I.R. NO. 2001-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL FIRE AND RESCUE,

Respondent,

-and- Docket No. CO-2001-224

NORTH HUDSON FIRE OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

On February 1, 2001, North Hudson Regional Fire and Rescue implemented a sick leave policy. The North Hudson Fire Officers Association alleges that the newly issued policy unilaterally changes terms and conditions of employment during the course of collective negotiations and seeks to restrain Regional from implementing it. Regional contends that the policy constitutes a sick leave verification program and, therefore, it has a managerial prerogative to implement the policy. Further, Regional claims that the policy represents a memorialization of the current terms and conditions of employment, consequenlty, it has not implemented any changes which require negotiaions. The Commission designee found that for the most part, the policy represents a sick leave verification program and implementation constitutes an exercise of inherent managerial prerogative. He also found various elements of the policy to be procedural in nature and, therefore, negotiable. However, the designee found that the Association had not established that the procedural elements constitute changes in terms and conditions of employment. He found one aspect of the policy to be a change in negotiable terms and conditions of employment and enjoined Regional from implementing that portion of the policy.

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Appearances:

For the Respondent,
Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Michael A. Bukosky, of counsel)

INTERLOCUTORY DECISION

On February 15, 2001, the North Hudson Fire Officers Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the North Hudson Regional Fire and Rescue (Regional) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7).[1/] The

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1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

Association alleges that Regional unilaterally changed mandatorily negotiable terms and conditions of employment by implementing a new leave policy. The unfair practice charge was accompanied by an application for interim relief. On February 16, 2001, I executed an order to show cause and set a return date for March 14, 2001. The Association seeks to restrain the implementation of the new leave policy. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. On March 23, 2001, the Association filed a supplemental affidavit concerning the issue of whether a currently pending unfair practice charge (Docket No. CO-2000-34) challenging Rules and Regulations issued by Regional in April 1999 which includes a leave policy which appears to be similar to the February 1, 2001 policy, impacts on the Association's application for interim relief in this matter. On April 4, 2001, Regional filed a reply. The following facts appear.

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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. (7) Violating any of the rules and regulations established by the commission."

Regional began operations in January 1999. Regional is a public employer and was created under the Consolidated Municipal Services Act, N.J.S.A. 40:48B-1 et seq. Regional is composed of what was previously five separate fire departments of the municipalities of North Bergen, Union City, Weehawken, Guttenberg and West New York. A separate employee organization representing fire officers existed in each of the respective municipalities with their own collective agreements.[2/] On March 16, 1999, the Commission issued a Certification of Representative to the Association establishing it as the majority representative of Regional's fire officers. The parties are now in the process of negotiating their initial collective agreement and are currently engaged in interest arbitration. In accordance with the terms of N.J.S.A. 40:48B-4.2, it appears that the terms and conditions of employment described in the predecessor agreements must be maintained until a new collective agreement is put into effect by the parties.

On February 1, 2001, Regional issued a department leave policy which replaced all previous orders issued regarding funeral (bereavement) leave, emergency leave, injury leave and medical leave. To the extent that the new leave policy conflicted with previously issued Regional Rules and Regulations, the new leave policy would prevail over any conflicting provisions.

2/ Hereinafter, I refer to the collective agreements which were in effect in each of the respective municipalities prior to the formation of Regional as the "predecessor agreements."

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

I now address the issue of whether the Association has established irreparable harm. Where I find below that Regional has unilaterally changed a term and condition of employment during the course of negotiations, I also find that the Association has thereby established the requisite element of irreparable harm. Where an employer is found to have unilaterally changed terms and conditions of employment during any stage of the negotiations process, such change has a chilling effect on employee rights guaranteed under the Act and undermines labor stability. Galloway Tp. Bd. of Ed., v Galloway Tp. EA, 78 N.J. 25 (1978). Further, the parties are currently engaged in interest arbitration. N.J.S.A. 34:13A-21 states:

> During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the

> other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

Thus, the Act expressly prohibits any change in terms and conditions of employment while parties are engaging in the interest arbitration process. In light of the foregoing, any change in the February 1, 2001 leave policy which also constitutes a modification in terms and conditions of employment prior to completion of negotiations constitutes irreparable harm.

Further, in weighing the relative hardship to the parties resulting from the grant or denial of interim relief, I find that the scale tips in favor of the Association. To the extent that I find below that a unilateral change has occurred in a term and condition of employment during the course of negotiations and while in the midst of interest arbitration, the Association will suffer irreparable harm. Regional will suffer little harm by being required to adhere to the collective negotiations process and maintain the status quo with respect to negotiable provisions in the February 1, 2001 leave policy. Moreover, the public interest is fostered by requiring Regional to adhere to the tenants of the Act. Therefore, having found irreparable harm and having weighed the relative hardship to the parties, I now address below whether the Association has established the requisite likelihood of prevailing in a final Commission decision.

Regional contends that much of the new leave policy represents a memorialization of the pre-existing terms and

conditions of employment or are verbatim publications of provisions contained in one or more of the individual predecessor agreements in effect prior to the creation of Regional. Clearly, to the extent that any provision in the new leave policy is a verbatim reproduction of a term contained in one or more of the predecessor agreements, charging party can show no change in terms and conditions of employment for those fire officers who were previously employed by the municipality which contained such term in its predecessor agreement. Thus, to the extent I issue any grant of interim relief, such order does not apply to employees covered by a predecessor agreement which contains a provision which is a verbatim reproduction of Regional's newly issued leave policy. See N.J.S.A. 40:48B-4.2. However, Regional contends that the February 1, 2001 leave policy is largely a compilation of previous general orders and Rules and Regulations which were issued over one year ago, for example, policy statements issued on October 1, 1999 and January 2000 and, thus, represents the existing terms and conditions of employment for unit employees. Regional claims that in or about April 1999, representatives from the North Hudson Fire Fighters Association, not the majority representative in this case, and management met to negotiate a uniform sick leave policy to be instituted within Regional. Such policy was agreed to and became effective on or about April 14, 1999 through the issuance of a general order. (Affidavit of Michael J. DeOrio, Regional's Executive Director of Operations.) The Association disputes

Regional's claim that the April 14, 1999 general order concerning leave represents the past practice establishing the condition of employment for the employees it represents. The Association cites a currently pending unfair practice charge which it filed against Regional on August 13, 1999, (Docket No. CO-2000-34) alleging that in April 1999, Regional unilaterally implemented the North Hudson Fire and Rescue Rules and Regulations which included similar provisions relating to leave at issue in this matter. The Association asserts that the August 13, 1999 charge serves as its formal objection to the implementation of the Rules and Regulations which Regional issued in April 1999.

