

P.E.R.C. NO. 2002-63

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC,

Petitioner,

-and-

Docket No. SN-2002-39

COMMUNICATIONS WORKERS OF  
AMERICA, LOCAL 1032, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the County of Passaic for a restraint of binding arbitration of a grievance filed by the Communications Workers of America, Local 1032. The grievance contests a policy requiring employees to submit doctors' notes for weekend call outs and docking their pay if they do not. The Commission holds that the County has a prerogative to require its employees to submit doctors' notes when calling out on weekends. However, the Commission does not restrain arbitration over any issue of who pays for any required doctors' notes. The Commission also does not restrain arbitration over any docking of pay or discipline that may stem from an employee not producing a doctor's note upon returning to work.

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, Genova, Burns & Vernoia, attorneys  
(Brian W. Kronick, on the brief)

For the Respondent, Weissman & Mintz, attorneys  
(Judianne Chartier, on the brief)

DECISION

On February 28, 2002, the County of Passaic petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by the Communications Workers of America, Local 1032, AFL-CIO. The grievance contests a policy requiring employees to submit doctors' notes for weekend call outs and docking their pay if they do not.

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

Local 1032 represents employees at the Youth Reception and Rehabilitation Center in the titles of senior juvenile detention officer, juvenile officer, laundry worker, building service worker, supervising maintenance repairer, maintenance repairer and communication officer. The parties' collective

negotiations agreement is effective from January 1, 1999 through December 31, 2002. The grievance procedure ends in binding arbitration.

Article 6.2.4 provides:

The supervisor must monitor the attendance cards for any type of patterning abuse and/or excessive absenteeism.

1. Patterning - Patterning is defined as the repeated use of sick days in conjunction with days off, before, after and on a holiday, or calling-in on the same day(s) of the week.
2. Excessive Use of Sick Time - Excessive use of sick time is determined when an employee has exhausted all of his/her sick time. In accordance with Civil Service Rules, the Supervisor has the right to request a physician's note for one day if the Supervisor feels there is "just cause" for the request.
3. Abuse of Sick Time - An employee is considered to be abusing sick time when the benefit is used for other than what it is intended (IE: sick day for shopping).
4. Disciplinary Proceeding - Violation of Departmental Policy regarding absenteeism includes excessive use, patterning and abuse of sick time. Employees should be disciplined in accordance with the established procedures. Also, any violation of the absenteeism policy should be noted on the employee's performance evaluation.

Appendix B of the agreement contains an absenteeism policy. It sets forth the procedure when certain levels of absences occur. It also provides that when abuse is suspected, medical verification shall be required for the absence and may be required

for future absences if the employee is found guilty of abuse. If there is a pattern of abuse, the matter is referred to the director to consider disciplinary action.

On June 27, 2000, the director issued a memorandum concerning sick calls on weekends and holidays. It stated:

This is to advise all staff members that any employee who fails to report for duty on a scheduled weekend or holiday must substantiate that illness with a physician's note.

Employees who do not substantiate their illness will be docked accordingly and may be subject to disciplinary action.

On August 4, 2000, the memorandum was reissued to all staff. On August 16, the County's personnel officer issued a notice concerning weekend attendance. It stated, in part:

Unfortunately, the attendance [absenteeism?] at the center continues to increase resulting in employee mandatory overtime and low morale. Therefore we are asking for your help to improve the working conditions for yourself and your fellow co-workers.

As indicated in previous memorandums from the Youth Center Director, all employees who call in sick on weekends are required to submit physician statements verifying the illness. You are expected to submit the physician statement upon returning for duty. Failure to comply with this policy may result in pay deduction, along with major disciplinary proceedings.

On April 15, 2001, Local 1032 filed a grievance. It stated:

The Center is operating under a policy that docks all staff for calling off on weekends without a doctor's note. This policy violates Article 6.2.4 of the contract between Local 1032 and Passaic County.

As a remedy, the grievance seeks discontinuance of the policy and reimbursement to all staff who were docked pay.

The County denied the grievance. It asserted that the grievance was untimely.

