

D.U.P. No. 2013-3

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

In the Matter of

TOWNSHIP OF PISCATAWAY,

Respondent,

-and-

Docket No. CO-2012-183

PBA LOCAL NO. 93,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint and dismisses an unfair practice charge filed against the Township of Piscataway. The Director finds that the Police Department Rules and Regulations which permits the Police Department to request documentation from a medical provider for an employee's immediate family member is an appropriate non-negotiable, managerial prerogative as a means of sick leave verification.

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Appearances:

For the Respondent,
Trimboli & Prusinowski, attorneys
(Stephen E. Trimboli, of counsel)

For the Charging Party,
Marc D. Abramson, Consultant

REFUSAL TO ISSUE COMPLAINT

On January 17, 2012, Police Benevolent Association, Local 93, (PBA) filed an unfair practice charge against the Township of Piscataway (Township), alleging that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-5.4a(1) and (5)^{1/} when it required a police officer to

^{1/} These provisions 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. (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."

produce a doctor's note substantiating his wife's illness. The PBA contends that this action unilaterally changed the Township's sick leave procedures, and demand that the Township seek to negotiate any changes to the sick leave procedures.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I will decline to issue a complaint. N.J.A.C. 19:14-2.3. Based upon the following facts, I find that the complaint issuance standard has not been met, and the charge should be dismissed.

The PBA represents all rank and file police officers employed by the Township of Piscataway. The parties' last collective negotiations agreement expired on December 31, 2010. The parties are currently in mediation for a successor agreement. The parties' collective negotiations agreement is silent regarding the procedure for taking sick leave to care for a sick family member. However, both the Township's Personnel Manual and the Department's Rules and Regulations address the procedure as follows:

Personnel Manual

Permissible Uses for Sick Leave, Chapter 4,
Section 2(D) states that sick leave shall be

granted for "illness of a member of the employee's immediate family."

Notice, Chapter 4, Section 2(B) states in pertinent part:

. . . For any sick leave a doctor's certification may be required, if requested by the employee's Department Head or Supervisor. . . Failure to provide a certification may be cause for a denial of sick pay. At the discretion of Township, a doctor's note may be required at any time where abuse is suspected.

Department's Rules and Regulations

Sickness in Family, Volume 4, Chapter 9, (J)(1) states in pertinent part:

When an employee's immediate family member becomes seriously ill, a sickness in family leave of up to three (3) days may be granted. The leave shall not exceed the employee's unused sick leave. The Duty Watch Commander will be responsible for obtaining all information at the time of the request before it is granted. The police department can request a signed report from the member's doctor.

On or about October 30, 2011, the Township requested an officer to provide certification from his wife's doctor for sick leave taken on her behalf. The officer failed to provide any documentation and was subsequently denied sick leave for the day. The PBA asserts this action was a unilateral change in a term and condition of employment and "constitutes an overly intrusive non-enforceable requirement for non-employees." The Township asserts that this was not a new practice and that officers have been

required to produce a doctor's note for sickness in the family for years.

ANALYSIS

In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982), the Commission held that the employer had a managerial prerogative to establish a sick leave verification policy and to use "reasonable means to verify employee illness or disability." Id. at 96. In subsequent years, the Commission has decided multiple cases involving sick leave verification policies. It has repeatedly held that employers have 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). The prerogative includes a public employer's right to verify the illness of family members attended to by its absent employees. Matawan-Aberdeen Reg. School Dist., P.E.R.C. No. 91-71, 17 NJPER 151 (¶22061 1991); Rutherford Bor., P.E.R.C. No. 97-47, 22 NJPER 400 (¶27218 1996).

The Township asserts that it has two policies which require officers to provide a doctor's note for family sickness, the Township Personnel Manual and the Department's Rules and Regulations. The PBA disputes that the Township's Personnel

Manual applies to its unit employees because they are governed by a collective negotiations agreement. The Personnel Manual states in part, "This Manual contains the policies and procedures adopted by the Township pertaining to all personnel (including represented and non-represented, full and part time, hourly seasonal and per diem) employed by the Township." For purposes of this case, I will not rely upon terms set forth in the Township Personnel Manual.

The parties agree that the Department's Rules and Regulations governing sick leave procedures apply to officers employed by the Township. This procedure provides that in the event of an employee's immediate family member's serious illness, "[t]he Police Department can request a signed report from the member's doctor." The PBA argues that the Township can "request" a doctor's note, but cannot require it.

I disagree. An officer has an inherent obligation to furnish this documentation upon the Department's request. Considering long-established Commission precedent declaring that verification of illness is a managerial prerogative and that doctor notes are a non-negotiable means of verification, I find that the Township has merely acted within its prerogative.

I also disagree that the Township's policy is "overly intrusive." The Commission has delineated reasonable applications of sick leave verification from unreasonable ones,

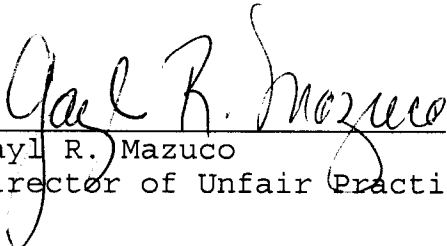
which "unduly interfere with an employee's welfare." Belmar Bor., P.E.R.C. No. 2003-63, 29 NJPER 104 (¶32 2003). No facts have been alleged which suggest that the demand for a doctor's note constituted an "egregious or unjustifiable violation of privacy." Dumont Bor., P.E.R.C. No. 2003-7, 28 NJPER 337, 340 (¶33118 2002). Accordingly, I dismiss the 5.4a(5)allegation.

Finally, the PBA has alleged no facts to demonstrate that the Township has interfered with, restrained, or coerced its members in the exercise of their rights guaranteed by the Act. Accordingly, I also dismiss the 5.4a(1) allegation.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Gayl R. Mazuco
Director of Unfair Practices

DATED: February 4, 2013
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by February 14, 2013.