

P.E.R.C. NO. 91-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-90-63

RIDGEFIELD PARK
EDUCATION ASSOCIATION,

SYNOPSIS

The Public Employment Relations Commission grants the Ridgefield Park Board of Education's request for a restraint of binding arbitration of a grievance filed by the Ridgefield Park Education Association. The grievance contests the Board's right to require teachers to produce verification of sick leave for April 24, 1989. The Commission finds that the Board has a right to verify that employees were really sick. However, the cost of obtaining a doctor's note is mandatorily negotiable.

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RIDGEFIELD PARK
EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, attorneys
(James L. Plosia, Jr., of counsel)

For the Respondent, Klausner & Hunter, attorneys
(Stephen E. Hunter, of counsel)

DECISION AND ORDER

On March 29, 1990, the Ridgefield Park Board of Education petitioned for a scope of negotiations determination. The Board seeks to restrain binding arbitration of a grievance filed by the Ridgefield Park Education Association. The grievance contests the Board's decision that employees absent on April 24, 1989 verify that they were sick.

Both parties have filed briefs and documents. These facts appear.

The Association is the majority representative of a broad-based unit of the Board's employees. Article 18B of the parties' collective negotiations agreement states that employees,

when requested by the superintendent or his agent, shall present a doctor's certificate in case of absence due to personal illness of five or more consecutive days. The contract's grievance procedure ends in binding arbitration.

As part of an attendance improvement plan, the Board's superintendent required that all teachers absent on April 24, 1989, the Monday after the Easter holiday, produce medical verification of illness. The superintendent claimed that a plan was necessary since educational staff absenteeism was considered excessive under State monitoring requirements.

Four teachers were absent on April 24, 1989. All of them produced the requested verification. No sick leave benefits were denied.

On May 4, 1989, the Association filed a grievance contending that requiring a medical verification for the April 24 absence was arbitrary. The Board denied the grievance and the Association demanded arbitration. This petition ensued.

The Board asserts that N.J.S.A. 18A:30-4 preempts the issue of sick leave verification^{1/} and that the implementation of a sick leave verification policy is a managerial prerogative. Moreover, the Board asserts that its policy cannot be challenged since no individuals lost sick leave benefits.

^{1/} N.J.S.A. 18A:30-4 provides: In case of sick leave claimed, a Board of Education may require a physician's certificate to be filed with the secretary of the Board of Education in order to obtain sick leave.

The Association contends that it challenges the policy's application, not its implementation. It contends that teachers suffered from having to pay doctors' fees and having their privacy rights invaded.

The implementation of a sick leave verification policy is a managerial prerogative. In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982), we said that "the Board...has a managerial right to implement measures to control abuse of sick leave by employees. In this endeavor, it may utilize reasonable means to verify employee illness or disability." This includes implementing a sick leave verification policy for a high absenteeism date. See, e.g., Jersey City Med. Center, P.E.R.C. No. 87-5, 12 NJPER 602 (¶17226 1986).


The application of a sick leave verification policy, however, may be subject to contractual grievance procedures. While an employer has the right to require proof of illness, employees have the right to grieve decisions denying paid sick leave. Piscataway. Moreover, the issue of who pays for a doctor's note is mandatorily negotiable. Elizabeth and Elizabeth Fire Officers Ass'n, Loc. 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985); Bor. of Cresskill, P.E.R.C. No. 89-19, 14 NJPER 569 (¶19239 1988).

Here, the employer had a right to verify that employees were really sick. No sick leave benefits were denied and no measures were taken that unduly invaded privacy. However, the issue of the cost of obtaining a doctor's note is mandatorily negotiable.

ORDER

The Board's request for a restraint of arbitration is granted to the extent the grievance challenges the employer's right to require teachers absent on April 24, 1989 to submit a doctor's note. The cost of obtaining a doctor's note is mandatorily negotiable.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Smith, Wenzler, Johnson and Goetting voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration. Commissioner Reid was not present.

DATED: November 26, 1990
Trenton, New Jersey
ISSUED: November 27, 1990