Local 1032 demanded arbitration. The demand identified the issue to be arbitrated as: "the employer has imposed a unilateral policy regarding doctor's notes request for weekend call outs. This policy is a violation of the Contractual Agreement between the County and the Union." This petition ensued.

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. [Id. at 154]

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the employer may have. We specifically do not consider the assertions that the grievance was untimely or that the issues raised in Local 1032's brief go beyond the grievance and cannot be arbitrated. Montclair Tp., P.E.R.C. No. 2000-107, 26 NJPER 310 (131126 2000).

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a dispute is mandatorily negotiable and legally arbitrable if:

(1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. [Id. at 404-405]

The parties' interests must be balanced in each case based on the issues and facts presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The County asserts that it has a managerial prerogative to implement a sick leave verification policy and to require doctors' notes for weekend absences. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). Local 1032 responds that the policy is disciplinary and that it may deter employees from using their negotiated sick leave benefits, including workers with no attendance problems who will be docked a day's pay for a weekend or holiday absence. It points out that a person with a 24-hour flu or nausea will often forego a doctor's visit, especially on a weekend when most doctor offices are closed. It cites Montclair Tp.; Borough of Rutherford, P.E.R.C. No. 97-47, 22 NJPER 400 (¶27218 1996); and other cases.

In Piscataway, we applied Local 195's negotiability tests to the issue of sick leave verification. We held that the employer had a prerogative to establish a verification policy and to use "reasonable means to verify employee illness or disability." Id. at 96. However, we distinguished the mandatorily negotiable issue of whether a policy has been properly applied to deny sick leave benefits. We stated:

In short, the Association may not prevent the Board from attempting to verify the bona fides of a claim of sickness, but the Board may not prevent the Association from contesting its determination in a particular case that an employee was not actually sick. Id. at 96.

Since Piscataway, we have decided dozens of cases involving sick leave verification policies. We have repeatedly held that an employer has a prerogative to require employees to produce doctors' notes verifying their sickness. See, e.g., Morris Cty. and Morris Cty. Sheriff, P.E.R.C. No. 2002-33, 28 NJPER 58 (¶33020 2001); Rahway Valley Sewerage Auth., P.E.R.C. No. 96-68, 22 NJPER 137 (¶27068 1996); State of New Jersey (Dept. of Treasury), P.E.R.C. No. 95-67, 21 NJPER 129 (¶26080 1995). But we have also repeatedly held that the issues of who pays for doctors' notes and what the penalties will be for violating a policy are mandatorily negotiable. See, e.g., City of Elizabeth v. Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985); Hudson Cty., P.E.R.C. No. 2001-23, 27 NJPER 4 (¶32003

2000); Hudson Cty., P.E.R.C. No. 97-90, 23 NJPER 132 (¶28064 1997); Rahway Valley Sewerage Auth.

Applying the balancing test in light of these precedents and the particular issues and facts, we hold that the County has a prerogative to require its employees to submit doctors' notes when calling out on weekends. The employer has experienced continuing absenteeism problems on weekends and seeks to alleviate its staffing shortages by reducing suspected sick leave abuse. We will thus restrain arbitration over the first paragraph of the director's June 27 memorandum.

However, we will not restrain arbitration over any issue of who pays for any required doctors' notes. Elizabeth. Nor will we bar arbitration over any docking of pay or discipline that may stem from an employee not producing a doctor's note upon returning to work. We do not believe that the employer's interest in seeking to reduce sick leave abuse compels an automatic docking of pay in all cases, potentially including some cases where workers were truly ill but could not see a doctor on a weekend. Visiting a doctor on a Saturday or Sunday may not be possible if emergency care is not needed and a doctor's office is closed; an inability to obtain a doctor's note may be excusable in some instances.

#### ORDER

The request of the County of Passaic for a restraint of binding arbitration is granted to the extent the grievance



challenges the first paragraph of the Center Director's June 27, 2000 memorandum. The request is otherwise denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Katz abstained from consideration. Commissioner McGlynn was not present.

DATED: May 30, 2002  
Trenton, New Jersey  
ISSUED: May 31, 2002