I note that Regional makes no claim that it negotiated and reached agreement with the Association; Regional reached an agreement with an employee organization representing a different negotiations unit.3/ Regional contends that the February 1, 2001 general order is mostly a reflection of previous policy statements issued on October 1, 1999, January 1, 2000, or March 1, 2000, and, therefore, constitutes the existing conditions of employment in February 2001. Regional claims that the Association has not contested and is now out of time to contest the policy statements issued after the Association's August 1999 unfair practice charge. In response, the Association claims that its August 13, 1999 charge

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3/ As noted, Regional negotiated with the employee organization representing firefighters, not fire officers. The charging party in this case is the employee organization representing the fire officers.

should serve as a continuing objection to all future general orders and rules and regulations promulgated by Regional. There is no evidence that the Association has acted to contest Regional's policy statements issued in October 1999, January 1, 2000, and March 1, 2000. While it is up to a hearing examiner after a plenary hearing and, ultimately, the Commission, to decide the legal implications of the August 13, 1999 charge, for purposes of this decision I will treat the October 1999, January 1, 2000 and March 1, 2000 policy statements as reflective of the existing terms and conditions of employment in effect on February 1, 2001, since the Association has not independently acted to contest those issuances.

Moreover, it appears that the February 1, 2001 general order does not constitute a change in terms and conditions of employment concerning those specific elements in the general order which are subject to or constitute restatements of express terms contained in any of the predecessor collective agreements. In other words, language in the February 1, 2001 Rules and Regulations which may derive from a predecessor collective agreement in West New York, for example, represents the existing term and condition of employment for fire officers previously employed by West New York, but not necessarily for other unit employees employed by Regional from other constituent municipalities. Accordingly, where Regional has referenced employees' respective predecessor collective agreements in the February 1, 2001 Rules and Regulations, as, for example, in the definition of funeral leave and emergency leave, it

appears that no change in terms and conditions of employment has occurred. The conditions of employment reflected in the predecessor agreement(s) has been maintained. To the extent the parties disagree regarding the application of the use of funeral or emergency leave, that dispute is properly resolved through the negotiated grievance procedures contained in the respective predecessor agreements. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

This case, to a large extent, is controlled by Piscataway Tp. Board of Education, P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982), wherein the Commission established a public employers right to implement a sick leave verification policy subject to negotiation of economic and certain procedural matters. In Piscataway, 8 NJPER at 96, the Commission stated that the employer "...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." The Commission noted that an employer has a managerial prerogative to monitor the performance of its work force. Id. The Commission went on to find that "the mere establishment of a verification policy is the prerogative of the employer. The application of the policy, however, may be subject to contractual grievance procedures." Thus, the Commission held that "...the Association may not prevent [an employer] from attempting to verify the bona fides of a claim of sickness, but the [employer] may not prevent the Association from contesting its

determination in a particular case that an employee was not actually sick." Id. The Commission further held that "...even if an employee suffers no deprivation of a sick leave benefit, he may contest the application of the policy if particular home visitations or telephone calls were for the purposes other than implementing a reasonable verification policy or constituted an egregious and unjustifiable violation of an employee's privacy." Id. (emphasis in original.)

I now address the individual provisions of the February 1, 2001 Rules and Regulations specifically raised by the charging party. Except as otherwise noted, I find that the Association has not established the requisite likelihood of success which would warrant the grant of interim relief.

The Association contends that certain definitions in section 2 of the leave policy regarding medical leave, extended medical leave and injury leave constitute changes in mandatorily negotiable terms and conditions of employment. The Association claims that by adopting these definitions, Regional has unilaterally restricted the scope of sick leave. Regional argues that these definitions do not constitute a change in conditions of employment. Whether or not these definitions constitute a change in mandatorily negotiable terms and conditions of employment is appropriately determined through a plenary hearing. The Association does not indicate the specific terms and conditions of employment which existed prior to the issuance of these definitions in the February

1, 2001 leave policy. Consequently, I issue no order with respect to the Association's alleged change in the definition of medical leave, extended medical leave or injury leave. As noted above, the definitions of funeral and medical leave reference the predecessor agreements.

With regard to sections 3.1(a), (b) and (c), the Association asserts that Regional has sought to limit entitlement to sick leave by requiring officers to contact the Department concerning any type of leave request, and that the above-cited sections implement new procedures by which employees must request leave. The Association contends that such procedures are "unduly burdensome" and seek to restrict the use of sick leave. The Association claims that such provisions constitute unilateral changes in conditions of employment. Regional contends that sections 3.1(a), (b) and (c) do not represent changes in the existing practice. I have reviewed these sections against the general orders issued on October 7, 1999, January 1, 2000, and March 1, 2000. I did not find any provision in those general orders covering section 3.1(a), (b) or (c). Thus, I do not find that section 3.1(a), (b) or (c) necessarily constitutes the existing practice. Additionally, it appears that although many procedures may be negotiable, employer's have a managerial prerogative to adopt, as part of a sick leave verification program, a reasonable and unintrusive requirement that employees follow certain specific procedures. Such procedures are inseparable and fundamental aspects

of the managerial prerogative which Piscataway recognized. See Newark Bd. of Ed., P.E.R.C. No. 85-26, 10 NJPER 551 (¶15256 1984). Consequently, the Association's request for interim relief regarding those sections is denied.

Section 3.1(d) requires unit employees to report the use of medical leave at least one hour prior to the commencement of their scheduled duty day. The Association claims that unit employees will not be allowed to use sick leave to which they are entitled if they do not comply with this provision. The Commission has held that an employer may require its employees to report a known illness at least one hour before they otherwise would have reported to work as part of its verification policy. Rahway Valley Sewerage Authority, P.E.R.C. No. 96-69, 22 NJPER 138 (¶27069 1996); Matawan-Aberdeen Regional School District P.E.R.C. No. 91-71, 17 NJPER 151 (¶22061 1991). In light of the foregoing decisions, interim relief is denied.

