

P.E.R.C. NO. 93-44

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Petitioner,

-and-

Docket No. SN-93-30.

TEANECK PBA LOCAL NO. 215,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Teaneck PBA Local No. 215 against the Township of Teaneck to the extent the grievance challenges the requirement that officers absenting themselves from duty during the last two hours of their shifts submit physicians' letters. The Commission declines to restrain arbitration to the extent, if any, the grievance raises the question of who will pay for any required physicians' examinations and letters. The Commission also declines to restrain arbitration to the extent, if any, the grievance raises claims that charging employees more sick time than they have taken breaches the sick leave provisions of the parties' collective negotiations agreement; and that particular denials of benefits violated the contract because an employee justifiably could not comply with the verification requirement, or because the employee complied and benefits were nevertheless denied.

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Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, P.A.,  
attorneys (M. Joan Foster, of counsel)

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

DECISION AND ORDER

On October 9, 1992, the Township of Teaneck petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Teaneck PBA Local No. 215. That grievance alleges that the Township violated the parties' collective negotiations agreement when its police chief issued an order concerning sick leave.

An affidavit, exhibits, and briefs have been filed. These facts appear.

The PBA represents the Township's patrol officers.<sup>1/</sup> The Township and the PBA entered into a collective negotiations

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<sup>1/</sup> The Superior Officers Association of the Teaneck Police Department represents the superior officers. The sick leave order in question also covers superior officers so the Township named the Association as a respondent. The Association, however, did not file a grievance. We therefore consider only the arbitrability of the PBA's grievance.

agreement effective from January 1, 1989 to December 31, 1991. That contract's grievance procedure ends in binding arbitration. Article XXI is entitled Sick Leave. Sections C and D state:

C. When an employee does not report for duty for a period of greater than three (3) working days or totaling more than ten (10) working days in one (1) calendar year because of sickness, he/she shall show proof of his/her inability to work by submitting to the Township Treasurer upon request a certificate, signed by a reputable physician in attendance to the effect that the said Employee was not, on the date or dates leave is requested, physically able to perform any duty connected with his/her job. In case the absence is due to a contagious disease, a certificate from the Department of Health shall be required. Pursuant to this Paragraph, if requested, the Employee shall submit to examination by a physician appointed by the Township to substantiate such illness. Such examination shall be at Township expense.

D. Sick leave shall be charged in amounts of half (1/2) days for an absence on a duty day of from two (2) to four (4) hours, and a full day for over four (4) hours.

Donald Giannone has been the police chief since September 1, 1991. He became acting chief on June 27, 1991. Before then he served as the administrative captain in charge of staffing and roll call.

While captain, Giannone noticed that certain officers regularly took sick leave for periods of less than two hours at the end of their shift. Under the collective negotiations agreement, they were not charged any sick time and they received a full day's pay. According to Giannone, these absences left the department understaffed, especially during the midnight tour when it was hard

to arrange coverage on short notice. Giannone told the PBA's president that if the absences didn't cease, the Township would have to implement a verification policy.

In July 1991, while acting chief, Giannone ordered a study of sick leave records from January through July 1991. During this period, 43 police officers took sick leave during the last two hours of their shift; the total of such sick time was 196 hours. One officer took such sick leave 12 times for a total of almost 24 hours.

On July 16, 1991, Giannone issued an order entitled Use of Sick Leave. That order stated:

I. Purpose

The purpose of this order is to clarify the use of certain sick leave.

II. Policy

It is the Department's policy to prevent the abuse of sick leave and to assure adequate staffing to meet the needs of the community.

III. Procedure:

Effective immediately, any officer who absences him/herself from duty during the last two hours of a shift, is to present a physician's letter specifying the medical reason for such absence.

If during a calendar year, an officer is absent three or more times without such documentation, he/she will be charged with one-half sick day for each absence, beginning with the third one.

This order will not be retroactive.

Giannone elected to charge unverified claims of sick time against an officer's credited sick time because he believed that such a penalty was less onerous than docking the officer's pay for the missed time.

Since the order, the number of officers taking sick leave during the last two hours of their shift has been reduced. From January 1 to July 16, 1992, 17 officers took such sick leave for a total of 40 hours. None of these officers has submitted sick leave verification or incurred any medical expenses under the policy. Only one officer has been absent three times without verification; one-half day was deducted from his credited sick time.

