

P.E.R.C. NO. 89-77

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PASSAIC,

Petitioner,

-and-

Docket No. SN-89-16

P.B.A. LOCAL NO. 14,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by P.B.A. Local No. 14 against the City of Passaic. The grievance challenges the adoption of a reporting procedure for police on sick leave. The Commission finds that the new procedure imposes more burdensome reporting procedures than required by the parties' contract. The Commission further finds that if the City were required to rescind or negotiate the policy, it would not be substantially limited in implementing its governmental policy aimed at curbing sick leave abuse. It concludes that the subject of the grievance is at least permissively negotiable.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PASSAIC,

Petitioner,

-and-

Docket No. SN-89-16

P.B.A. LOCAL NO. 14,

Respondent.

Appearances:

For the Petitioner, Sills, Cummis, Zuckerman,  
Radin, Tischman, Epstein & Gross, Esqs.  
(Richard M. Salsberg, of counsel)

For the Respondent, Loccke & Correia, Esqs.  
(Michael J. Rappa, of counsel)

DECISION AND ORDER

On September 23, 1988, the City of Passaic ("City") filed a Petition for Scope of Negotiations Determination. The petition seeks to restrain binding arbitration of a grievance filed by P.B.A. Local No. 14 ("PBA").<sup>1/</sup> The grievance challenges the adoption of a reporting procedure for police on sick leave.

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

The City and the PBA have entered an agreement effective January 1, 1988 to December 31, 1989. The agreement's grievance procedure ends in binding arbitration. Article 14, Section 2 provides, in part:

---

<sup>1/</sup> Arbitration has been restrained pending our determination. I.R. No. 89-8,      NJPER      (¶ 1988).

- C. If an officer is out sick or injured under doctor's care, he will not be required to remain in his home if the doctor feels it is not necessary for his recuperation; but will let the desk officer know where he can be reached.
- D. If an officer lives alone or becomes ill or injured while not at home, he will notify the desk officer as to where he will be staying.

On June 28, 1988, the Acting Chief of Police issued a memorandum concerning the department's sick leave policy. It provides, in part:

- 1. All members out on sick leave, when leaving their residence, must notify the desk officer or dispatcher and give the following facts:
  - a. Reason for leaving
  - b. What location member is going to
  - c. Phone number at that location  
(NO BEEPER NUMBERS)
  - d. Length of time member is expected to be out of his/her residence
  - e. Notify headquarters upon returning home

The memorandum also provides that noncompliance will be grounds for discipline.

On July 14, 1988, the PBA filed a grievance alleging that the new policy violated the agreement. The City denied the grievance and the PBA demanded arbitration. This petition ensued.

The City contends the policy is non-negotiable and non-arbitrable because it is part of its managerial prerogative to verify employee illness and curb sick leave abuse. It asserts that the grievance challenges the establishment of the verification policy rather than its application or the cost of medical exams to verify illness.

The PBA argues that the dispute involves employees' conduct while on sick leave and not a sick leave verification policy. It contends that the subject is already covered by Article 4, Section 2, paragraphs C & D and that the issue is at least permissively negotiable.

The boundaries of our scope of negotiations jurisdiction are narrow. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154].

Accordingly we do not determine whether the City had a contractual right to adopt the disputed policy.

In Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and fire fighters.<sup>2/</sup> The Court stated:

---

<sup>2/</sup> The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

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. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978)] 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 policymaking 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. [87 N.J. at 92-93; citations omitted]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is either mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. A-3664-81T3 (4/28/83). Paterson bars arbitration only if the agreement alleged would substantially limit government's policymaking powers.

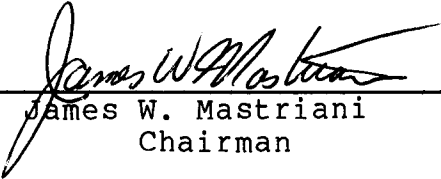
Cases governing the negotiability of sick leave verification are discussed in the Commission designee's decision restraining arbitration. I.R. at 4-5. He concluded that the promulgation of this policy is neither mandatorily nor permissively negotiable. We disagree.

Here the contract already provides that employees on sick leave must report their location to the department. This policy does

not change that requirement, but it does impose more burdensome reporting procedures. If the union were to prevail in arbitration, the City would still know the whereabouts of employees on sick leave as part of its verification program. Nor does this grievance affect the City's right to demand medical proof of illness. Thus we conclude that if the City were required to rescind or negotiate the policy it would not be substantially limited in implementing its governmental policy aimed at curbing sick leave abuse.<sup>3/</sup> We conclude that the subject of the grievance is at least permissively negotiable.<sup>4/</sup>

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
 \_\_\_\_\_  
 James W. Mastriani  
 Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
 January 9, 1989  
 ISSUED: January 10, 1989

- 
- <sup>3/</sup> However, we do not determine whether the new policy is within the City's contractual authority.
- <sup>4/</sup> City of Newark, P.E.R.C. No. 85-13, 10 NJPER 505 (¶15231 1984) and City of Camden, P.E.R.C. No. 89-4, 14 NJPER 504 (¶19212 1988) involved the promulgation of comprehensive sick leave verification policies, rather than the "fine-tuning" of reporting procedures which do not affect the employer's basic policy goal of verifying sickness. This policy is more akin to a "home visitation" portion of a comprehensive policy at issue in City of East Orange, P.E.R.C. No. 84-68, 10 NJPER 25 (¶15015 1983), which did not address permissive negotiability.