

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BURLINGTON,

Petitioner,

-and-

Docket No. SN-2001-33

BURLINGTON TOWNSHIP  
F.O.P. LODGE 84,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Township of Burlington for a restraint of binding arbitration of two grievances filed by a police officer represented by Burlington Township F.O.P. Lodge 84. The first grievance contests the procedures the officer had to follow when calling in sick while assigned to light duty after a job-related injury. The second grievance contests the assignment of the officer to an 8-hour shift rather than the normal 12-hour shift. The Commission holds that whether the employer violated the contract by requiring the officer to charge sick time despite his claim that his absence was job-related can be considered by an arbitrator. The Commission also holds that an arbitrator can consider an employee's claim that the employer discriminated by changing his hours during a light duty assignment when it allowed another employee to work her regular hours while on light duty. The Commission grants a restraint of arbitration to the extent the grievance seeks to contest the requirement that an absent employee complete Schedule Change Reports.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, George T. Kotch, P.C., attorneys  
(George T. Kotch, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys  
(Charles E. Schlager, Jr., on the brief)

DECISION

On December 27, 2000, the Township of Burlington petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of two grievances filed by a police officer represented by Burlington Township F.O.P. Lodge 84. The first grievance contests the procedures the officer had to follow when calling in sick while assigned to light duty after a job-related injury. The second grievance contests the assignment of the officer to an 8-hour shift rather than the normal 12-hour shift.

The parties have filed briefs and exhibits. These facts appear.

The FOP represents patrol officers and detectives employed by the Township. The Township and the FOP are parties to

a collective negotiations agreement effective from January 1, 1998 through December 31, 2001. The grievance procedure ends in binding arbitration.

Section 5 of the agreement provides that the Township maintains the right:

To determine work schedules, the starting and ending hours of employment, and the duties, responsibilities, materials and the utilization thereof by Township employees of every kind and nature so long as same is within recognized safety standards.

Article H is entitled Work Schedules. Section 7 provides:

The maintaining of the department's current work schedules (i.e., twelve [12] hour shifts for patrols; ten (10) hour shifts for detectives) shall continue for the life of this Agreement, unless the Employer presents economic reasons for a change or the need for any re-distribution of manpower for the safety of the community. Economic arguments will be based solely on the police department's budget.

David Edwards is a patrol officer. On May 4, 2000, Edwards had surgery to repair a hernia. He returned to work on June 19 and was assigned light duty. On July 7, his doctor advised that he had to continue light duty until his next scheduled appointment on July 25.

On July 10, 2000, Edwards was absent from work. Apparently, the employer ordered him to submit a sick leave entitlement form (Schedule Change Request Form) and charged him with a sick day. On July 20, Edwards sent an "Action Memo" to Public Safety Director Lloyd Nippins. Edwards questioned why he

was required to submit a leave entitlement form for an absence on July 10 since the absence was due to pain from his job-related injury. He explained to Nippins that he was trying to get a doctor's appointment and that he had conveyed this to several people, including two lieutenants, who did not get back to him. He asked Nippins to advise him of the department's position.

On July 24, 2000, Edwards filed a grievance.<sup>1/</sup> It stated:

I was ordered to complete a sick leave entitlement form by Sgt. Leonard. I had informed Sgt. Leonard that I was not sick and that I have relayed this to three (3) supervisors on three different times that I was not sick and in fact I could not report to work because my duty related injury was what prevented me from reporting for duty. He informed me that I had no choice and must fill out and sign the sick leave entitlement form.

The grievance alleges a violation of the contract's sick leave article and as a remedy seeks a change in the charged sick leave day.

On July 26, 2000, Nippins responded to Edwards' action memo. He stated:

On Tuesday, July 25, 2000, you voiced some concerns about your light duty or restricted status. Dr. Ruvolo examined you on July 25, 2000, and a copy of his note (presented to you) did not address your continuing status on light duty. As you know, I spoke with Dr. Ruvolo on the phone and explained to him what activities were required when performing light duty. Dr. Ruvolo responded that he had no problem with you continuing your light duty assignment. When you were advised of this, you stated that

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<sup>1/</sup> The grievance is dated July 21 but signed July 24.

you felt some of your activities were aggravating your condition.

In addition, you questioned why you were on an 8-hour day schedule. Lt. Worrell stated that you had requested the 8-hour work day and you had even picked your own hours. Attached is a letter sent to Dr. Ruvolo asking him for written clarification of your light duty status.

Until this requested documentation is received, you are not to report for light duty until directed to do so. This time will be charged as injury time. I trust you can use this time for additional rest, with everyone's goal being your complete recovery and return to full duty.

Nippins then wrote to Dr. Ruvolo seeking clarification of Edwards' light duty status. He explained to Ruvolo that Edwards was on desk and phone duty and that he was assigned to an 8-hour shift rather than a 12-hour shift.

