

H.E. NO. 86-48

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-84-217-32

HUDSON COUNTY CORRECTIONS  
AND SHERIFF'S DEPARTMENTS,  
PBA LOCAL 109,

Charging Party.

SYNOPSIS

A Hearing Examiner denies the County of Hudson's motion for summary judgment and grants that portion of the Hudson County Corrections and Sheriff's Departments, PBA Local 109's cross-motion for summary judgment declaring work-related disability benefits to be mandatorily negotiable. The Hearing Examiner denies that portion of Local 109's cross-motion for summary judgment finding that the County unilaterally changed unit members' work-related disability benefits.

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Appearances:

For the Respondent, Murray & Granello, Esqs.  
(James P. Granello, of Counsel)

For the Charging Party, Loccke & Correia, Esqs.  
(Manuel A. Correia, of Counsel)

RULING ON MOTION AND CROSS-MOTION FOR SUMMARY JUDGMENT

On March 5, 1984, the Hudson County Correction and Sheriff's Departments, PBA Local 109 ("Local 109") filed an unfair practice charge against the County of Hudson ("County"). The charge alleges that the County violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (5),<sup>1/</sup> by unilaterally changing an

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<sup>1/</sup> These subsections 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; and (5) Refusing to negotiate in good faith with a majority representative of

established practice of allowing unit members who were injured on the job to go on sick/injured status at full pay without using accumulated sick leave.

On August 24, 1984, a Complaint and Notice of Hearing issued. On September 5, 1984, the County filed its Answer. It denies that prior to November 15, 1983, it had an official policy concerning work-related disability for unit members and admits only that on July 22, 1982, it promulgated a county-wide work-related disability leave policy. The County also pleads seven affirmative defenses. It argues the charge is untimely, barred by the doctrine of laches and that it fails to state a prima facie case for which relief can be granted. In addition, it argues the Commission lacks jurisdiction, negotiation over this case is preempted, the parties' contract authorizes the current policy and that Local 109 waived its right to negotiate.

On September 28, 1984, the County moved for summary judgment and a stay of proceedings in this matter and filed a supporting brief. It argues that Civil Service law requires the County to adopt policies whereby an employee injured on the job is given the option of either using accumulated sick leave or receiving workers' compensation. It alleges that negotiation over work-related

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1/ Footnote Continued From Previous Page

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."

disability leave is preempted and that the alleged practice is therefore an illegal subject of negotiations.

On October 16, 1984, Local 109 cross-moved for summary judgment and filed a brief supporting its cross-motion and opposing the County's motion. It argues that the County admits the unilateral change and that work-related disability leave at full pay, rather than being preempted, is specifically authorized by statute and is therefore mandatorily negotiable.

On October 24, 1984, the County filed a brief in opposition to Local 109's cross-motion. It denies that the County ever conceded the existence of a past practice of providing unit members leaves with full pay for work-related injury without charge to accumulated sick leave. It does not, however, contest that it may, by resolution, enact a work-related disability leave policy with benefits exceeding those provided by workers' compensation and that the adoption of such a resolution is mandatorily negotiable. It argues, however, that Local 109 has produced no evidence that the County passed such a resolution, and therefore, any past practice would be ultra vires and unenforceable. Finally, the County argues that if its motion is denied, Local 109's cross-motion should also be denied because several disputed issues of material fact regarding the existence of the alleged past practice remain.

On October 31, 1984, pursuant to N.J.A.C. 19:14-4.8, the Chairman of the Commission referred this motion and cross-motion to Hearing Examiner Judith E. Mollinger. On November 2, 1984, Local 109 requested oral argument before the Commission.

In a letter dated March 5, 1986, Local 109 informed Hearing Examiner Mollinger that it believes a question of fact exists which requires a full evidentiary hearing.

On March 6, 1986, Hearing Examiner Mollinger resigned from the Commission. Pursuant to N.J.A.C. 19:14-6.1, this matter was transferred to me.<sup>2/</sup>

These motions present two separate issues for decision. Is the subject of work-related disability leave a mandatorily negotiable term and condition of employment? And, if so, did the County unilaterally change a past practice regarding those benefits?

N.J.A.C. 19:14-4.8 establishes that summary judgment shall only be granted:

[i]f it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law.

Thus, if the disputed subject is not mandatorily negotiable, the County is entitled to its requested relief.

In IFPTE Local 195 v. State, 88 N.J. 393 (1982), our Supreme Court articulated the tests for determining whether a subject is mandatorily negotiable:

a subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public

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<sup>2/</sup> Because the request for oral argument was made after this matter was referred to Hearing Examiner Mollinger, I will treat it as a request to me. I deny the request as the parties have thoroughly briefed the issues.

employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.  
Id. at 404-05.

The Commission has long held that work-related disability leave is mandatorily negotiable. County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in part, rev'd in part, App. Div. Docket No. A-3564-78 (6/19/80); County of Morris, P.E.R.C. No. 79-2, 4 NJPER 304 (¶4154 1978). "Unquestionably, sick leave or other leaves of absence are matters that directly and intimately affect the terms and conditions of employment." Morris at 305, quoting Burlington Cty College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 14 (1973).

