

P.E.R.C. NO. 2001-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Respondent,

-and-

Docket No. CO-H-2000-311

ORANGE POLICE DEPARTMENT SUPERIOR
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the City of Orange Township violated the New Jersey Employer-Employee Relations Act by unilaterally eliminating the right of unit employees represented by the Orange Police Department Superior Officers Association to accrue negative sick leave balances. The SOA moved for summary judgment on an unfair practice charge it filed against the City. The City did not respond. The Commission concludes, given the undisputed facts, the mandatory negotiability of sick leave in general, and the absence of any legal argument in response to the SOA's summary judgment motion, that the City did not have the right to unilaterally eliminate negative sick leave balances and require employees to choose among employer-selected options for reducing their balances.

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 Respondent, McCormack & Matthews, attorneys
(Thomas M. McCormack, of counsel)

For the Charging Party, Loccke & Correia, attorneys
(Merick H. Limsky, of counsel)

DECISION

On January 18, 2001, the Orange Police Department Superior Officers Association moved for summary judgment on an unfair practice charge it filed against the City of Orange Township. The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5) and N.J.S.A. 34:13A-21,^{1/} by

^{1/} The face of the charge alleges violations of 5.4a(1), (3) and (5), but the explanation makes clear that the charge alleges violations of 5.4a(1) and (5) and N.J.S.A. 34:13A-21. N.J.S.A. 34:13A-5.4a(1) and (5) 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. (5)

unilaterally eliminating the right of unit employees to accrue negative sick leave balances. The City did not file a response.

On February 15, 2001, the Chair referred the motion to the full Commission. N.J.A.C. 19:14-4.8.

The SOA's charge was filed on April 7, 2000 and was accompanied by a request for interim relief. On June 14, 2000, a Commission designee restrained the City from unilaterally eliminating the right of employees to accrue negative sick leave balances pending a final Commission order. I.R. No. 2000-16, 26 NJPER 326 (¶311131 2000). Specifically, the City was restrained from unilaterally recouping sick leave and was ordered to return to the status quo ante by returning any recouped sick leave to affected employees.

On July 7, 2000, the City moved for reconsideration of the interim relief decision. On September 29, we denied

1/ Footnote Continued From Previous Page

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. N.J.S.A. 34:13A-21 provides that: "During the pendency of proceedings before the [interest] arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other...."

reconsideration. P.E.R.C. No. 2001-17, 26 NJPER 433 (131170 2000). We rejected the City's arguments that negative sick leave balances are disallowed by N.J.A.C. 4A:6-1.3(e)^{2/} and N.J.S.A. 2C:20-9,^{3/} and are an unconstitutional gift of public monies.

No material facts are in dispute. Accordingly, summary judgment will be granted if the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). We summarize the pertinent facts.

Since 1981, the City has permitted unit members to carry a negative sick leave balance until such time as the member earns sick time to offset the negative balance or, apparently, until the member leaves employment and the paid sick leave is recouped. On February 25, 2000, the SOA petitioned for interest arbitration. That same day, the police director issued a memorandum to a unit member informing him that he was carrying a negative balance of 48 sick days and giving him until March 13 to inform the City how he would clear the negative balance. The City gave the employee three options: paying the City; paying back with sick time, compensatory time or vacation time; or having current pay docked. At about the

^{2/} That regulation, which applies to employees other than police officers, provides: "An employee who exhausts all paid sick days in any one year shall not be credited with additional paid sick leave until the beginning of the next calendar year."

^{3/} N.J.S.A. 2C:20-9 is a criminal statute dealing with theft by failure to make a required disposition of property received.

same time, the City informed the SOA that it was eliminating employees' ability to accrue any negative sick leave balances.

Sick leave is, in general, mandatorily negotiable. See Hoboken Bd. of Ed., P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd NJPER Supp.2d 113 (¶95 App. Div. 1982), pet. for certif. dismissed as improvidently granted 93 N.J. 262 (1983). As we said in our earlier decision, the law contemplates some advance accruals of paid sick leave, but there may be some limits on how many days an employee can accrue in advance. 25 NJPER at 434. In this case,, however, there are no statutory limits on the number of days police officers can accrue, and there is no evidence that the employer has been or will be unable to recoup negative sick leave balances before an employee separates from City employment. Given the undisputed facts, the mandatory negotiability of sick leave in general, and the absence of any legal argument in response to the summary judgment motion, we conclude that the City did not have the right to unilaterally eliminate negative sick leave balances and require employees to choose among employer-selected options for reducing their balances. Accordingly, we will make permanent our designee's June 14, 2000 order and require the employer to post a notice of its violation.

ORDER

The City of Orange Township is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally ending the practice of permitting employees represented by the Orange Police Department Superior Officers Association to accrue negative sick leave balances and by unilaterally recouping such balances from employees not yet separating from employment.

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, particularly by unilaterally ending the practice of permitting employees represented by the Orange Police Department Superior Officers Association to accrue negative sick leave balances and by unilaterally recouping such balances from employees not yet separating from employment.

Take this action:

1. Return any recouped sick leave to affected employees.

2. Negotiate in good faith with the Orange Police Department Superior Officers Association if it seeks to change the practice of permitting superior officers to accrue negative sick leave balances.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the

Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Within twenty (20) days of receipt of this decision, notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

DATED: February 22, 2001
Trenton, New Jersey
ISSUED: February 23, 2001



NOTICE TO EMPLOYEES
PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally ending the practice of permitting employees represented by the Orange Police Department Superior Officers Association to accrue negative sick leave balances and by unilaterally recouping such balances from employees not yet separating from employment.

WE WILL cease and desist from 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, particularly by unilaterally ending the practice of permitting employees represented by the Orange Police Department Superior Officers Association to accrue negative sick leave balances and by unilaterally recouping such balances from employees not yet separating from employment.

WE WILL return any recouped sick leave to affected employees.

WE WILL negotiate in good faith with the Orange Police Department Superior Officers Association if we seek to change the practice of permitting superior officers to accrue negative sick leave balances.

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CITY OF ORANGE TOWNSHIP
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"