

P.E.R.C. NO. 92-89

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Petitioner,

-and-

Docket No. SN-92-52

PATERSON POLICE PBA  
LOCAL NO. 1,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Paterson Police PBA Local No. 1 against the City of Paterson. The grievance asserts that the employer violated a contractual obligation to notify an employee personally during his absence that he had to submit a doctor's note, and therefore the employee should not have had sick leave pay withheld. The Commission finds the grievance legally arbitrable.

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Appearances:

For the Petitioner, Ralph L. DeLuccia, Jr., Corporation  
Counsel (John C. Emolo, on the brief)

For the Respondent, Guazzo, Perelson, Rushfield & Guazzo,  
attorneys (Mark C. Rushfield, of counsel)

DECISION AND ORDER

On November 12, 1991, the City of Paterson petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by Paterson Police PBA Local No. 1. The grievance contests the withholding of sick leave pay.

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

The PBA represents the City's police officers. The parties' collective negotiations agreement provides that employees will be docked one-half day's pay per occurrence of sick leave for the first work day and that a doctor's note shall not be required unless a personal request is made by the police chief or his

designee during the employee's absence. The contract also requires just cause for disciplinary action. The grievance procedure ends in binding arbitration.

On April 6, 1990, the Acting Chief of Police issued special order no. 11 to commanding officers, a deputy chief, an inspector, and all divisions. The order stated that the Internal Affairs Division had compiled a list of officers who showed a pattern of sick leave abuse. The order stated that officers on that list had to produce a full report by an attending physician when they returned from sick leave; if they did not, they were not to be paid for sick time. Eight officers, including Oliver Smith, were on the list. Smith complied with the order on several occasions by submitting a note and he was paid on those occasions.

On June 10, 1991, Smith and the PBA filed a grievance. The grievance contested the withholding of Smith's pay during a sick leave for failure to produce a doctor's note, even though Smith allegedly had not been requested to submit a note. The grievance was denied and the PBA demanded arbitration.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n and 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. [Id. at 154]

Thus, we do not consider the contractual merits of the PBA's grievance or the employer's defenses.

The scope of negotiations for police and fire employees is broader than for other employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiation. See Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981). Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). The steps of a scope of negotiations analysis for police officers and firefighters is outlined in Paterson:

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 the dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3664-81T3 (4/28/83). Since there is no statute or regulation which preempts negotiations, we need only decide whether the agreement alleged would substantially limit government's policymaking powers.

The implementation of a sick leave verification policy is a managerial prerogative. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). This right includes compiling a list of employees suspected of sick leave abuse and requiring employees to submit a doctor's note verifying that the employee was really sick. Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985); Town of Kearny, P.E.R.C. No. 92-40, 17 NJPER 481 (¶22233 1991); Ridgefield Park Bd. of Ed., P.E.R.C. No. 91-51, 17 NJPER 4 (¶22002 1990). However, the application of a policy, the denial of sick leave pay, sick leave procedures, penalties for violating a policy, and the cost of a required doctor's note are all mandatorily negotiable. Elizabeth; Piscataway; Mainland Reg. H.S. Dist., P.E.R.C. No. 92-12, 17 NJPER 406 (¶22192 1991); Newark Bd. of Ed., P.E.R.C. No. 85-25, 10 NJPER 549 (¶15255 1984).

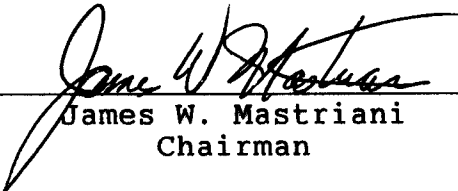
The PBA does not contest the employer's right to demand that Smith submit doctors' notes when he returns from sick leave. The grievance instead contends the employer has not complied with

the contractual sick leave verification procedures. It specifically asserts that the employer had violated a contractual obligation to notify Smith personally during his absence that he had to submit a doctor's note, and therefore Smith's pay (beyond the one-half day contractually allowed) should not have been docked. The grievance is legally arbitrable.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Goetting abstained from consideration.

DATED: February 19, 1992  
Trenton, New Jersey  
ISSUED: February 20, 1992