

P.E.R.C. NO. 99-21

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY,

Petitioner,

-and-

Docket No. SN-99-2

AFSCME COUNCIL 73, LOCAL 2287,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Mercer for a restraint of binding arbitration of grievances filed by AFSCME Council 73, Local 2287. The grievances seek restoration of holiday pay lost because of the grievants' alleged failure to provide doctors' notes for absences the day before or after a holiday. The Commission finds that N.J.S.A. 34:13A-5.3 authorizes negotiations over minor disciplinary disputes in civil service jurisdictions and that this dispute over the docking of holiday pay may therefore be submitted to binding arbitration.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Alfred B. Vuocolo, Jr., County  
Counsel (David W. Boyer, Assistant County Counsel)

For the Respondent, Frank Herrick, Staff Representative

DECISION

On July 2, 1998, Mercer County filed a scope of negotiations petition. The employer seeks a restraint of binding arbitration of grievances filed by AFSCME Council 73, Local 2287. The grievances seek restoration of holiday pay lost because of the the grievants' alleged failure to provide doctors' notes for absences the day before or after a holiday.

The parties have filed exhibits and briefs. These facts appear.

Mercer County is a Civil Service jurisdiction. Local 2287 represents certain County employees. The parties entered into a collective negotiations agreement effective from January 1, 1996 through December 31, 1998. The grievance procedure ends in binding arbitration. The Discipline/Discharge clause permits binding arbitration of minor disciplinary disputes.

On November 21, 1997, the superintendent of parks issued a memorandum to all Park Commission employees entitled "Sick Days." It states that anyone calling in or taking a sick day before or after a holiday will be required to submit a doctor's note stating the reason for the illness and anyone not adhering to the directive will face disciplinary charges.

Esther Gold, William Grieb and Frank Smith are employed by the County. Gold was docked holiday pay for January 1, 1998 because she called in sick on December 31, 1997 and did not supply a doctor's note. Grieb was docked holiday pay for January 1, 1998 because he called in sick on December 26, 1997 and did not supply a doctor's note. Smith was docked holiday pay for December 25, 1997 because he called in sick on December 24 and 26, 1997 and did not supply a doctor's note.

Local 2287 grieved the employer's action. The grievances state that the employees were docked holiday pay despite supervisory authorization of the absences on the days surrounding the holidays. The County Administrator found that the doctor's note requirement in each case was reasonable and denied the grievance. Local 2287 demanded binding arbitration. This petition ensued.

The employer argues that it has a managerial prerogative to discipline employees. Local 2287 responds that N.J.S.A. 34:13A-5.3 authorizes binding arbitration of minor disciplinary disputes.

Our scope of negotiations jurisdiction is narrow.

Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J.

144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [78 N.J. at 154]

N.J.S.A. 34:13A-5.3 authorizes negotiations over disciplinary review procedures, including binding arbitration of minor disciplinary disputes in Civil Service jurisdictions.

Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997). Minor discipline includes fines and suspension of five days or less.

This disciplinary dispute over the docking of holiday pay may therefore be submitted to binding arbitration. Id. at 295.<sup>1/</sup>


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<sup>1/</sup> The grievances do not appear to and cannot challenge the employer's prerogative to require sick leave verification. See Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). Local 2287 instead claims that the grievants' supervisors authorized their absences without requesting a doctor's note.

ORDER

The request of Mercer County for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, and Klagholz voted in favor of this decision. None opposed. Commissioner Ricci abstained from consideration. Commissioner Wenzler was not present.

DATED: September 24, 1998  
Trenton, New Jersey  
ISSUED: September 25, 1998