Section 4.1(a) of the February 1, 2001 leave policy provides as follows:

> Employees requiring medical leave or injury leave as the result of illegal activities, self-inflicted incapacitation or chemical or alcohol ingestion shall be subject to disciplinary action.

The Association claims that this provision restricts the illnesses or injuries for which unit employees may use sick leave. The Association contends that this restriction seeks to alter or modify the conditions under which an employee may take leave,

therefore, the provision must be negotiated before it is implemented. Regional contends that section 4.1(a) does not limit the illness for which medical leave is provided but simply advises the employee that consequences may flow from the activities addressed in this subsection. Regional claims that this provision places no limits on the use of leave. I find that section 4.1(a) does not limit the use of medical or injury leave, but rather advises employees of Regional's intention to take disciplinary action as the result of the employees' engaging in certain types of activities. The Commission has held that the issue of what disciplinary penalties will be imposed for abusing sick leave is mandatorily negotiable. See Township of Montclair, P.E.R.C. No. 2000-107, 26 NJPER 310 (¶31126 2000); City of Elizabeth, P.E.R.C. No. 2000-42, 26 NJPER 22 (¶31007 1999). However, an employer has the right to decide whether there is an abuse of sick leave and invoke a disciplinary sanction. City of Elizabeth, 26 NJPER at 24. Section 4.1(a) merely advises employees that Regional will impose disciplinary action under certain circumstances, but does not state the actual disciplinary penalties which may be imposed. Once an employer decides that there is abuse and invokes a disciplinary sanction, arbitration may be invoked to challenge the propriety of the employers actions. See Mainland Regional High School District, P.E.R.C. No. 92-12, 17 NJPER 406 (¶22192 1991). However, it appears that Regional has a managerial prerogative to issue section 4.1(a), consequently, interim relief is denied.

Section 4.1(c) states the following:

> Employees on medical leave and injury leave are subject to monitoring by the Department. Monitoring may be by telephone, or visits to the residence of the Employee on leave by the Department representative or a Department appointed physician or nurse. Employees requesting medical leave may be required to report to a Department designated medical facility.

The Association focuses upon the last sentence of 4.1(c) and argues that the fee for and selection of the physician are mandatorily negotiable. Clearly, the Commission has held that the issue of who pays the doctors' fees is mandatorily negotiable. Town of Aberdeen, P.E.R.C. No. 90-24, 15 NJPER 599 (¶20246 1989). The employer contends, and a facial reading of 4.1(c) indicates, that it does not state that the employee would be responsible for the cost of the examination. Further, the Association does not cite, nor have I found through research, a Commission decision which holds that the selection of the physician is a mandatorily negotiable subject.4/ A plain reading of the 4.1(c) sentence at issue does not appear to be contrary to the Commission's general principles concerning sick leave verification which allows an employer to take steps to verify whether an employee is abusing sick leave usage. The provision does not appear to preclude the employee from

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4/ The Association cites Borough of Roselle Park, H.E. No. 93-31, 19 NJPER 375 (¶24167 1993), a hearing examiner's recommended decision, in support of the proposition that the selection of the physician is mandatorily negotiable. I do not base a holding on that recommended decision alone.

receiving medical care from the employee's personally selected physician. Consequently, interim relief is denied.

Section 4.1(d) provides as follows:

> Whenever an employee is out on medical leave, extended medical leave or injury leave, he shall remain in his residence at all times. If it is necessary for an Employee on medical leave or injury leave to leave his residence, that Employee shall notify the appropriate Duty Chief during normal business hours. Fire Control shall be notified after 22:00 hours. The Employee shall provide the address and telephone number where he can be contacted and his reason for leaving his residence. Upon returning home, the Employee shall notify the Duty Chief or Fire Control.

The Association argues that section 4.1(d) is overly broad since it may require employees to remain in residence around the clock. Charging party claims that the requirement in section 4.1(d) calling for employees to advise Regional of the address and telephone number where the employee can be contacted and the reason for leaving the residence is also overly broad and, therefore, mandatorily negotiable. Regional argues that unit employees are currently required to remain at home pursuant to the January 1, 2000 general order, paragraph 4. While Regional concedes that the February 1, 2001 general order differs from the January 1, 2000 general order, it claims that it has a managerial prerogative to make the changes reflected in the February 1, 2001 general order. Moreover, Regional argues that its requirement of having the employee state the reason for leaving the residence is not unduly intrusive and does not constitute an invasion of privacy.

The Commission has addressed the issue of requiring an employee on sick leave to remain at home. In Township of Maplewood, P.E.R.C. No. 2000-9, 25 NJPER 374, 376 (¶30163 1999), the Commission stated:

> There may be circumstances where requiring an employee on sick leave to remain at home is unreasonable.
>
> * * *
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> Having an employee stay at home when sick is not purely an issue of sick leave verification. It also involves restrictions on employees who may be too sick or injured to work, but not too sick or injured to engage in other activities.

However, the Commission found the employee organization's proposal to prohibit an employer from requiring that a sick or injured employee be at home unless ordered by a treating physician, to be overly broad and not mandatorily negotiable. The Commission found that such a rule could significantly interfere with an employer's ability to verify illness. Consequently, in consideration of the employer's right to be able to verify appropriate use of sick leave, I find that at this juncture, the Association has not established a likelihood of success that section 4.1(d) is mandatorily negotiable. The provision does not impose an absolute prohibition against leaving a residence. Moreover, an employer may have a legitimate interest in knowing why an employee on sick leave is leaving the residence and where that employee is going. This is not to suggest that the employer cannot apply section 4.1(d) in an unreasonable fashion. However, an unreasonable application of the

general order is appealable through the grievance procedure. Thus, in accordance with Township of Maplewood, it appears that section 4.1(d) constitutes an exercise of inherent managerial prerogative and may not require negotiations prior to implementation.

Section 4.1(e) states:

> All medical leave and injury leave is subject to review by the Chief of Department. All medical leave will be audited on a regular basis.

The Association contends that this provision violates State and Federal law because no standards are provided by which the Chief may use to determine whether sick leave is or is not appropriate.[5/] The Association cites Philadelphia Lodge No. 5, Fraternal Order of Police v. City of Philadelphia, 599 F.Supp. 254 (E.D.Pa. 1984) for the proposition that sick leave regulations which leave the question of whether employees would be entitled to use sick leave solely to the discretion of a departmental official is constitutionally invalid.

