

P.E.R.C. NO. 2000-106

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WYCKOFF,

Petitioner,

-and-

Docket No. SN-2000-82

WYCKOFF P.B.A. LOCAL NO. 261,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Wyckoff for a restraint of binding arbitration of a grievance filed by Wyckoff P.B.A. Local No. 261. The grievance alleges that the Township improperly denied a police officer four days of paid sick leave. The Commission concludes that the application of a sick leave policy is a generally negotiable issue and that an arbitrator may determine whether the officer is entitled to paid sick leave.

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.

P.E.R.C. NO. 2000-106

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WYCKOFF,

Petitioner,

-and-

Docket No. SN-2000-82

WYCKOFF P.B.A. LOCAL NO. 261,

Respondent.

Appearances:

For the Petitioner, Savage and Serio, P.A., attorneys
(Thomas J. Savage, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Joseph Licata, on the brief)

DECISION

On February 4, 2000, the Township of Wyckoff petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Wyckoff P.B.A. Local No. 261. The grievance alleges that the Township improperly denied a police officer four days of paid sick leave.

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

The PBA represents non-supervisory police officers. The Township and the PBA are parties to a collective negotiations agreement effective from January 1, 1998 through December 31, 2002. The grievance procedure ends in binding arbitration.

Section 21.01 of the parties' contract is entitled Sick Leave. It states:

Sick leave shall be granted to all members of the Department for a reasonable length of time up to one (1) year considering the type and extent of the sickness and the length of service time that the member has had with the Department. The Officer in charge of the Department at the time may personally verify any request for sick leave. If the Officer in charge of the Department at the time of the request is not satisfied with the validity of the request, he shall immediately notify the Chief of Police. The Chief of Police may require that the member of the Department requesting the sick leave submit to a medical examination to verify the request. A refusal of a member requesting sick leave to submit to such verification shall be a violation of the regulations of the Department. The Chief of Police may require a doctor's certificate, or may require that the member submit to a physical when the sick leave extends beyond two (2) days.

On September 10, 1999, Officer Kevin McNeill injured his right wrist in an off-duty automobile accident. On September 24, McNeill's doctor re-examined his wrist and reported continued, but reduced, soft tissue swelling. He also reported that the x-rays "revealed maintenance of fracture position." He concluded that McNeill was making good progress and should return in two weeks for a repeat evaluation.

On October 22, 1999, the police chief ordered McNeill to report for work the next morning. He wrote:

I have received your doctor's form letter and look forward to his prognosis as to when you will return to regular duty.

This shall confirm our previous meeting last week and subsequent telephone message from Lt. Hagedorn earlier this week regarding your assignment status.

Your assignment duties shall begin on October 23, 1999. You have been assigned to work the 7:00am - 3:00pm shift rather than the regularly assigned 11:00pm - 7:00am patrol assignment. You are relieved from the midnight shift the entire week and will work 7:00am - 3:00pm on your regularly scheduled days.

As you agreed with me, you are capable of performing administrative portions of your regular duties and responsibilities as well as other similar duties listed. You shall:

- perform CJIS validations
- review motor vehicle accident reports,
- review blotter entries,
- dispatcher training, and
- other required administrative functions consistent with your current physical disability.

You are not to perform patrol or field duties nor be required to operate and/or be a passenger in a departmental vehicle for any purpose. While limited to administrative duties you are not required to report for duty in uniform and should dress in regular business attire, properly groomed according to the Departmental Rules and Regulations.

You shall report through the Chain of Command of the Service Division regarding each administrative duty.

On the afternoon of October 22, 1999, McNeill reported off duty from October 23 to 26 and submitted a doctor's note dated October 20. The note stated that McNeill was unable to work and his return to work date would be determined at his next office visit on October 26. McNeill did not report for work on October 23, 24, 25 and 26.

On October 25, 1999, the chief placed McNeill on unpaid sick leave and ordered that appropriate payroll deductions be

made. The chief did not require McNeill to be examined by the employer's physician.

On October 26, 1999, McNeill's doctor sent a letter to the employer's attorney. He wrote:

This is in response to your letter of October 25, 1999. Enclosed please find copies of the office visits for Officer McNeill. The dates are listed on the reports.

In his present condition, he is capable of answering a telephone, sitting in a chair and observing the performance of other employees. He is also able to read documents. He was not able to write with his right hand prior to his current evaluation today. This was due to significant stiffness and pain with range of motion of the digits of the right hand. As he has made good progress, he is now cleared to do so. Mr. McNeill has exhibited a willingness to return to the duties mentioned in your letter.

On October 29, 1999, McNeill filed a grievance asserting "improper administration of sick leave." The grievance remained unresolved and the PBA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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 this grievance or any contractual defenses the Township may have.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters.^{1/} The Court stated:

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]

We will not restrain arbitration unless the agreement alleged is preempted or would substantially limit government's policymaking powers. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095

^{1/} The scope of negotiations for these 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).


1982), aff'd NJPER Supp.2d 13 (¶111 App. Div. 1983). No preemption argument is made.

This dispute centers on a claim that the employer improperly denied four days of paid sick leave. The application of a sick leave policy to deny paid leave presents a generally negotiable issue. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1082). Local No. 261 does not dispute the employer's power to require McNeill to perform duties he was fit to perform, but it does dispute the employer's assessment that McNeill was in fact fit to perform those duties. It notes that McNeill's doctor concluded he was not able to work before October 26 and that the employer did not direct McNeill to have its own doctor examine him. An arbitrator may determine whether McNeill is entitled to paid sick leave for the days in question. See Town of Phillipsburg, P.E.R.C. No. 88-86, 14 NJPER 245 (¶19091 1988).

ORDER

The request of the Township of Wyckoff for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Madonna abstained from consideration.

DATED: June 29, 2000
Trenton, New Jersey
ISSUED: June 30, 2000