

P.E.R.C. NO. 2020-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
MOTOR VEHICLE COMMISSION,

Petitioner,

-and-

Docket No. SN-2019-061

LOCAL 32BJ, NJ STATE MOTOR VEHICLE
EMPLOYEES UNION, SEIU, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the State's request for a restraint of binding arbitration of Local 32BJ's grievance contesting the State's failure to credit a unit member with paid leave she used for medical and physical therapy appointments related to an injury she sustained at work. Finding that the issue of paid leave for sickness or injury is generally mandatorily negotiable and not expressly, specifically, or comprehensively preempted by workers' compensation laws, the Commission holds the grievance legally arbitrable.

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, Gurbir S. Grewal, Attorney General
(Dipti Vaid Dedhia, Deputy Attorney General, on the
brief)

For the Respondent, Kroll Heineman Carton, LLC,
attorneys (Raymond G. Heineman, Jr., of counsel, Seth
B. Kennedy, on the brief)

DECISION

On April 8, 2019, the State of New Jersey, Motor Vehicle Commission (State) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Local 32BJ, NJ State Motor Vehicle Employees Union, SEIU, AFL-CIO (Local 32BJ). The grievance asserts that the State violated the parties' collective negotiations agreement (CNA) when it failed to credit the Grievant four days and four hours of leave she used for medical and physical therapy appointments related to an injury sustained at work.

The State filed briefs, exhibits, and the certification of its Human Resources Director, Dana Foraker. Local 32BJ filed a brief.^{1/} These facts appear.

Local 32BJ represents employees in the state-wide Inspection and Security Unit of the Motor Vehicle Inspector Division. The State and Local 32BJ are parties to a CNA with a term of July 1, 2015 through June 30, 2019. Article 29 of the CNA, titled "Leaves of Absence Due to Job-Related Injury or Disease", states, in pertinent part:

A. All employees covered by this Contract who are temporarily disabled because of a job related injury or disease may be granted temporary disability benefits under the New Jersey Workers Compensation Act ("WCA").

B. Such employee may also be able to utilize earned sick leave or vacation leave in order to maintain full salary to the extent of such leave balances, subject to applicable provisions of this Contract and rules and regulations concerning the utilization of sick leave and vacation leave.

C. An employee is eligible for temporary disability benefits under the WCA if he is unable to work, and is under active medical care due to an injury arising out of and in the course of employment, and is disabled for a period of more than 7 days.

* * *

E. For temporary disability benefits, no compensation other than medical aid shall

^{1/} Local 32BJ did not file a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

accrue and be payable until the employee has been disabled 7 days, whether the days of disability immediately follows the accident, or whether they be consecutive or not. These shall be termed the waiting period. Should the total period of disability extend beyond 7 days, additional compensation shall become payable covering the above prescribed waiting period.

The grievance procedure ends in binding arbitration.

On February 12, 2018, the Grievant was injured on the job. The Grievant was cleared to return to work on February 16, with physical therapy to begin on February 21. The Grievant attended the physical therapy appointments during work hours, and as a result, used four days and four hours of accrued benefit time.

On April 30, 2018, Local 32BJ filed a grievance seeking recoupment of the benefit time the Grievant used to attend her medical and physical therapy appointments to treat her work-related injury. The State responded to the grievance in its June 6 letter, stating in pertinent part:

According to the record, the State authorized physician found you capable of work during your examination on February 16, 2018, and therefore, you were not absent for seven (7) days which renders you ineligible for Temporary Workers' Compensation benefits. This finding is in accordance to the Workers' Compensation Law, Section 34:15-14 titled Waiting Period, which states that "No compensation other than medical aid shall accrue and be payable until the employee has been disabled seven days."

Should you disagree with this finding, you can contact your Claim investigator at the Department of the Treasury.... Formal appeals

will need to be addressed through the Appellate Division of the Superior Court.

On September 24, a step two grievance hearing was conducted where the State denied the grievance. On January 23, 2019, Local 32BJ filed a Request for Submission of a Panel of Arbitrators.^{2/} This petition ensued.

The Commission's inquiry in a scope of negotiations proceeding is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer.

^{2/} An arbitrator has been assigned, but a hearing date has not been scheduled.

When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[Id. at 404-405.]

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The State argues that the grievance is preempted by workers' compensation statutes, N.J.S.A. 34:15-14 and 49, and arbitration is inappropriate based on the plain language of the CNA.^{3/}

Local 32BJ responds that the Commission has found workers' compensation laws do not preempt grievances seeking recoupment of sick leave due to alleged violations of a CNA. Local 32BJ alleges that Article 29 was violated and asserts that it is silent as to what rights an employee has if injured on the job and is able to return to work in fewer than seven days, but still requires physical therapy or other rehabilitative care. Local 32BJ

^{3/} The State argues that the grievance is preempted by the following statutory provisions:

N.J.S.A. 34:15-49- "The Division of Workers' Compensation shall have the exclusive original jurisdiction of all claims for workers' compensation benefits under this chapter."

N.J.S.A. 34:15-14- "no compensation other than medical aid shall accrue and be payable until the employee has been disabled seven days, whether the days of disability immediately follow the accident, or whether they be consecutive or not."

further responds that the State's other argument is a contractual defense that the Commission should not consider.

The question before us is whether N.J.S.A. 34:15-14 and 49 preempt Local 32BJ from seeking recoupment of the Grievant's used sick time for her work-related injury through arbitration. We determine that those statutes are not preemptive here.

Where a statute or regulation addresses a term and condition of employment, negotiations are preempted only if it speaks in the imperative and fixes a term and condition of employment expressly, specifically and comprehensively. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). We have held that workers' compensation laws do not foreclose a majority representative's efforts to enforce contractual clauses providing leaves of absence for injury or sickness by seeking remedies such as restoration of sick leave days. Mercer Cty., P.E.R.C. No. 2015-46, 41 NJPER 339 (¶107 2015). In Burlington Cty., we found that grievances seeking that medical expenses be paid and sick leave days be reccredited for alleged work-related injuries were legally arbitrable and not preempted by workers' compensation laws. P.E.R.C. No. 97-84, 23 NJPER 122 (¶28058 1997), aff'd, 24 NJPER 200 (¶29092 App. Div. 1998); see also Burlington Cty., P.E.R.C. No. 98-86, 24 NJPER 74 (¶29041 1997), City of East Orange, P.E.R.C. No. 99-34, 24 NJPER 511 (¶29237

1998), City of Camden, P.E.R.C. No. 96-33, 21 NJPER 399 (¶26244 1995). Similar to the above-cited cases, here the grievance alleges a violation of the parties' CNA and seeks restoration of the Grievant's sick leave used because of a work-related injury. As stated in those cases, such grievances are not preempted by workers' compensation laws and are legally arbitrable.

The State's arguments that the CNA bars the grievance from arbitration (e.g. that the CNA requires this grievance to be appealed directly to the Civil Service Commission) is a contractual defense which is outside of the Commission's scope of negotiations jurisdiction. Ridgefield Park, supra. Accordingly, we deny a restraint of binding arbitration.

ORDER

The request of the State of New Jersey, Motor Vehicle Commission for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones and Papero voted in favor of this decision. None opposed. Commissioner Voos was not present.

ISSUED: November 26, 2019

Trenton, New Jersey