Philadelphia Lodge No. 5 concerns a regulation which requires employees using sick leave to remain in their residence and the means by which such employees may leave. The Court held that the City must develop reasonable and rational guidelines to direct City officials in their determinations concerning whether to grant employee requests to leave their premises. I find Philadelphia Lodge No. 5 to be inapposite to a determination of whether section

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5/ The Association has not specifically cited the State or Federal law it claims to have been violated.

4.1(e) requires prior negotiations. A plain reading of section 4.1(e) appears to merely constitute a statement that medical and injury leaves are subject to review by the Chief and that medical leaves will be regularly audited. This statement does not appear to implicate employees actual use of sick leave in any particular incident. 4.1(e) appears to concern verification which relates to the employer's exercise of managerial prerogative. Thus, interim relief is denied.

The balance of section 4.1 reads as follows:

> (f) Employees attempting to misrepresent themselves or found guilty of misrepresenting themselves as ill or injured shall be subject to all disciplinary actions deemed appropriate by the Department.
>
> (g) Abuse and misuse of medical leave and injury leave is a violation of the Regional's rules and regulations and orders of the Department and shall be understood to be a chargeable offense.
>
> (h) It shall be understood that this Department shall hold chronic and/or excessive medical leave as abuse of sick leave and subject to disciplinary action.
>
> (i) It shall be understood that chronic or excessive absenteeism or lateness are held as cause for Major and Minor Disciplinary Action as per N.J.A.C. 4A:2-2.1, 4A:2-2.2, 4A:2-2.3.

The Association argues that the penalty for sick leave abuse or violations of a sick leave policy are mandatorily negotiable. It asserts that to the extent that the policy provisions indicate that the disciplinary actions will be to the extent "deemed appropriate" by the Department they are mandatorily negotiable and may not be implemented prior to negotiations.

Regional contends that sections 4.1(f), (g), (h) and (i) are merely clarifications of the pre-existing policy statement contained in the general order issued on January 1, 2000 at paragraph f, which states that "failure to comply with this procedure will be cause of disciplinary action." I find that section 4.1(f), (g), (h) and (i) address issues concerning allegations of sick leave abuse. The Commission, citing Piscataway Tp. Bd. of Ed., stated that a public employer has a prerogative to verify that sick leave is not being abused. Township of Montclair, 26 NJPER at 312. Once the employer decides that there is abuse, it may invoke a disciplinary sanction. City of Elizabeth, 26 NJPER at 24. As noted previously, the issue of a specific schedule of disciplinary penalties to be imposed for abusing sick leave is mandatorily negotiable. Township of Montclair; City of Elizabeth. However, sections 4.1(f), (g), (h) and (i) merely announce that the employer will take some sort of disciplinary action in the event it determines that sick leave abuse has occurred. This constitutes an exercise of inherent managerial prerogative. No particular schedule of penalties is designated. However, concerning section 4.1(f), it would appear that the Association is not precluded from seeking impact negotiations to establish a schedule of disciplinary penalties. Consequently, the Association's request for interim relief is denied.

Section 4.2 of the February 1, 2001 policy provides as follows:

> (a) Duty Chief granting medical leave shall insure all reports are completed and forwarded as

required. All affected Battalions and Companies shall be notified of any medical leave granted. All required information shall be recorded in all Battalion and Company journals.

(b) Employees on medical leave for extended recovery periods shall contact the office of the Chief of Department every monday between the hours of 0900 and 1000.

(c) Employees on extended medical leave may be required to be examined by a Department designated medical provider on a regularly scheduled basis.

(d) Officers shall, when notified of sudden illness of an on-duty Employee, act promptly to secure required treatment. When immediate Hospital treatment is evident, an ambulance shall be summoned. The Deputy Chief, Battalion Chief and Safety Officer shall be notified immediately in the event of such occurrence.

(e) Where doubt exists as to the severity, extent or degree of illness or injury, emergency medical services shall be summoned. The Deputy Chief, Battalion Chief and Safety Officer shall be notified immediately.

(f) The Department reserves the right to have any employee reporting sick or injured, on-duty or off-duty, to report for a medical examination by a physician designated by the Department.

Regarding sections 4.2(a), (b), (c), (d) and (e), the Association contends that procedures incident to the granting of medical leave is mandatorily negotiable. It asserts that to the extent that these provisions implement procedures for use of sick leave, they are mandatorily negotiable and cannot be implemented without prior negotiations with the Association. Regional contends that sections 4.2(a), (b), (d) and (e) are reflective of the pre-existing procedure. Regional argues that section 4.2(b) relates

to paragraph 4[6/] of the general order issued on April 12, 1999. I find that the April 12, 1999 general order does not constitute the pre-existing conditions of employment, since it has been challenged by the Association's August 13, 1999 unfair practice charge (Docket No. CO-2000-34). Concerning section 4.2(b), while according to Piscataway, the employer has the right to require employees on extended medical leave to periodically contact the employer, it cannot unilaterally establish the hours between which such contact must be made. Routine contact by employees is distinguishable from the circumstance where an employee must contact the employer one hour before the start of the shift in order to report that the employee will be out ill. There appears to be no fundamental governmental policy reason which would justify an employer's unilateral establishment of a specific call in period. See Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981). Consequently, Regional is enjoined from unilaterally implementing section 4.2(b) by requiring employees who are on extended medical leave from calling in between the hours of 0900 and 1000.

A plain reading of section 4.2(a) appears to indicate that the actions required under that section relate to non-unit employees. Moreover, the Commission held in Newark Bd. of Ed., 10 NJPER at 552, that an employer has:

6/ Regional errs in its brief by referencing section 4.2(b) of the February 1, 2001 general order to paragraph 3 of the April 12, 1999 general order.

> ...a managerial prerogative to adopt, as part of a sick leave verification program, the reasonable and unintrusive requirement that employees fill out a form certifying they were sick. The prerogative to adopt a sick leave verification form would be an empty one, however, if employees could not be expected or required to fill out the forms in order to receive sick leave pay. In short, the [employer's] ability to establish a certification requirement and the employees' obligation to comply with that requirement in order to obtain sick leave benefits are inseparable and fundamental aspects of the managerial prerogative which Piscataway recognized.

Consequently, interim relief is denied.

Sections 4.2(d) and (e) pertain to the summoning of medical assistance and notification to particular Regional employees as the result thereof. Since sections 4.2(d) and (e) also appear to relate to actions by non-unit employees, and do not appear to implicate terms and conditions of employment, the Association's application for interim relief is denied.

