

P.E.R.C. NO. 98-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Petitioner,

-and-

Docket No. SN-97-111

BURLINGTON COUNTY CORRECTIONAL
OFFICERS, PBA LOCAL 249,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Burlington for a restraint of binding arbitration of a grievance filed by an employee represented by Burlington County Correctional Officers, PBA Local 249. The grievance asserts that the County violated the parties' collective negotiations agreement when it did not restore sick days taken because of the employee's work-related disability. The County argues that workers' compensation laws preempt arbitration over the application of the contractual provisions in question. The Commission finds that this grievance does not seek tort-based damages and is limited to a claim for a paid disability leave and restored sick leave days and is therefore mandatorily negotiable and legally arbitrable.

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, Evan H.C. Crook, County Solicitor
(Wayne A. Hamilton, of counsel)

For the Respondent, Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, attorneys
(Kevin P. McGovern, of counsel)

DECISION

On May 7, 1997, the County of Burlington petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by an employee represented by Burlington County Correctional Officers, PBA Local 249. The grievance asserts that the County violated the parties' collective negotiations agreement when it did not restore sick days taken because of the employee's work-related disability.

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

Local 249 represents correction officers and identification officers employed by the County. The parties entered into a collective negotiations agreement with a grievance

procedure ending in binding arbitration of certain defined disputes. Article VIII of the agreement is entitled Workers' Compensation. Sections B, C and D provide:

- B. Any employee who is temporarily or permanently disabled as a result of work related injury or illness, shall be covered by the provisions of the New Jersey Worker's Compensation Law and the provisions of this Article from the date of the injury or illness. Said employee shall be entitled to a leave of absence for the entire period of such disability. During such leave, said employee shall also continue to accrue credit for sick and vacation leave, however, such credit shall be actually added to the employee's account upon return to work. Further, employees on such leave shall suffer no loss of seniority.

- C. Employees on a leave of absence pursuant to paragraph B herein, shall have the option to utilize earned sick, vacation, holiday and personal leave time while on said disability leave. In the event an employee exercises this option, said employee shall receive from the County the difference between the employee's regular salary and the workers' compensation wage benefits the employee is receiving. Said payment shall be charged against the employee's accumulated leave on a pro-rata basis.

Notwithstanding any language in this Article to the contrary, an employee who has not yet been determined to be eligible to receive workers' compensation benefits may elect to draw on earned sick, vacation, holiday and personal leave time. At such time as the employee is determined to be eligible for workers' compensation wage benefits, the employee shall be placed on a leave of absence pursuant to paragraph B of this Article and appropriate adjustments shall be made to reduce the salary payments made by the County, under this option, to the difference between the employee's normal pay

and the workers' compensation wage received. The employee shall also have the option at such time to assign over to the County any retroactive workers' compensation wage benefits received so as to restore, on a pro-rata basis, that portion of the employee's earned sick, vacation, holiday or personal leave time which has been utilized to date and time and the employee shall have the further option to draw on such time pursuant to the first sub-paragraph of this paragraph.

All wage payments set forth hereunder shall be charged against the employee's earned sick, vacation, holiday and personal leave time in that order. If accumulated leave time is completely used up before workers' compensation benefits terminate, the employee shall thereafter receive only his workers' compensation benefits.

The employee shall provide written notice of his election to exercise any of the options set forth herein.

- D. Notwithstanding any terms to the contrary in paragraph C above, an employee who is injured while acting in the proper and lawful performance of his duties as a result of the direct action, effort, interference or activity of an inmate or prisoner shall be entitled to a leave of absence in accordance with the terms of paragraph B herein and such leave shall be granted with pay for the period of disability or up to one (1) full year whichever is less. In the event the employee is determined to be eligible for workers' compensation wage benefits, such pay shall not be in addition to any such benefits and the employee shall be obligated to assign to the County any such wage benefits which are received as a condition of receiving the wage payments set forth herein.

