

P.E.R.C. NO. 95-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT
OF TREASURY),

Petitioner,

-and-

Docket No. SN-93-117

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Communications Workers of America, AFL-CIO against the State of New Jersey (Department of Treasury). The grievance asserts that the employer violated the parties' collective negotiations agreement when it issued a standard memorandum requiring employees absent on sick leave a certain number of days to submit doctor's notes instead of personal affidavits verifying their sickness. The Commission reaffirms that an employer has a prerogative to require employees on sick leave to produce doctors' notes verifying their sickness. However, an employer may not prevent an employee from contesting its determination in a particular case that the employee was not actually sick.

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, Deborah T. Poritz, Attorney General
(Michael L. Diller, Senior Deputy Attorney General)

For the Respondent, Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

DECISION AND ORDER

On June 15, 1993, the State of New Jersey (Department of Treasury) petitioned for a scope of negotiations determination. The employer seeks to restrain binding arbitration of a grievance filed by the Communications Workers of America, AFL-CIO. The grievance asserts that the employer violated the parties' collective negotiations agreement when it issued a standard memorandum requiring employees absent on sick leave a certain number of days to submit doctor's notes instead of personal affidavits verifying their sickness.

The parties have filed an affidavit, exhibits, and briefs. These facts appear.

CWA affiliates represent four separate negotiations units of State employees, including a unit of administrative and clerical employees and a unit of professional employees. The parties reached collective negotiations agreements covering these two units and, in particular, reached agreement on an article in each agreement entitled Sick Leave. That article provides, in part:

The appointing authority may require proof of illness of employee on sick leave, whenever such requirement appears reasonable. Such requirement shall be consistent with the Department of Personnel Rules and Regulations.

An employee who has been absent on sick leave for periods totalling fifteen (15) days in one (1) calendar year consisting of periods of less than five (5) days, shall submit acceptable medical evidence, but where reasonable and appropriate an affidavit of the employee shall be acceptable as medical evidence, for any additional sick leave in that year unless such illness is of a chronic or recurring nature requiring recurring absences of one (1) day or less in which case only one certificate shall be necessary for a period of six (6) months.

The contracts' grievance procedures end in binding arbitration.

In November 1992, the Division of Pensions in the Department of Treasury began requiring employees who had exceeded the minimum number of absences specified by N.J.A.C. 4A:6-1.4(d) to supply medical documentation in order to receive paid sick leave. A memorandum setting forth the requirements was sent to each employee in that category. That memorandum required employees to have a medical doctor supply documentation including a certification of inability to work, a prognosis, the duration of the illness, and the employee's expected date of return. The memorandum also stated that

failure to provide such documentation would result in the absence being considered unauthorized and could lead to discipline and that the employee's use of time off would be monitored. In addition, the memorandum also "recommended" that the employee contact the Employee Advisory Service ("EAS").

On November 25, a CWA representative filed two grievances on behalf of administrative and clerical employees and professional employees. The grievances asserted that the new memorandum violated the contractual articles on sick leave and was unreasonable in that it required doctors' notes instead of affidavits and suggested contacting the EAS. The grievance also asserted that the memorandum's "specificity of distribution" was selective. The grievance asked that the memorandum be rescinded and a new notice be issued limited to "15 day use info and a statement that complies with the letter and spirit of contract."

In response to the grievance, meetings were held and changes were made in the memorandum. The requirement that documentation be supplied by a medical doctor was retained. The "recommendation" that the employee contact EAS was turned into a notice that EAS services were available. The grievances, however, were ultimately denied.

CWA demanded binding arbitration. This petition ensued.

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 do not consider the contractual merits of these grievances or any contractual defenses the employer may have.

In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982), we held that the employer had a prerogative to establish a sick leave verification policy and to use "reasonable means to verify employee illness or disability." Id. at 96. We distinguished the mandatorily negotiable issue of whether a policy had been properly applied to deny sick leave benefits. We summed up this distinction by saying:

In short, the Association may not prevent the Board from attempting to verify the bona fides of a claim of sickness, but the Board may not prevent the Association from contesting its determination in a particular case that an employee was not actually sick. Id. at 96.

Since Piscataway, we have decided dozens of cases involving sick leave verification policies. We have repeatedly stated and held that an employer has a prerogative to require employees on sick leave to produce doctors' notes verifying their sickness. See, e.g., Hudson Cty., P.E.R.C. No. 93-108, 19 NJPER 274 (¶24138 1993); City of Elizabeth, P.E.R.C. No. 93-84, 19 NJPER 211 (¶24101 1993); South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017

1989): City of Camden, P.E.R.C. No. 89-4, 14 NJPER 504 (¶19212 1988); Borough of Spring Lake, P.E.R.C. No. 88-150, 14 NJPER 475 (¶19201 1988); Jersey City Med. Center, P.E.R.C. No. 87-5, 12 NJPER 602 (¶17226 1986); Newark Bd. of Ed., P.E.R.C. No. 85-26, 10 NJPER 551 (¶15256 1984). But we have also repeatedly stated and held that the issues of who pays for doctors' notes and what the disciplinary penalties will be for abusing sick leave are mandatorily negotiable. See, e.g., City of Elizabeth v. Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985); Teaneck Tp., P.E.R.C. No. 93-44, 19 NJPER 18 (¶24009 1992); City of Paterson, P.E.R.C. No. 92-89, 18 NJPER 131 (¶23061 1992); Mainland Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 92-12, 17 NJPER 406 (¶22192 1991); Aberdeen Tp., P.E.R.C. No. 90-24, 15 NJPER 599 (¶20246 1989).

CWA accepts that the employer has a prerogative to require proof of illness, but submits that whether that proof takes the form of a doctor's note or an employee's affidavit (when reasonable or appropriate) is mandatorily negotiable. This proposition, however, is inconsistent with established case law. Under these precedents, this employer has a prerogative to require a doctor's note when an employee has been absent for the number of days that triggers its sick leave verification policy.

The grievances also contest the memorandum's "specificity of distribution" although CWA asserts that it is not seeking to arbitrate whether the enforcement of the policy is discriminatory (Brief at 4). The employer has a prerogative to decide the number

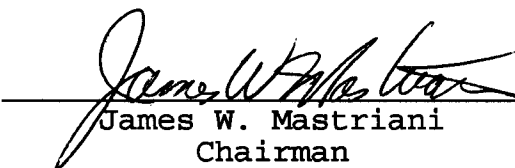
of absences triggering a notice to employees that a doctor's note is required and that the employees' attendance will be monitored. If the grievances were meant to challenge the employer's determination of when to require doctor's notes on a blanket basis, then they are not mandatorily negotiable.

Finally, the grievances assert that the memorandum's suggestion that employees contact EAS is unreasonable under the contract. CWA, however, does not pursue this argument or seek to distinguish it from its central contention that an employer must negotiate over requiring employees to submit doctor's notes on a blanket basis instead of accepting an employee's affidavit on a case-by-case basis. In any event, simply informing the employees that EAS is available does not give rise to an inference of discipline or implicate the right to negotiate over other employment conditions. Compare Town of Kearny, P.E.R.C. No. 92-40, 17 NJPER 481 (122233 1991).

ORDER

The request of the State of New Jersey (Department of Treasury) for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Finn, Klagholz and Ricci voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Wenzler was not present.

DATED: February 28, 1995
Trenton, New Jersey
ISSUED: March 1, 1995