Sections 4.2(c) and (f) concern the employer's determination to refer an employee using sick leave to a physician designated by Regional. For the reasons expressed with respect to section 4.1(c), I deny interim relief.7/

Section 4.3(a) provides as follows:

> Employees returning to duty from medical leave shall inform the Department immediately upon being cleared for duty by a physician. Employees, upon being cleared for duty, shall

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7/ Of course, the cost of the doctor's visit born by the employee is negotiable. Regional does not contest this fact.

> inform the Department of the scheduled return to duty date. Only Employees who have called off of sick leave may leave their residence without notification to the Department pursuant to 4.1(d) of this Order.

The Association contends that section 4.3(a) is procedural in nature and must be negotiated prior to implementation. Regional argues that this section constitutes an exercise of managerial prerogative and, therefore, is not mandatorily negotiable. Regional also argues that this procedure does not reflect a change in terms and conditions of employment. I find that this section is reflected in the general order issued on March 1, 2000, paragraph 3 and, therefore, does not appear to constitute a change in terms and conditions of employment. Consequently, interim relief is denied.

Sections 4.3(b), (c) and (d) state the following:

> (b) Employees returning to duty from medical leave shall follow the procedure outlined herein:
>
> i. The Employee shall call Fire Control and inform the dispatcher that they are returning to duty from medical leave. This call must be made no later than 2200 hours on the night before the Employee is scheduled to report for duty.
>
> ii. The Employee shall have the call forwarded to the appropriate Battalion Commander. The Employee returning to duty from medical leave shall speak directly to the Battalion Commander. Fire Control personnel shall not be used to relay this information. It is the responsibility of the Employee returning to duty to insure the Battalion Commander is contacted.
>
> iii. Employees coming off medical leave but going on vacation or other time due MUST inform the Duty Commander of this information. [emphasis in original.]

> (c) When the Department medical representative or their own personal physician clears any employee for duty, that Employee must report for duty at his assigned Company as scheduled.
>
> (d) When a (sic) Employee is cleared for duty during a regularly scheduled tour of duty, that employee must report for duty directly from medical clearance.

The Association contends that sections 4.3(b), (c) and (d) are merely procedural aspects of sick leave, consequently, they require negotiations prior to implementation. Regional argues that section 4.3(b), (c) and (d) are reflective of the existing terms and conditions of employment, therefore, no change has occurred which would impose upon it a negotiations obligation. Additionally, Regional asserts that sections 4.3(b), (c) and (d) constitute a legitimate exercise of its managerial prerogative. The general order issued January 1, 2000 and the general order dated March 1, 2000 at paragraph 2, respectively, contains the same provision as section 4.3(b)(i). Thus, 4.3(b)(i) does not constitute a change in terms and conditions of employment. However, sections 4.3(b)(ii) and (iii) do not appear in any prior general order and are procedural in nature. Those provisions do not appear to place a substantial limitation on governmental policy making authority and, consequently, would appear to be mandatorily negotiable prior to implementation. Similarly, I find that sections 4.3(c) and (d) are also procedural in nature as they relate to the time by which an employee must report for duty after being cleared to do so. Moreover, sections 4.3(c) and (d) are not contained in the general

orders issued on January 1, 2000 or March 1, 2000. However, DeOrio states in his affidavit at paragraph 11 that sections 4.3(b), (c) and (d) are restatements of existing practice. Thus, an issue of material fact is raised which results in the denial of interim relief.

Sections 4.3(e) and (f) state as follows:

> (e) When a (sic) Employee returns to duty during a regularly scheduled tour of duty, the overtime replacement will be relieved and all replacement overtime cancelled.
>
> (f) The Battalion Commander, upon being notified of a return to duty, shall insure this information is entered into appropriate company journals. Platoon Commanders shall insure all manning adjustments are made and all overtime replacements are cancelled.

The Association argues that sections 4.3(e) and (f) implicate overtime considerations which are mandatorily negotiable. Thus, the Association concludes that Regional had an obligation to negotiate these provisions prior to implementation. Regional contends that sections 4.3(e) and (f) are memorializations of a pre-existing policy and practice. In Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 86-114, 12 NJPER 362 (¶17137 1986), the Commission held:

> While a public employer has the right to select and deploy its personnel, it does not have the right to do so solely to avoid paying negotiated stipends or premium rates for overtime work. [Id. Citations omitted.]

Thus, to the extent that sections 4.3(e) and (f) implicate overtime, I find those sections to be mandatorily negotiable. However, DeOrio's affidavit at paragraph 11, indicates that sections

4.3(e) and (f) are restatements of existing practice. A final determination as to the practice representing the existing conditions of employment is determined through a plenary hearing. In light of Regional's claim that sections 4.3(e) and (f) do not change the existing conditions of employment, I am constrained from enjoining Regional with respect to these sections.

Section 4.3(g) states as follows:

> Employees are required to supply a report from an attending physician pursuant to the sick leave verification policy they are currently following. Employees hired directly by the Regional will follow the proposed Regional model contract until such time it is superceded by the new collective bargaining agreement. Wherever an attending physician's note is required, it is further required that such note cannot be executed by a chiropractor, unless such chiropractor is also a licensed medical doctor. Further the report from the attending physician shall contain the following information:
>
> i. Name, address and telephone number of the attending physician.
>
> ii. Dates which the Employee was under the physician's care.
>
> iii. Nature of illness or injury and diagnosis for recovery included Employee's fitness for duties as a firefighter or fire officer.
>
> iv. If medical leave was due to injury resulting from external trauma, the cause of injury must be included.

The Association contends that Philadelphia Lodge No. 5, Fraternal Order of Police v. City of Philadelphia, 812 F.2d 105 (3rd Cir. 1987) supports its position that the information sought by section 4.3(g) triggers the privacy protections contained within the United States Constitution.

Lodge 5, Fraternal Order of Police raised constitutional challenges to a questionnaire promulgated by the Philadelphia Police Department for use in selecting applicants to its Special Investigation Unit (SIU). Applicants were required to complete and certify a questionnaire, undergo an initial personal interview, a background investigation, a polygraph examination, and a final personal interview. The questionnaire contained 39 questions seeking personal information about the applicant and his or her family. Applicants were told that the questionnaire would remain confidential. In response to the FOP's challenge, the Court stated:

> we have previously explained that there is no absolute protection against disclosure. Disclosure may be required if the government interest in disclosure outweighs the individual's privacy interest. Trade Waste Management Association, Inc. v. Hughey, 780 F.2d 221, 234 (3d Cir. 1985); [United States v. Westinghouse Electric Corp., 638 F.2d 570, 577 (3d Cir. 1980)]."

