

P.E.R.C. NO. 97-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-96-131

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 109,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Hudson County for a restraint of binding arbitration of a claim raised in a grievance filed by the Policemen's Benevolent Association, Local 109. The grievance asserts that the County violated the sick leave verification procedures in the parties' collective negotiations agreement. The restraint is granted to the extent Local 109 seeks to challenge the requirement that officers on sick leave present a doctor's note when they return to duty. The Commission finds that the County has a prerogative to establish a reasonable policy requiring that employees verify their illness.

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, Genova, Burns, Trimboli & Vernoia,
attorneys (Michael E. Heston, of counsel)

For the Respondent, Yankowitz, Goldsmith & Sayers,
attorneys (William D. Sayers, of counsel)

DECISION AND ORDER

On May 30, 1996, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by the Policemen's Benevolent Association, Local 109. The grievance asserts that the County violated the sick leave verification procedures in the parties' collective negotiations agreement.

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

Local 109 represents corrections officers at the County's correctional facility. The parties entered into a collective negotiations agreement effective from January 1, 1992 through

December 31, 1993 and a memorandum of understanding effective from January 1, 1994 through December 31, 1998. These documents, read together, constitute the parties' current collective negotiations agreement. Article XII, Sick Leave, provides, in part:

E. Verification of Sick Leave

1. A member who shall be absent on sick leave may be required to submit acceptable medical evidence substantiating the need for sick leave. Abuse of sick leave shall be cause for disciplinary action.
5. Failure to provide verification may result in disciplinary action.

The County contends that in October 1995, its staffing levels were critically low. On October 12, 1995, the County directed that all corrections officers reporting off sick return to duty with a doctor's note verifying the medical necessity of the absence.

On November 5, 1995, Local 109 filed a grievance stating that the verification policy was initiated without negotiations and without regard to an individual employee's past history of using sick leave; there are times when a "sick call" does not warrant a doctor's visit; the new sick leave policy does not state who is to pay for the doctor's visit; and the policy does not contain any provision for penalties. The County denied the grievance. Local 109 demanded arbitration. 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 this grievance or any contractual defenses the Authority may have.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

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.... 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 policy-making 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. [Id. at 92-93; citations omitted]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 13 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982), we held that the employer had a prerogative to establish a sick leave verification policy and to use "reasonable means to verify employee illness or disability." Id. at 96. We distinguished the mandatorily negotiable issue of whether a policy has been properly applied to deny sick leave benefits. We stated:

In short, the Association may not prevent the Board from attempting to verify the bona fides of a claim of sickness, but the Board may not prevent the Association from contesting its determination in a particular case that an employee was not actually sick. Id. at 96.

Since Piscataway, we have decided dozens of cases involving sick leave verification policies. We have repeatedly stated and held that an employer has a prerogative to require employees taking sick leave to produce doctors' notes verifying their sickness. See, e.g., Rahway Valley Sewerage Auth., P.E.R.C. No. 96-69, 22 NJPER 138

(¶27068 1996); State of New Jersey (Dept. of Treasury), P.E.R.C. No. 95-67, 21 NJPER 129 (¶26080 1995); Hudson Cty., P.E.R.C. No. 93-108, 19 NJPER 274 (¶24138 1993); City of Elizabeth, P.E.R.C. No. 93-84, 19 NJPER 211 (¶24101 1993); South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989); City of Camden, P.E.R.C. No. 89-4, 14 NJPER 504 (¶19212 1988); Borough of Spring Lake, P.E.R.C. No. 88-150, 14 NJPER 475 (¶19201 1988); Jersey City Med. Center, P.E.R.C. No. 87-5, 12 NJPER 602 (¶17226 1986); Newark Bd. of Ed., P.E.R.C. No. 85-26, 10 NJPER 551 (¶15256 1984). But we have also repeatedly stated and held that the issues of who pays for doctors' notes and what the penalties will be for violating a policy are mandatorily negotiable. See, e.g., City of Elizabeth v. Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985); Rahway Valley Sewerage Auth.; Teaneck Tp., P.E.R.C. No. 93-44, 19 NJPER 18 (¶24009 1992); 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); cf. City of Passaic, P.E.R.C. No. 89-77, 15 NJPER 93 (¶20041 1989), aff'd NJPER Supp.2d 221 (¶194 App. Div. 1989) (reporting procedures that do not implicate right to demand proof of illness permissively negotiable).

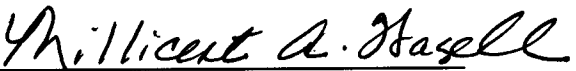
The County has a prerogative to establish a reasonable policy requiring that employees verify their illness. However, Local 109 has a right to negotiate and arbitrate over such questions

as who pays for a doctor's visit and whether the policy was properly applied to an individual employee.

ORDER

The request of Hudson County for a restraint of arbitration is granted to the extent Patrolmen's Benevolent Association, Local 109 seeks to challenge the requirement that officers on sick leave present a doctor's note when they return to duty.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: January 30, 1997
Trenton, New Jersey
ISSUED: January 31, 1997