

P.E.R.C. NO. 2001-23

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-2001-5

P.B.A. LOCAL 109,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Hudson for a restraint of binding arbitration of a grievance filed by P.B.A. Local 109. The grievance seeks to overturn disciplinary sanctions imposed as a result of the County's application of a sick leave verification policy. The Commission concludes that, although the County has the right to adopt a sick leave verification policy, this dispute involves whether a sick leave verification policy was properly applied. That issue can be submitted to binding arbitration. The Commission also notes that minor disciplinary sanctions imposed on law enforcement officers can be reviewed through binding arbitration.

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, Scarinci & Hollenbeck, LLC, attorneys  
(Esther Suarez, on the brief)

For the Respondent, Griffin & Griffin, P.C., attorneys  
(Jennifer L. Alexander, on the brief)

DECISION

On August 8, 2000, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed on behalf of 30 corrections officers represented by P.B.A. Local 109. The grievance seeks to overturn disciplinary sanctions imposed as a result of the County's application of a sick leave verification policy.

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

The PBA represents corrections officers in the Hudson County Correctional Center. The County and the PBA are parties to a collective negotiations agreement effective from January 1, 1994 through December 31, 1998. The grievance procedure ends in binding arbitration.

Article XII, Section E is entitled Verification of Sick Leave. It provides, in part:

1. A member who shall be absent on sick leave may be required to submit acceptable medical evidence substantiating the need for sick leave. Abuse of sick leave shall be cause for disciplinary action.

\* \* \*

5. Failure to provide verification may result in denial of sick leave and may result in disciplinary action.

Between September and October 1996, the County called corrections officers to work mandatory overtime. Thirty officers failed to work the mandatory overtime and apparently provided sick leave verification for the time they did not work. The County rejected the verification, asked for more documentation, and suspended 30 officers for three to five days each. The officers were charged with insubordination, conduct unbecoming, and neglect of duty.

On November 4, 1996, the PBA filed this grievance:

Pursuant to Article XII Subsection E Verification of Sick Leave all of the above named employees have provided verification of sick leave. The department rejected said verification and demanded additional documentation in violation of the Collective Bargaining Agreement. Verification of sick leave has been provided by all of the above named officers. It was not until October 18, 1996 that additional requirements for physician notes became a Hudson County policy. All of the aforementioned officers submitted verification of sick leave prior to the new policy of October 18, 1996.

As a remedy, the grievance asks that all fines and/or suspensions be vacated and the notices of minor discipline be removed from each officers' personnel file.

The employer denied the grievance and on July 18, 1997, the PBA demanded arbitration. After arbitration was scheduled for September 2000, the County filed this petition.<sup>1/</sup>

The County asserts that it has a prerogative to establish a reasonable policy requiring employees to verify illness. It also asserts that it has a prerogative to discipline employees for failing to provide adequate medical verification. It cites Hudson Cty., P.E.R.C. No. 97-90, 23 NJPER 132 (¶28064 1997).

The PBA asserts that the officers were never given an opportunity to provide acceptable medical documentation, but were prematurely suspended on the spot for refusing the mandatory overtime. It asserts that a sick leave policy must be reasonable and that the application of a sick leave policy to discipline employees is a mandatorily negotiable issue. It cites Hudson Cty., P.E.R.C. No. 93-108, 19 NJPER 274 (¶24138 1993) and Hudson Cty., P.E.R.C. No. 97-90.

The County responds that the issue argued by the PBA is not the issue presented by the grievances filed four years ago, and that the PBA now seeks to arbitrate the County's

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<sup>1/</sup> We note that the grievance was filed in 1996, arbitration was demanded in 1997, and the filing of this petition and the scheduling of an arbitration hearing did not occur until 2000. The record does not explain the delay.

implementation and enforcement of its sick leave policy. The County asserts that the PBA cannot change the grievance at this juncture.

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 this grievance or any contractual defenses the County may have. Specifically we do not consider the County's argument that the PBA has bypassed part of the grievance procedure.

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 No. 1 v. City of 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.... 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 policy-making 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. [Id. at 92-93; citations omitted]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82- 90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 13 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

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. We distinguished the mandatorily negotiable issue of whether a policy has been properly applied to deny sick leave benefits. We stated:

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 taking sick leave to produce doctors' notes verifying their sickness. See, e.g., Rahway Valley Sewerage Auth., P.E.R.C. No. 96-68, 22 NJPER 137 (¶27068 1996); State of New Jersey (Dept. of Treasury), P.E.R.C. No. 95-67, 21 NJPER 129 (¶26080 1995); Hudson Cty., P.E.R.C. No. 93-108; 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 penalties will be for violating a policy 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); Rahway Valley Sewerage Auth.; 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).

In P.E.R.C. No. 97-90, the grievance challenged the City's adoption of a new sick leave verification policy. Here, by contrast, the City has applied its policy and imposed minor disciplinary sanctions (fines or suspensions of five days or less) on officers. We specifically stated in that prior dispute that Local 109 could arbitrate whether the sick leave verification policy "was properly applied to an individual employee." 23 NJPER at 133. This dispute presents no novel negotiability issue, merely an extrapolation from one employee to thirty. In addition, minor disciplinary sanctions imposed on law enforcement officers can be reviewed through binding arbitration. See Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997).

ORDER

The request of the County of Hudson for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

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

DATED: October 30, 2000  
Trenton, New Jersey  
ISSUED: October 31, 2000