

P.E.R.C. NO. 95-68

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE  
AND DENTISTRY OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-94-21

INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, LOCAL 97,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the International Brotherhood of Teamsters, Local 97 against the University of Medicine and Dentistry of New Jersey to the extent, if any, the grievance contests the requirement that employees submit doctor's notes under certain circumstances. The Commission reaffirms that the employer has a prerogative to verify that employees are using sick leave properly. The Commission rejects the employer's contention that it has the prerogative to determine the penalties for violating its revised sick leave policy. In addition, the rates for accruing and accumulating sick time are mandatorily negotiable.

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  
(Andrea M. Silkowitz, Assistant Attorney General, of  
counsel; Robert A. Blass, Deputy Attorney General, on the  
brief)

For the Respondent, Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano, P.C., attorneys  
(James M. Mets, of counsel)

DECISION AND ORDER

On September 10, 1993, the University of Medicine and  
Dentistry of New Jersey petitioned for a scope of negotiations  
determination. UMDNJ seeks a restraint of binding arbitration of a  
grievance filed by the International Brotherhood of Teamsters, Local  
97. That grievance asserts that UMDNJ violated the parties'  
collective negotiations agreement when it implemented a revised sick  
leave policy.

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

Local 97 represents the employer's licensed practical  
nurses, clerical employees, health care and services employees, and

operations, maintenance and service employees. The parties entered into a collective negotiations agreement effective from July 1, 1992 thorough June 30, 1995. The contract's grievance procedure ends in binding arbitration of contractual disputes.

In May 1991, the employer implemented a revised sick leave policy. The policy was apparently revised to include provisions for employees on 12 hour shifts. Such employees work three 12 hour shifts a week, except every fourth week they work four 12 hour shifts a week.

The revised policy specifies the rate at which sick time is accrued and accumulated; for example, employees on 12 hour shifts accrue 10 hours of sick time a month while other employees accrue 1 1/4 days of sick time a month. The policy also sets forth the purposes for which sick time can be used and the procedures for notifying management of absences; staff members who do not comply may have their pay deducted for their absences and may be penalized in accordance with the employer's Attendance Control policy. That policy in turn provides for progressive discipline -- an oral warning, a written warning, a three day suspension (two days for employees on 12 hour shifts), and termination. The sick leave policy also specifies when staff members have to bring in doctor's notes to verify absences; if they do not, employees may lose their salary for the days missed and may be disciplined under the Attendance Control policy. Employees who have been placed on "doctor's note restriction" because of previous attendance abuse are

required to present a note from their personal physician for any absences. Employees who are absent for three or four consecutive workdays (two or three consecutive workdays for employees on 12 hour shifts) without notifying management of the reason for that absence, or without providing an expected return date, or without securing approval will have their salary deducted for the days absent; if the employee was on a 12 hour shift, he or she will be suspended for two days without pay. If the employees had previously been suspended under the Attendance Control policy during that year, they may be discharged. Employees who are absent for five or more consecutive work days (4 consecutive work days for an employee on a 12 hour shift) without notifying management of the reason for the absence, or without providing an expected return date, or without receiving approval will have their salary deducted for the days absent and their employment terminated.

On May 16, 1991, Local 97 filed a grievance. The grievance asserted that the employer had violated a contractual clause requiring it to maintain existing benefits and practices uniformly affecting unit employees. Local 97 apparently filed a second grievance, although that is not in the record. The employer did not respond at steps one or two of the grievance procedure.

On January 15, 1993, Local 97 demanded binding arbitration. It identified this grievance: "Employees who work the 12 hour shift in EMS are being denied an established prior practice in the department regarding the sick pay policy." 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 arbitrability or merits of the grievance or any contractual defenses the employer may have. We specifically decline to consider the employer's contentions that the demand for arbitration was untimely; the revised policy does not change employment conditions, practices, or disciplinary penalties; the revised policy does not violate the contract and is permitted by the management rights clause; and Local 97 should have sought to negotiate over these issues during the previous round of contract negotiations.

The employer asserts that it has a prerogative to verify that employees are using sick leave properly. Local 97 agrees and so do we. See, e.g., City of Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). Thus, the requirement that employees submit doctor's notes when they have been absent a certain amount of time may not be

contested through binding arbitration. Nevertheless, severable issues such as who pays for the doctor's notes and whether a sick leave policy has been properly applied to withhold sick pay are mandatorily negotiable. Elizabeth; Piscataway.

The employer also claims a prerogative to determine the penalties for violating the revised sick leave policy. No authority is cited for this proposition. To the contrary, the discipline amendment to N.J.S.A. 34:13A-5.3 requires negotiations over disciplinary disputes and review procedures. We have thus repeatedly held that the penalties for violating sick leave and absenteeism policies are mandatorily negotiable. 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); Jersey City Medical Center, P.E.R.C. No. 87-5, 12 NJPER 602 (¶17226 1986). Cf. Cty. College of Morris Staff Ass'n v. Morris Cty. College, 100 N.J. 383 (1985) (progressive discipline concepts are negotiable). We do so here as well.<sup>1/</sup>

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<sup>1/</sup> The revised policy also sets forth the employees' obligations for notifying management of their absences and expected return dates. Local 97 does not appear to be contesting those requirements. It is, however, contesting the penalties for violating the sick leave policy and, as we stated above, that issue is mandatorily negotiable.


The revised policy also sets forth the rates for accruing and accumulating sick time. The employer does not argue that it had a managerial prerogative (as opposed to a contractual right) to adopt those provisions. They are mandatorily negotiable.

Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977).

ORDER

The request of the University of Medicine and Dentistry of New Jersey for a restraint of binding arbitration is granted to the extent, if any, the grievance contests the requirement that employees submit doctor's notes under certain circumstances. The request is otherwise denied.

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 the first part of the Order and in favor of the second part of the Order. Commissioner Wenzler was not present.

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