

I.R. NO. 96-20

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RUTHERFORD,

Petitioner,

-and-

Docket No. SN-96-99

RUTHERFORD PBA LOCAL No. 300,

Respondent.

SYNOPSIS

A Commission Designee restrains in part an arbitration pending a final Commission decision in a matter brought by the Borough of Rutherford. Rutherford PBA Local No. 300 sought to arbitrate a grievance concerning the denial of the use of sick leave when a family member is ill as permitted by the contract. Local 300 argued that the Borough is altering the terms of the contract by granting sick leave only when a family member is seriously ill. The arbitration was restrained to the extent Local 300 sought to challenge sick leave verification but was not restrained to the extent the Borough altered a contractual right as to whether a unit member may use sick leave.

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Appearances:

For the Petitioner,  
Lane J. Biviano, attorney

For the Respondent,  
Loccke & Correia, attorneys  
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On March 1, 1996, the Borough of Rutherford filed a Scope of Negotiations Petition with the Public Employment Relations Commission seeking to restrain an arbitration brought by PBA Local 300. The Borough also seeks an interim restraint of the arbitration pending a final Commission decision.

The Borough maintains that Local 300 seeks to contest a recent directive issued by the Borough's Police Department requiring verification of sick leave when an officer uses sick leave when

a family member is seriously ill. The Borough argues it has a non-negotiable right to verify the bonafides of a claim of sickness.

A show cause order was executed and made returnable for April 8, 1996. The hearing was conducted on that date.

Local 300 concedes that the employer has a non-negotiable right to verify the legitimate use of sick leave. It maintains, however, that the Borough's directive was overly broad. Specifically, the parties contract provides for the right of their members to take sick leave when a family member is ill. Local 300 claims that the Police Department directive limits the use of sick leave to when a family member has a "serious" illness.

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. 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).

There is no dispute that an employer has a non-negotiable right to verify the use of sick leave. City of Elizabeth v. Elizabeth Fire Officers Association, 198 N.J. Super. 382, 386 (App. Div. 1985); State of New Jersey (Department of Treasury) and Communications Workers of America, 21 NJPER 129 (¶26080 1995). Here, however, Local 300 maintains that the arbitration was being brought to challenge a directive which impermissably restricts the contract right to take sick leave when a family member is ill, not just seriously ill. In response the Borough claims that Local 300 is altering its demand for arbitration. This, in turn, is disputed by Local 300.

This is not the forum to determine whether, as the employer claims, Local 300 is seeking to alter its demand for arbitration. A scope of negotiations petition addresses the abstract question only; whether the issue sought to be arbitrated is negotiable. Issues of contractual arbitrability are for the arbitrator. Sick leave is mandatorily negotiable and arbitrable. Tp. of Edison, P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984).

Accordingly, the arbitration is restrained to the extent it seeks to challenge the sick leave verification policy imposed by the Borough. The arbitration is not restrained to the extent the Local seeks to arbitrate whether the Borough has altered the contractual circumstances when a unit member may use sick leave.

This is an interim order only. This matter will go forward to a final Commission decision.

  
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Edmund G. Gerber  
Commission Designee

DATED: April 12, 1996  
Trenton, New Jersey