On August 26, 1991, the PBA demanded binding arbitration. It listed the grievance to be arbitrated as "Unilateral Change in Sick Leave Benefits." This petition ensued.<sup>2/</sup>

The Township asserts that it has a non-negotiable right to require sick leave verification and that this right subsumes a right to penalize employees for failure to comply with verification requirements. The PBA does not challenge the Township's right to require sick leave verification, but does contest the Township's power to determine the appropriate penalty unilaterally. The PBA also raises the question of who will pay doctors' fees required to verify sickness.

A public employer has a prerogative to require an employee to provide proof of illness, including a doctor's verification, in order to be eligible for sick leave benefits. See, e.g., South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989);

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<sup>2/</sup> The PBA has also filed an unfair practice charge. On September 24, 1992, a Complaint and Notice of Hearing issued. The unfair practice proceeding has been held in abeyance pending this decision.

Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). We have thus restrained binding arbitration over requirements that police officers and firefighters verify sick leave. Bor. of Spring Lake, P.E.R.C. No. 88-150, 14 NJPER 475 (¶19201 1988); City of Camden, P.E.R.C. No. 89-4, 14 NJPER 504 (¶19212 1988). We have also restrained arbitration over grievances seeking sick leave benefits where the employees' refusal to fill out sickness certification forms effectively prevented the employer from implementing its verification policy. Newark Bd. of Ed., P.E.R.C. No. 85-26, 10 NJPER 551 (¶15256 1984). And we have dismissed an unfair practice charge challenging the employer's right to require that employees who call in sick on "crisis days" produce medical documentation or be docked for those days. Jersey City Med. Center, P.E.R.C. No. 87-5, 12 NJPER 602 (¶17226 1986). The PBA does not now challenge the requirement that an officer claiming sick leave present a physician's letter so we will restrain arbitration to the extent, if any, the grievance challenges that requirement.

The issue of who pays for a doctor's note is mandatorily negotiable. City of Elizabeth v. Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985). The Township does not challenge this proposition. We therefore decline to restrain arbitration to the extent, if any, the grievance raises the question of who will pay for any required physician's examinations and letters.

The Township asserts that penalties for abusing sick leave are a non-negotiable component of a sick leave verification policy. We have rejected that general proposition and have stated instead that the application of a policy, the denial of sick leave days, and the penalties for violating a policy are all mandatorily negotiable. See 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 Med. Center.<sup>3/</sup>

We now examine the facts of this case. The order states that officers who claim sick leave three or more times during the last two hours of a shift without submitting medical verification will be charged with one-half of a sick leave day for each absence, beginning with the third one. In effect, the order honors the officers' claims that they were sick, but charges them sick time at a fixed rate regardless of the amount of time taken. The amount of time charged may therefore exceed the amount of time taken.

An employer has a right to establish a reasonable policy requiring that employees verify their illness and announcing that employees will be denied sick leave benefits for failing to comply

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<sup>3/</sup> The Township relies on dicta in a Hearing Examiner's recommended decision suggesting that employers have a right to establish penalties -- including discharge -- for sick leave abuse. Matawan-Aberdeen Reg. School Dist., P.E.R.C. No. 91-16, 17 NJPER 32, 36 (¶22013 1990). We reject that dicta. An employer must negotiate upon demand over the penalties for sick leave abuse. We distinguish situations where an employer announces a policy of denying sick leave benefits to employees who fail to comply with a verification requirement.

with the policy. But an employer does not have an inherent prerogative to establish a sick leave verification policy that charges employees more sick time than they have taken as a penalty for not complying with the policy. And a union has a right to allege that charging employees more sick time than they have taken breaches the sick leave provisions of the parties' collective negotiations agreement. In addition, a union may arbitrate claims that particular denials of benefits violated the contract because an employee justifiably could not comply with the verification requirement or because the employee complied and benefits were nevertheless denied. We therefore decline to restrain arbitration to the extent, if any, the grievance raises these issues.

ORDER

The request of the Township of Teaneck for a restraint of binding arbitration is granted to the extent the grievance of Teaneck PBA Local No. 215 challenges the requirement that officers absenting themselves from duty during the last two hours of their shifts submit physicians' letters.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Grandrimo and Regan were not present.

DATED: November 25, 1992  
Trenton, New Jersey  
ISSUED: November 25, 1992