The Court went on to note that in Westinghouse a general balancing test was established which stated:

> [the Court] must engage in the delicate task of weighing competing interests. The factors which should be considered in deciding whether an intrusion into an individual's privacy is justified are the type of record requested, the information it does or might contain, the potential for harm in any subsequent nonconsentual disclosure, the injury from disclosure to the relationship in which the record was generated, the adequacy of safeguards to prevent unauthorized disclosure, the degree of need for access, and whether there is an express statutory mandate, articulated public policy, or other recognizable public interests militating toward access. [638 F.2d at 578.]"

Ultimately, on appeal, the Court concluded that:

> Because the medical information requested is directly related to the interest of the police department in selecting officers who are physically and mentally capable of working in dangerous and highly stressful positions, sometimes over long periods of time, and because police officers have little reasonable expectation that such medical information will not be requested, we hold that [the medical questions] do not unconstitutionally impinge upon the applicants' privacy interest. [Lodge No. 5, 812 F.2d at 114.]

The Association also cites IMO Martin, et al., 90 N.J. 295 (1982) for the proposition that it is unconstitutional for a governmental entity to collect personal, confidential materials without insuring adequate safeguards are in place to protect against disclosure of such information. The Association asserts that Regional does not have nor does the policy contain adequate safeguards against disclosure of the information gathered through section 4.3(g). Consequently, the Association claims that section 4.3(g) is unconstitutional and thus does not constitute the legitimate exercise of a managerial prerogative by requiring the submission of such information sought by section 4.3(g).

Martin does not involve sick leave verification or disclosure of medical information. Martin is a dispute concerning the nature of the information which must be supplied on an application for a license to work in a New Jersey gambling casino. One of the issues raised in that case was the contention that conditioning a license application on the disclosure of personal information to the government impermissibly infringed on the

applicant's constitutional right of privacy. The applicants contended, among other things, that even if the State may constitutionally require certain disclosures to the government, it may not do so unless it has taken adequate steps to ensure that private information so acquired will not be disclosed to the public. The nature of the information at issue in Martin pertained to confidential records held by various institutions such as courts, banks, employers, government agencies and educational institutions. The Court found this information to be highly personal, intimate and private. The Court held that in order for the authorization on the casino license application granting the release to the Casino Control Commission to obtain such intimate information to pass constitutional muster, the State must undertake adequate precautions to safeguard the material against disclosure to the public once it is in the government's hands. Id. at 322. Thus, the Court held "that the State has the constitutional power to condition license application on the applicants' signing the release authorization only if it has instituted adequate safeguards against public disclosure of confidential materials it obtains". Id.

Applying Lodge No. 5 here, it is not clear that unit employees have a reasonable expectation that such medical information will not be requested by the employer. The Commission has long held, and the Courts have affirmed, that employers may require employees to submit doctor's notes. City of Elizabeth, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super

382 (App. Div. 1985). While I make no specific finding with respect to whether the information sought in 4.3(g)(i), (ii), (iii) and (iv) is subsumed within management's prerogative to require a doctor's note, I find that the Association has not established a likelihood of success that such information is mandatorily negotiable. Moreover, I find that IMO Martin offers little guidance in this case. It is factually distinguishable. The nature of the information obtained on the casino license application and the investigation that the governmental authorities could undertake into the applicant's background goes well beyond the information sought through section 4.3(g). Moreover, Regional has indicated that this information is held in an employee's medical file which Regional asserts affords the necessary protections concerning the employees' confidential medical documents. Whether an employee's medical file affords adequate protection is appropriately resolved through a plenary hearing.

The Association also contends that Regional cannot unilaterally reject the submission of a doctor's report by a chiropractor who is not a licensed medical doctor. However, Regional contends that it has never been its policy or practice to knowingly accept a chiropractor's note in lieu of a report from a medical doctor in satisfaction of its requirement for employees to submit medical verification. (See DeOrio's affidavit, paragraph 12.) Consequently, in light of this material factual dispute, the Association's request for interim relief is denied. This issue must be resolved through a plenary hearing.

Section 4.3(h) states as follows:

> A (sic) Employee returning to duty from medical leave shall work one (1) full tour of duty before becoming eligible for regular overtime rotation. Employees shall not accept any overtime until a full tour of duty is completed.

The Association claims that this provision implicates terms and conditions of employment concerning overtime which are mandatorily negotiable. The Association contends that Regional has not met its negotiations obligation prior to implementing this section. Regional contends that this section represents the current condition of employment and its inclusion in the policy does not constitute a change in terms and conditions of employment. Regional claims that this provision is a restatement of the existing policy and practice. See DeOrio's affidavit, paragraph 11. I find that the parties differing positions as to whether section 4.3(h) constitutes a change in terms and conditions of employment is a material factual dispute that must be resolved through a plenary hearing. Interim relief is therefore denied on this issue.

Section 5 pertains to on-duty injury leave. The Association claims that section 5 touches upon workers compensation issues. Therefore, the workers compensation law preempts any unilateral action by the employer. To the extent that there is a dispute concerning the application of the workers compensation laws, the parties may resolve their disagreements before the workers compensation court, the proper jurisdiction.

The Association specifically addresses sections 5.10 and 5.11 of the on-duty injury leave section. These sections concern requirements that employees use medical facilities for on-going or follow-up care designated by Regional. The Commission has held, and the court has affirmed, that the workers compensation statutes preempt negotiations over changes in the manner in which employees obtain treatment for compensable injuries. Thus, in City of Perth Amboy, P.E.R.C. No. 97-138, 23 NJPER 345 (¶28159 1997), aff'd 24 NJPER 531 (¶29247 App. Div. 1998), the City retained a consulting service to administer its self-insured workers compensation program. Under the consultants administration, employees were permitted to select their primary physician from a list of approved physicians. The physician, in turn, could prescribe diagnostic treatment or refer employees to a specialist without oversight or prior approval. Later, the City contracted with a managed care organization to manage its workers compensation program. Under managed care, all treatment, except emergency treatment, required pre-certification. Referrals were made by the managed care organization and testing and examination by specialists required its approval. The initial referral was not to a physician of the employees' choosing, but to a doctor selected by the managed care organization. Thus, under the managed care program, referral and treatment decisions, previously made by the employee or his self-selected primary physician, were now made by the managed care administrator. The Commission held that the workers compensation

statutes preempted negotiations over changes in the manner in which employees obtain treatment for compensable injuries. The Commission found no unfair practice as the result of the City of Perth Amboy changing its workers compensation administrator and the resultant change in procedures flowing from that change. Thus, it appears that sections 5.10 and 5.11 relate to the designation of physicians and facilities employees must use as the result of on-duty injury pursuant to the workers compensation statutes. Consequently, I deny interim relief.

