

I.R. NO. 92-6

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Petitioner,

-and-

Docket No. SN-92-5

KEARNY POLICEMEN'S BENEVOLENT ASSOCIATION  
LOCAL 21,

Respondent.

Appearances:

For the Petitioner  
Kenneth J. Lindenfelser, of counsel

For the Respondent  
Schneider, Cohen, Solomon, Leder & Montalbano, attorneys  
(David Solomon, of counsel)

INTERLOCUTORY DECISION

On July 25, 1991, the Town of Kearny ("Town") filed a scope of negotiations petition with the Public Employment Relations Commission ("Commission") seeking a determination as to whether certain matters in dispute between the Town and Kearny PBA Local 21 ("PBA") are within the scope of negotiations. N.J.S.A. 34:13A-5.4.

The petition was accompanied by an Order to Show Cause and supporting documents requesting that the PBA show cause why an Order should not be entered staying the arbitration of the grievance underlying this dispute pending a final determination of the negotiability issue by the Commission. The Order was executed and a telephone hearing was conducted on August 22, 1991. The PBA

submitted a response to the show cause request prior to the hearing and both parties argued orally. I granted an interim restraint of arbitration. This decision memorializes that ruling.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>1/</sup>

The PBA is the majority representative of police officers employed by the Town. On January 23, 1991, the Chief of Police issued a general order addressing the issue of sick leave stating that there has been an abuse of the sick leave benefit and that "UNDER THE NEW JERSEY ADMINISTRATIVE CODE OF CIVIL SERVICE RULES 4:1-16.9 CAUSE FOR REMOVAL FROM THE SERVICE CAN BE:

1. INCAPACITY DUE TO MENTAL OR PHYSICAL DISABILITY
2. CHRONIC OR EXCESSIVE ABSENTEEISM

EFFECTIVE IMMEDIATELY ALL PERSONNEL WHO MANIFEST AN ABSENCE RECORD WHICH MIGHT BRING THEM INTO VIOLATION OF CIVIL SERVICE RULE WILL RECEIVE A LETTER FROM THE DEPARTMENT AS TO THEIR STATUS. THEIR SICK RECORD WILL THEN BE CLOSELY MONITORED.

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<sup>1/</sup> Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

ANYONE FOUND IN VIOLATION OF THE AFOREMENTIONED CIVIL SERVICE RULES WILL HAVE APPROPRIATE DISCIPLINARY ACTION TAKEN AGAINST THEM UP TO AND INCLUDING REMOVAL FROM THE SERVICE."

On January 24, 1991, a second notice went out to certain individual members of the force in which the total number of sick days used during the past year by that individual was listed. The sick days were further broken down as to which sick days were supported by doctors notes and which were not. This notice again referred to Civil Service Rule 4:1-16.9 (removal or other disciplinary action for excessive use of sick leave) and stated that, "the purpose of this letter is to advise you that your absenteeism record will be closely monitored as a result of the number of days taken off in 1990. Chronic or excessive absenteeism will not be tolerated." These notices were placed in the respective officers' personnel files.

The PBA filed a grievance over whether the Town had the right to issue these notices to its police officers and whether the Town has the right to include these notices in the officers' personnel files. The PBA concedes that sick leave verification is not negotiable. It contends, however, that these letters were not advisory notices but, rather, they implied a violation of sick leave policy and were a form of discipline.

The Town argues that it has a non-negotiable, managerial prerogative to issue notices monitoring sick leave to its police officers and a non-negotiable managerial prerogative to retain these notices in the officers' personnel files. The Town cites Hunterdon

City, P.E.R.C. No. 83-46, 8 NJPER 607 (¶13287 1982); Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224, 226 (¶16087 1985); and Holland Tp. Bd. of Ed., P.E.R.C. No. 87-34, 12 NJPER 824, 827 (¶17316 1986).

In Franklin, the Commission held that the content of personnel files is non-negotiable.

Here, the Town has the right to monitor sick leave, to notify employees of their use of sick leave and to keep records of sick leave use in employees' personnel files.

There may be a component of discipline in the notices issued by the Town. However, it is difficult to carve out the discipline component from the Town's inherent right to monitor and verify sick leave. I believe it is best to grant an interim restraint of the arbitration to allow the Commission to make a full determination on the record in this matter.

Accordingly, I restrained the arbitration.

  
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Edmund G. Gerber  
Commission Designee

DATED: August 27, 1991  
Trenton, New Jersey