

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

BOROUGH OF SAYREVILLE,

Respondent,

-and-

Docket No. CO-95-412

SAYREVILLE PBA LOCAL 98,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses one count of an unfair practice charge finding that the Borough's medical leave policy is a sick leave verification policy, the implementation of which is a managerial prerogative. However, the Director issues a Complaint on two other allegations raised in the charge. The Association alleges that the Borough's requirement that certain employees who participated in a Commission hearing charge their time used to personal or sick leave was discriminatorily applied. The Association also alleged repudiation of a contract clause providing that two officers shall be permitted to be on vacation at the same time from the same shift.

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Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro, & Murphy, attorneys
(Robert T. Clarke, of counsel)

For the Charging Party,
Weinberg & Kaplow, attorneys
(Irwin Weinberg, of counsel)

DECISION

On June 5, 1995, the Sayreville PBA Local 98 filed an unfair practice charge against the Borough of Sayreville alleging that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). Specifically, the PBA alleges that the Borough violated subsections 5.4(a)(1), (2), (3), (4) and (5)^{1/} through three distinct actions.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or

First, the PBA alleges that in February 1995, the Borough violated the Act when it implemented a Medical Leave Policy without negotiations. The PBA claims this policy involves submitting private medical information about individuals to the Borough's physician and obligates unit members to pay for obtaining the records. The information requested from employees allegedly violates the Family Medical Leave Act of 1993. Second, the PBA alleges that the Borough's requirement that certain employees who participated in a Commission hearing charge their time use to personal leave or sick leave was discriminatory. Other employees were allowed to charge their Commission appearance time to work time. Finally, the PBA claims that the Borough denied a vacation request of an employee. By doing so, the Borough allegedly repudiated a contract clause providing that two officers shall be permitted to be off on vacation at the same time from the same shift.

1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

The Borough implemented its Medical Leave Policy on February 16, 1995. The policy states:

Please be advised that prior to returning to work, employees who are granted a medical leave of absence or are out on extended leave and/or hospitalized, will be required to have all updated medical records forwarded from your attending physician to the Borough's physician and a complete physical examination may be required to insure that the job duties assigned can be performed without risk to yourself and others. A medical release from your physician will also have to be submitted. A timely response is expected to this policy and appreciated.

The Borough asserts that it is a managerial prerogative to implement a sick leave verification policy, which it did through the Medical Leave Policy. The Medical Leave Policy is consistent with the Borough's managerial prerogative to insure that employees are fit for duty and to verify the employees legitimate use of sick leave. Nowhere in the policy does it say that employees would have to assume the costs of the implementation of this policy. However, the Borough acknowledges its obligation to negotiate over certain applications resulting from the policy, such as any costs that an employee might incur. In its responsive papers, the Borough agrees to assume responsibility for any costs not covered by the Borough's medical insurance program, despite not having received a demand to negotiate over the application of the policy from the PBA.

In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95, 96 (¶13039 1982), the Commission held that a public employer has a managerial right to implement reasonable measures to verify

employee illness or disability. This principle also extends to an employer's right to verify that an employee's illness or disability has abated by the time he reports back for duty. See Bor. of Park Ridge, P.E.R.C. No. 87-55, 12 NJPER 851, 853 (¶17328 1986); Bor. of Sayreville, P.E.R.C. No. 87-2, 12 NJPER 597 (¶17223 1986); City of Elizabeth, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super. 382 (App. Div. 1985); N.J.A.C. 4:1-17.18(d) (allowing a civil service employer to require an employee returning from sick leave to be examined by a physician to determine fitness for duty); cf. City of Jersey City, P.E.R.C. No. 88-33, 13 NJPER 764 (¶18290 1987). The Commission further held in Piscataway that while "the mere establishment of a verification policy is the prerogative of the employer, the application of the policy may be subject to contractual grievance procedures." 8 NJPER at 96. A matter predominantly involves the application rather than the establishment of a sick leave verification policy when the employer has formulated the policy; the employee has complied with the policy; and the employer has then decided to withhold sick leave benefits from the particular employee. See Newark Bd. of Ed., P.E.R.C. No. 85-26, 10 NJPER 551 (¶15256 1984), where we held not arbitrable a grievance contesting denial of sick leave based upon an employee refusal to supply requested verification. In Newark, the grievance challenged the employer's right to establish a verification program and not a dispute over whether the employee was eligible for sick leave.

As to whether the information requested violates the Family Medical Leave Act of 1993, this Commission has no jurisdiction over violations of the Family Medical Leave Act.

Accordingly, I find that the allegations concerning the implementation of a Medical Leave Policy do not meet the Commission's complaint issuance standard^{2/} and I refuse to issue a Complaint on the allegations of count one.

The Borough denies the allegations of count two and asserts the incidents described in count three do not constitute an unfair practice. It alleges it refused to allow an officer to take vacation because the number of officers on duty would fall below its minimum staffing requirements.

The facts alleged in counts two and three of the charge may constitute unfair practices within the meaning of the Act. Therefore, under separate letter, a Complaint and Notice of Hearing will issue concerning the remaining allegations in the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: September 14, 1995
Trenton, New Jersey

2/ N.J.A.C. 19:14-2.1 and 2.3.