Section 6.2, Emergency Leave, provides as follows:

> The Department shall review all requests for emergency leave consistent with the terms of the applicable collective bargaining agreement. Emergency leave shall be granted only in cases of "serious illness". The Department interprets "serious illness" as grave or dangerous medical conditions requiring urgent, current and immediate attention of a physician or emergency room and affecting an immediate family member. Minor non-critical ailments or injuries shall not be held as reason for granting emergency leave. Emergency leave is for the period of time that such emergency exits. In the event that the emergency situation is resolved prior to the end of a tour of duty, it is required that the Employee return to work.

The Association argues that by including this provision in its policy, it has implemented a new term and condition of employment which limits the scope of "emergency leave". The Association contends that the requirements for the use of sick leave are mandatorily negotiable and by seeking to define the scope of what constitutes a serious illness and restricting officers in their use of emergency leave, Regional has unilaterally implemented a new

term and condition of employment in violation of the Act. Regional argues that it has not changed terms and conditions of employment. Regional cites the first sentence of section 6.2 which provides that all requests for emergency leave shall be reviewed in accordance with the applicable collective negotiations agreements. I find that since section 6.2 relates to emergency leave granted consistent with the predecessor collective agreements, the Association has not established that this provision has changed terms and conditions of employment. Any dispute over the application of a grant of emergency leave consistent with the respective predecessor collective agreements are subject to resolution through the parties negotiated grievance procedures. Interim relief is denied.

Sections 6.3 and 6.4 provide as follows:

> 6.3 Employees shall know the Department may require emergency leave time be paid back at the convenience of the Department if it is determined that the proper criteria is (sic) not met.
>
> 6.4 The Department, at its discretion, may grant extended emergency leave by rescheduling vacation or compensation time accrued by the employee. A request for extended sick leave must be made to the Chief of the Department.

The Association contends that sections 6.3 and 6.4 implicate procedures and definitions of when and how sick leave can be used. The Association asserts that since these provisions are mandatorily negotiable, they cannot be implemented prior to the completion of negotiations. Regional contends that these provisions constitute the existing policy and practice. See DeOrio's affidavit, paragraph 11. Accordingly, Regional contends that

section 6.3 and 6.4 do not represent a change in the existing terms and conditions of employment. I find that in light of the material factual dispute concerning what constitutes the existing conditions of employment, the Association has not established the requisite likelihood of success concerning either section 6.3 or 6.4 to obtain interim relief. The resolution of this factual dispute must be addressed in a plenary hearing.

Section 6.5, Emergency Leave, states as follows:

> Employees are required to provide proof of treatment rendered to the family member. This document shall be provided upon the employee's return to work.

The Association argues that section 6.5 implicates privacy interests of unit family members. Regional contends that section 6.5 merely requires verification of medical treatment to a family member and does not require the disclosure of detailed confidential information. A plain reading of this provision appears to indicate only proof of treatment is required. The Commission has long held that verification of an employee's proper use of sick leave is a managerial prerogative. Piscataway Tp. Bd. of Ed. Accordingly, interim relief is denied.

Section 7 pertains to completing leave/absence reports. The Association contends that section 7 implicates procedures and touches upon the parameters in which different types of leaves may be used. The Association claims that it has the right to negotiate over sick leave procedures regarding the manner in which sick leave can be used and, to the extent that all of the provisions within

section 7 implicate such mandatorily negotiable terms and conditions of employment, they may not be implemented prior to the completion of negotiations. Regional argues that the Association has not specified examples of how section 7 affects a negotiable right. I find that a plain reading of section 7 appears to require the Battalion Commander to fill out the leave/absence report and not unit employees. Consequently, section 7 does not appear to impact upon unit employees' terms and conditions of employment. To the extent that employees are required to fill out the leave/absence reports, the Commission has held that employers have a managerial right to require employees to fill out forms certifying that they were sick, as part of the employer's sick leave verification program. Newark Bd. of Ed.

Section 8 pertains to medical leave counseling procedures and sick leave monitoring status. The introduction to section 8 states the following:

> When an employee's sick leave rate exceeds the Department average by 50% or more, such employee is placed on sick leave monitoring status and is required to attend a counseling session with his Battalion and/or Platoon Commander. By counseling these individuals who have high rates of absenteeism, it is hoped that an improvement in reducing the amount of unnecessary absences from duty can be achieved. The Battalion Commander and/or Platoon Commander will be notified by the Department of those individuals whose rates exceed the Department average by 50%. The following procedures shall be followed when conducting an official counseling session with an Employee regarding medical leave monitoring and/or medical leave abuse.

The Association contends that by requiring counseling and/or discipline solely on the basis of the number of days of absence experienced by an employee regardless of the circumstances of the unit members' previous attendance history renders such a policy unreasonable and arbitrary. The Association relies upon Montville Tp. Bd. of Ed., NJPER Supp.2d 159 (¶140 App. Div. 1985), for the proposition that adverse consequences which flow as the result of a solely mathematical review of the employee's number of absences is arbitrary and unreasonable. The Association asserts that it is unreasonable to require an employee to engage in a counseling session which possibly may lead to discipline only because the employee exceeding an arbitrarily imposed absence limit without even considering the underlying cause for the use of sick leave. Regional argues that its policy is not arbitrary and it has a managerial right to require counseling when individual employees go beyond a specified level of sick leave use.