- 1). Eligibility Determination - Whether or not an employee is deemed to be eligible for the benefits provided for under paragraph D of this article shall be determined in accordance with the procedure set forth as follows:

- a). Upon the occurrence of an inmate/prisoner related incident which results in an injury believed by the employee to be covered by the provisions of the Paragraph D, the employee shall submit to the Jail Administrator a medical certificate from the employee's treating physician certifying that the employee's disability is the result of a work related injury or illness. The Jail Administrator shall have the right to require the employee to be evaluated by the County's treating physician pursuant to the provisions of paragraph E of this Article.
- b). If, after the requirements set forth under sub-paragraph D (1) (a) are fulfilled by the employee, a dispute develops as to whether or not the employee's disability was a result of a work related injury or illness, said dispute shall be resolved in accordance with procedures as provided under the New Jersey Workers' Compensation Law and the employee shall not be eligible for the benefits set forth under this paragraph D until such dispute is resolved.
- c). If, the County does not dispute that the employee's disability is work related, but a dispute develops as to whether or not the disability resulted from injuries suffered by an employee while acting in the proper and lawful performance of his duties as a result of the direct action, effort, interference, or activity of an inmate or prisoner, the Association shall have twenty (20) working days from the date of notice of such dispute to submit the same directly to binding

arbitration through the Public Employment Relations Commission, with the cost thereof to be borne equally by the Employer and the Association.

- d). During the resolution of any disputes under subsections 1(a) and (b) above, an employee may elect to draw on benefits available under Section C of this Article.

Samuel Green is a correction officer. Sometime in November 1996, he injured his back while subduing an inmate he was escorting within the jail. A doctor in the employer's health clinic found that Green may have aggravated a back injury for which he was undergoing treatment and concluded that Green was unable to work until his own physician evaluated him.

Green filed for workers' compensation benefits. The employer denied that claim because it believed Green had a pre-existing back injury and he had not shown that the altercation with the inmate had aggravated that condition.

Green was out of work from November 25, 1996 to January 16, 1997. On his return to work, he filed a grievance alleging that the employer had violated Article VIII, Sections B and D. He asserted that the denial of workers' compensation benefits was "wrong and unjust" and he asked that the sick days he had used be restored to him and that the days he was absent be charged to workers' compensation days.

The employer denied the grievance, asserting that the injury was not work-related because of Green's pre-existing back

condition. Local 249 demanded arbitration and the employer agreed to arbitrate the dispute. However, it reconsidered and asserted that the proper forum to resolve this dispute was a workers' compensation tribunal. 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 the grievance or any contractual defenses the County may have. We specifically do not consider the County's contentions that Green's grievance is not covered by the contractual definition of grievance and that the parties agreed to be bound by the workers' compensation laws rather than their negotiated grievance procedures.

The County does not contest that the contractual provisions in question are mandatorily negotiable, but it asserts that the workers' compensation laws, N.J.S.A. 34:15-1 et seq., preempt arbitration over the application of those provisions in this case. We rejected a similar claim in another case involving this employer and a different union. Burlington Cty. and CWA, P.E.R.C. No. 97-84,

23 NJPER 122 (¶28058 1997), app. pending App. Div. Dkt. No. A-004016-96T5. The workers' compensation laws rest on the premise that an employer receives insulation from an employee's tort actions in exchange for assuming strict liability for workplace injuries. These laws do not address or foreclose a majority representative's efforts to negotiate contractual clauses providing leaves of absence and to enforce such clauses by seeking remedies limited to restoring sick leave days. See City of Camden, P.E.R.C. No. 96-33, 21 NJPER 399 (¶26244 1995); Riverside Tp., P.E.R.C. No. 95-7, 20 NJPER 325 (¶25167 1994); Maurice River Tp. Bd. of Ed., P.E.R.C. No. 87-91, 13 NJPER 123 (¶18054 1987); Jackson Tp., P.E.R.C. No. 82-79, 8 NJPER 129 (¶13057 1982); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in part, 6 NJPER 338 (¶11169 App. Div. 1980). Since this grievance does not seek tort-based damages and is limited to a claim for a paid disability leave and restored sick leave days, it is mandatorily negotiable and legally arbitrable.

ORDER

The request of Burlington County for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Millicent A. Wasell

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: December 18, 1997
Trenton, New Jersey
ISSUED: December 19, 1997