In its motion, the County maintains that Civil Service statutes and regulations compel the County to adopt a work-related disability leave policy which gives an employee the option of either using accumulated sick leave or receiving workers' compensation at the rate of 70% of the employee's weekly wage. N.J.S.A. 11:24A-4;

N.J.S.A. 34:15-43; N.J.A.C. 4:1-17.1(b).<sup>3/</sup> The County further argues that because the statutes and regulations allegedly "expressly, specifically and comprehensively" fix a term and condition of employment, negotiation is preempted. Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Ed. Ass'n, 91 N.J. 38 (1982); Local 195.

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3/ N.J.S.A. 11:24A-4 provides:

The appointing authority shall establish regulations which authorize the granting of special leaves of absence with pay or part pay to employees disabled either through injury or illness as a result of, or arising from, their respective employment. During such period of disability, employees may elect, if they so desire, to first utilize all or any part of the sick leave accumulated under section 3 of the act of which this act is amendatory. In the absence of such election, leaves of absence provided by this section shall not affect in any manner whatsoever the accumulated sick leave provided under section 3 of the act of which this act is amendatory. Any amount of salary or wages paid or payable to employees because of leave granted pursuant to sections 3 or 4 of the act of which this act is amendatory shall be reduced by the amount of any workmen's compensation award under chapter 15 of Title 34 of the Revised Statutes made for temporary disability because of the same injury or illness requiring such leave.

N.J.S.A. 34:15-43 provides:

Every officer, appointed or elected, and every employee of the State, county, municipality. . . or any other governing body . . . who may be injured in line of duty shall be compensated under and by virtue of the provisions of...(Section 34:15-7, et seq.).

N.J.A.C. 4:1-17.1(b) provides:

In local service, the governing body or appointing authority shall prepare and administer standards regarding holidays, sick leave, work related disability leave, leaves of absence with or without pay and special leaves subject to statutory provisions and Civil Service rules.

In its cross-motion for summary judgment, Local 109 argues, and the County now concedes, that N.J.S.A. 40A:9-7 specifically authorizes a county to adopt a third option -- leaves of absence with full pay.

N.J.S.A. 40A:9-7 provides:

The board of chosen freeholders of any county, by resolution, or by the governing body of any municipality, by ordinance, may provide for granting leaves of absence with pay not exceeding one year, to any of its officers or employees who shall be injured or disabled resulting from or arising out of his employment, provided that the examining physician appointed by the county or the municipality shall certify to such injury or disability.

In fact, the Commission's decision in Morris specifically addressed a county's authority to grant leaves of absence with pay under N.J.S.A. 40A:9-7. The phrase "may provide" in the statute indicates that the employer is empowered to provide such payments subject to two limits. The leave of absence shall not exceed one year and an examining physician shall certify the injury or illness. Morris at 305.<sup>4/</sup>

Thus, the subject of work-related disability leave is not preempted and is mandatorily negotiable. I therefore deny the County's summary judgment motion and grant Local 109's cross-motion with regard to this issue.

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<sup>4/</sup> Morris refers to the phrase "may pay", although the statute includes the phrase "may provide". The analysis, however, is the same.



The second issue presented by these motions is whether the County unilaterally changed a past practice of paying work-related disability benefits.

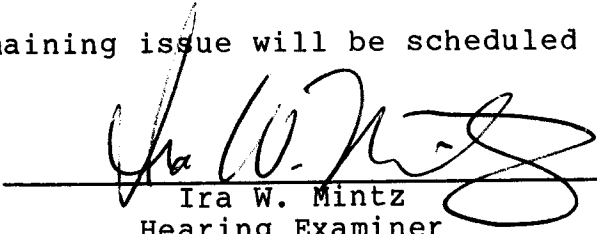
In its cross-motion for summary judgment, Local 109 alleges that the past practice existed and that the County admits it unilaterally changed the practice. The County, however, denies the existence of the practice. In addition, the County asserts that the absence of a specific resolution of the Board of Freeholders makes any alleged past practice ultra vires and therefore illegal.

Thus, factual disputes exist as to what past practice, if any, existed, whether a resolution authorizing a plan was passed and whether the County unilaterally changed any alleged practice.<sup>5/</sup> I therefore deny the second portion of Local 109's cross-motion for summary judgment.

ORDER

The County's motion for summary judgment is denied. The first portion of Local 109's cross-motion for summary judgment declaring work-related disability benefits to be mandatorily negotiable is granted. The second portion of Local 109's cross-motion for summary judgment finding that the County unilaterally changed unit members' work-related disability benefits is denied.

A hearing on the remaining issue will be scheduled in a subsequent Order.

  
Ira W. Mintz  
Hearing Examiner

DATED: Trenton, New Jersey  
April 7, 1986

<sup>5/</sup> This list of factual disputes is not necessarily exclusive.