The Commission has addressed the issue of whether an employer has the right to conduct an employee conference pursuant to its sick leave verification policy. In City of Elizabeth, 26 NJPER at 24, the Commission stated:

> The employer's right to verify illness may include the right to conduct a conference with the employee to find out why the employee was absent and to determine whether a disciplinary sanction is warranted. See, e.g., Mainland Reg. H.S. Dist., P.E.R.C. No. 92-12, 17 NJPER 406 (¶22192 1991). But once the employer decides that there is abuse and invokes a disciplinary sanction, arbitration may be invoked. In Mainland, counselling was a sanction imposed

> after a conference to discuss the employee's absence record. We noted that disciplinary sanctions for absenteeism could include counseling, letters of reprimand, docking of pay, withholding of increments, tenure charges, and nonrenewal or termination of nontenured staff members. Similarly, in Rahway Valley Sewerage Auth., P.E.R.C. No. 83-80, 9 NJPER 52 (¶14026 1982), the Chairman restrained arbitration of a grievance challenging the establishment of a sick leave verification policy. That policy included a provision that a certain number of absences would trigger the employer's review of the employee's attendance record to see if counseling or a warning were appropriate. In that case, the employer had a managerial prerogative to review the employee's record; counseling and a warning were presumably two forms of discipline that could be initiated when appropriate after the employer's review.
>
> In this case, the employer has established a policy that includes counseling sessions that are in the nature of the conferences addressed in Mainland and Rahway. Given the employer's representation, we find that the decision to have the conferences cannot be contested through binding arbitration. The PBA's concern that the session will be viewed as prior discipline in any future disciplinary proceeding is unwarranted given the employer's statement that it is not disciplinary. West Windsor-Plainsboro Reg. Bd. of Ed., P.E.R.C. No. 97-99, 23 NJPER 168 (¶28084 1997). Should any sanction flow from an individual counseling session, the employee may contest the sanction through binding arbitration.

Likewise, in the instant matter, the employer appears to have the managerial prerogative to require employees to engage in a conference-type counseling session when the employee's sick leave rate exceeds the Department's average by 50%. Section 8.2(d) specifically states that the counseling is not a form of discipline but may, if misuse or abuse of sick leave is discovered, lead to discipline. Thus, the counseling in and of itself appears to be

permissible and any discipline which flows therefrom would be appealable through the parties negotiated grievance procedure currently reflected in the employee's predecessor collective agreement. Moreover, Montville Tp. Bd. of Ed. is distinguishable. Montville was decided in the context of teachers' evaluations under the education laws and did not pertain to sick leave verification.

Sections 8.1(a), (c) and (d) pertain to notice provided to employees who are required to undergo counseling. Procedural issues such as notice are mandatorily negotiable and may not be unilaterally implemented by the employer. However, here, the notice provisions contained in section 8.1 flow from the employer's exercise of its inherent managerial prerogative to counsel employees whose sick leave usage exceeds the Departments average by 50%. Consequently, the Association may demand impact negotiations with respect to these notice issues. The Association does not claim that it has demanded negotiations on these impact issues, and the filing of the unfair practice charge does not constitute such a demand. See Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984). Accordingly, I find that the Association has not established the requisite likelihood of success warranting interim relief with respect to sections 8.1(a), (c) and (d).[8/]

Section 8.2(e) provides as follows:

8/ The Association has made no specific claim with respect to section 8.1(b).

> The officers shall notify the Employee that he will be placed upon sick leave monitoring which will result in the following actions in addition to other requirements under the sick leave policy:
>
> i. During any subsequent medical leave absence the Employee may be directed, for each such absence, to report to a designated medical facility for examination and treatment. This examination and treatment will be conducted on the Employee's first scheduled duty day. The Employee shall be contacted by the Duty Battalion Chief between 0900 hours and 1100 hours and told the time of his appointment and where he is to report.
>
> ii. Employees may be called and/or visited at his home by a Duty Chief during reasonable hours, at any time during his medical leave. The Department may choose to have a nurse or physician visit at home during his medical leave. The Employee must answer the telephone or door or make arrangements to do so. Voice mail/answering machines are not an acceptable response to monitoring calls or visits.
>
> iii. The monitoring status will stay in effect for one year.
>
> iv. Violations of the above procedures may result in a formal disciplinary action.

The Association asserts the same arguments it has previously urged with respect to requiring an employee to remain in his residence for a 24 hour period. Similarly, the Association contends that since the employer is seeking to impose discipline on unit employees, a schedule of disciplinary penalities are mandatorily negotiable and may not be unilaterally implemented. I find, however, that section 8.2(e) does not set forth a schedule of disciplinary penalties. Consequently, interim relief is not warranted with respect to that issue.

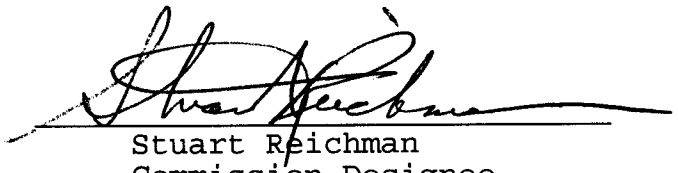
Regarding section 8.2(ii), it appears that the employer may engage in home visits and require employees on sick leave to remain at home. Township of Maplewood. Consequently, for reasons already discussed above, I issue no interim relief concerning this section.

Section 9 relates to sick leave abuse and lists examples of unauthorized absences. Section 9 indicates that employees who absent themselves in an improper manner or otherwise abuse sick leave will be subject to disciplinary action. The Association contends that Regional has an obligation to negotiate the penalties for any violation of the sick leave policy. Section 9 does not list or otherwise indicate the nature of the penalty to be imposed upon any unit employee charged with abuse of sick leave. Regional claims that the current practice has been that employees abusing sick leave are subject to disciplinary action. An employer has the prerogative to impose discipline in the circumstance where it believes that an employee has abused sick leave usage and such disciplinary action is subject to appeal by the employee organization through its grievance procedure to determine whether the sick leave policy has been properly applied and whether the disciplinary penalty imposed is appropriate. See Tp. of Montclair; City of Elizabeth. Consequently, interim relief is denied.

I grant the Association's application for interim relief only as indicated in this decision. This case will proceed through the normal unfair practice processing mechanism.

ORDER

Regional is enjoined from unilaterally implementing that portion of section 4.2(b) which requires unit employees to call in between the hours of 0900 and 1000. Concerning all other provisions of Regional's leave policy, interim relief is denied.



Stuart Reichman
Commission Designee

DATED: May 7, 2001
Trenton, New Jersey