On July 27, 2000, Ruvolo wrote to Nippins. He stated:

I received your letter of July 26, regarding David Edwards. He had repair of a left inguinal hernia with mesh on May 4, 2000. Since that time he's had discomfort in the incision which he feels has been exacerbated by the light duty to which he had been assigned.

My examination reveals his incision is healing well and there is no excess swelling.

I feel there need not be any restriction on the length of his workday.

I'm afraid that I will not be of much help to you or to Officer Edwards by specifically defining what I think he can or cannot do. This is something that must be worked out by him and by his employer. It does appear to me that the incision is healing well and that the repair is strong. Therefore, I am not concerned about it breaking down. There is, of course, a lot of individual variation in the process of recovery with some patients having more pain than others.

On July 27, 2000, Nippins wrote to Edwards and directed him to report for duty as scheduled at 8:00 a.m. on Friday, July 28, 2000. He advised Edwards that he would be assigned to work eight-hour shifts from 8:00 a.m. to 4:00 p.m. until further notice. He further advised Edwards to provide his supervisor, Lieutenant Worrell, with an original doctor's note for July 10, 2000. He advised Edwards that he would be assigned to perform administrative duties that would not aggravate or irritate his injury; he should reasonably limit his movements; and if he feels any part of the assignment will or does aggravate or irritate the injury, he should tell his supervisor.

On July 28, 2000, Lieutenant Bellamy issued a Personnel Directive to Edwards notifying him of his restricted duty assignment. The directive stated, in part:

You have been placed on restricted duty status due to a duty-related injury that prohibits you from carrying out your police duties. During this period, you will be assigned a variety of administrative and other duties. This is a temporary assignment, and you will be returned to full duty status when medically cleared to do so.

While on restricted duty, you will report directly to Lt. Worrell, who will serve as your immediate supervisor during this period. All questions regarding assignments, attire, and work hours will be directed to Lt. Worrell. Unless directed otherwise, you will report to Lt. Bellamy if Lt. Worrell is not available.

You will provide Lt. Worrell with the dates and times of any scheduled examinations or treatments regarding your injury. Lt. Worrell will also be advised anytime you are examined or treated for the injury outside those

scheduled appointments. The original doctor reports generated as a result of those examinations or treatments are to be provided to Lt. Worrell immediately upon your return for duty.

\* \* \*

While on restricted duty requests for the utilization of leave entitlement must be approved by Lt. Worrell. If you are unable to report for your restricted duty assignment due to your injury, normal sick leave procedures, to include the completion of a Schedule Change Request Form, will be followed. The time taken will be carried as sick leave until such time as you present documentation from the attending physician confirming the use of the time was related to the injury. At that time the sick leave will be converted to injury leave and any time used will be credited back to your accumulated sick leave.

On July 31, 2000, Nippins advised Edwards that he had received Edwards' doctor's note for July 10 and that the day would be charged as an injury day instead of a sick day. Nippins stated that since the sick day had been changed to an injury day, that action should satisfy the grievance.

On August 1, 2000, Edwards apparently raised some concerns as to his 8-hour rather than 12-hour shift assignment, his uniform, and the requirement that a schedule change request form be completed in order to take sick leave.

On August 3, 2000, Lieutenant Worrell sent an action memo to Edwards in response to his August 1 concerns. With respect to the assignment to 12-hour shifts, Worrell wrote that Edwards is not currently assigned to a patrol function and that there are currently no available 12-hour light duty assignments that his

injury would permit him to work. With respect to uniforms, Worrell advised Edwards that since he is unable to wear a police uniform, specifically a gun belt, and since the Township does not want an unarmed officer in uniform, he has the option to wear casual business attire. Finally, with respect to sick leave, Worrell advised Edwards that he must complete a schedule change request form if he takes sick leave and that upon submission of documentation verifying that the absence was due to his job-related injury, the sick time will be changed to injury leave.

On August 8, 2000, Edwards filed a grievance. It stated:

Ordered to work 8 hr shifts, after advising PSD Nippins and Lt. Worrell of the agreed shifts (contract) and PSD Nippins receiving a letter from the Doctor advising of no restriction of working hours and another female officer on light duty was allowed to work agreed (contract) hours.

The grievance alleged violations of several contractual articles and, as a remedy, sought reprimands for those responsible for violating the contract and safeguards to prevent further contractual violations.

On November 8, 2000, the FOP demanded arbitration over the assignment to an 8-hour light duty shift rather than a 12-hour light duty shift. The demand for arbitration does not include the sick leave issue, but both parties have addressed that issue in their briefs.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:



The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we cannot consider the merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA Local No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an

item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

[87 N.J. at 92-93; citations omitted]

We will not restrain arbitration of a grievance involving police officers unless the alleged agreement is preempted or would substantially limit government's policymaking powers. Preemption is not at issue here.

The Township asserts that it has a managerial prerogative to have a sick leave verification policy. It asserts that as part of that policy it has a right to seek verification from Edwards that the time he takes off is for his job-related injury and not some other reason for which he would be required to use accumulated sick leave. The Township also asserts that when Edwards provided verification that the time taken was for his job-related injury, the sick time was changed to injury leave.

The Township also asserts that it has a right to set and alter work schedules. It argues that Edwards' injury prevents him from performing regular patrol duties on 12-hour shifts. It states that since the Township is only open for administrative purposes from 8:00 a.m. to 4:00 p.m., and since he can only perform certain administrative functions, he must work an 8-hour shift.

The FOP asserts that the Township does not have the right to require that a sick leave report form be completed without negotiations. The FOP disagrees with the Township that this is part of its sick leave verification policy and asserts that the Township seeks to change the negotiated provisions on physician's notes as an acceptable form of verification.

The FOP also asserts that Edwards was discriminated against by being assigned to an 8-hour light duty assignment because the doctor did not state that his hours should be limited and another officer on light duty had been assigned to her regular work hours. It notes that the Township told it that the female officer had a "different factual scenario" and special skills that the Township used. The FOP further asserts that hours of work and work schedules are mandatorily negotiable.

The first issue involves the requirement that Edwards complete a Schedule Change Report when absent. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982), applied the negotiability tests to the issue of sick leave verification. We held that the employer had a prerogative to establish a verification policy and to use "reasonable means to verify employee illness or disability." Id. at 96.

The employer had a prerogative to have Edwards verify the reason for his absence -- whether it was sick leave or injury leave. Barneгат Tp. Bd. of Ed., P.E.R.C. No. 84-123, 10 NJPER 269 (¶15133 1984). The form of written verification the employer

requires, for example, a doctor's note or an employee certification, is not negotiable. See, e.g., Newark Bd. of Ed., P.E.R.C. No. 85-26, 10 NJPER 551 (¶15256 1984). However, whether the employer violated the contract by requiring that Edwards charge sick time despite his claim that his absence was job-related can be considered by an arbitrator. We note, however, that Edwards' sick time for July 10, 2000 has been restored and it is not clear to us what issue remains for an arbitrator to consider. We also note that the arbitrator cannot issue a ruling inconsistent with the employer's prerogative to have Edwards verify the reason for his absence.

The second issue involves Edwards' work schedule while on light duty. We have restrained arbitration of grievances demanding that an employer create light duty assignments. City of Camden, P.E.R.C. No. 93-3, 18 NJPER 392 (¶23177 1992); Montgomery Tp., P.E.R.C. No. 89-22, 14 NJPER 574 (¶19242 1988); City of Camden, P.E.R.C. No. 83-128, 9 NJPER 220 (¶14104 1983). But we have declined to restrain arbitration of grievances asserting that employees were denied available light duty assignments for which they were qualified. City of Englewood, P.E.R.C. No. 94-114, 20 NJPER 257 (¶25128 1994); City of Englewood, P.E.R.C. No. 93-110, 19 NJPER 276 (¶24140 1993). Such claims are at least permissively negotiable. Where a light duty policy is acknowledged to exist, we have allowed arbitration of disputes where the employer asserted no position then existed, or that such positions were not available to

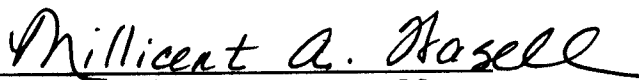
officers injured off-duty. See, respectively, Ewing Tp., P.E.R.C. No. 97-9, 22 NJPER 283 (¶27153 1996) and Franklin Tp., P.E.R.C. No. 95-105, 21 NJPER 225 (¶26143 1995).

This employer has a light duty policy. It has required Edwards to return to work on light duty and has changed his work schedule to conform to its administrative hours. Having an arbitrator review Edwards' claim that the employer discriminated against him by changing his hours when it had allowed a female employee to work light duty during her regular hours would not substantially limit governmental policy. Arguments that the employer is trying to be fiscally responsible and that it is acting in conformance with the contractual management's rights clause must be reviewed by the arbitrator. Paterson State-Operated School Dist., P.E.R.C. No. 2001-42, 27 NJPER 99 (¶32038 2001), app. pending App. Div. Dkt. No. A-003600-00T1 (employer's desire to reduce compensation is legitimate, but can be addressed through collective negotiations); Ridgefield Park. An arbitrator cannot, however, order that supervisors be disciplined. Little Ferry Bd. of Ed., P.E.R.C. No. 94-16, 19 NJPER 448 (¶24210 1993).

ORDER

The request of the Township of Burlington for a restraint of binding arbitration is granted to the extent the grievance seeks to contest the requirement that absent employees complete Schedule Change Reports. The request is otherwise denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman all voted in favor of this decision. None opposed.

DATED: April 26, 2001  
Trenton, New Jersey  
ISSUED: April 27, 2001