

P.E.R.C. NO. 98-79

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-97-121

PBA LOCAL 177, SOMERSET COUNTY
CORRECTIONS OFFICERS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a scope of negotiations petition filed by the Somerset County Sheriff. The petition seeks to restrain binding arbitration of grievances filed by PBA Local 177, Somerset County Corrections Officers. The grievances allege that the employer violated the parties' collective negotiations agreement when it disciplined employees for not answering telephone calls to their residences while on sick leave. The Commission finds that since the PBA does not seek to arbitrate the issue of concern to the employer -- the right of an employer to require employees out sick to answer their telephones and the employer does not seek to restrain arbitration over the issue of concern to the PBA -- the application of the employers' sick leave verification policy, there is no scope of negotiations dispute.

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, Stanton, Hughes, Diana, Zucker &
Salsberg, attorneys (Mark Diana, of counsel)

For the Respondent, Loccke & Correia, attorneys
(Joseph Licata, of counsel)

DECISION

On May 30, 1997, the Somerset County Sheriff petitioned for a scope of negotiations determination. On August 11, the petition was amended to include an additional grievance involving a different grievant, but the same subject. The Sheriff seeks to restrain binding arbitration of grievances filed by PBA Local 177, Somerset County Corrections Officers. The grievances allege that the employer violated the parties' collective negotiations agreement when it disciplined employees for not answering telephone calls to their residences while on sick leave.

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

The PBA represents all corrections officers from the rank of correction officer to captain employed at the County jail. The Sheriff and the PBA are parties to a collective negotiations agreement effective from January 1, 1995 through December 31, 1997. The grievance procedure ends in binding arbitration.

Article XIX of the parties' agreement, entitled "Sick Leave," sets forth the number of sick days employees will receive at the beginning of each year, the method for accumulation of sick days, and how credit for unused sick days is computed upon termination, retirement and death. This article is silent on the use of sick leave and verification procedures.

The Sheriff maintains Standard Operating Procedures (SOP) in the County jail. On August 10, 1995, SOP 14:11, entitled "Sickness and Injury (Procedure)," was issued. Section F provides:

Unauthorized Absence: Members or employees who absent themselves in an improper manner shall be subject to disciplinary action preferred against them. Unauthorized absence occurs when members or employees:

- *1. Are not at home or who are not at their place of confinement while on sick leave when visited by a physician or superior officer.
2. Feign illness or injury.
3. Deceive the physician in any way as to their true condition.
4. Are injured or become sick as a result of improper conduct or of intemperate, immoral, or vicious habits or practices.

*(A phone call by a superior or physician is considered the same as a visit).

On March 31, 1997, Officer John Esposito called out sick from a scheduled 4 p.m. to midnight shift. Pursuant to SOP 14:11, a sergeant called his home to verify his illness. No one answered a first call, the line was busy a minute later, and no one answered three minutes after that.

On April 20, 1997, Esposito was issued an Employee Performance Report for violating SOP 14:11 by failing to answer his phone while out on sick leave. Esposito responded that he had a very important telephone call and that, although he has call waiting, he did not put the other caller on hold to answer the incoming call.

On April 20, 1997, Esposito filed a grievance alleging that he was improperly charged in the Employee Performance Report and that he was being denied access to his sick time benefit in violation of Article XIX. As a remedy, he seeks to be compensated for sick time used, to have the Employee Performance Report rescinded as it denies access to sick time benefits, and to have the employer stop improper telephone calls to his home.

On May 2, 1997, Officer Kyndall Street called out sick from her 8:00 a.m. to 4:00 p.m. shift. A sergeant telephoned her home twice and received no answer. On May 9, the sergeant asked Street why she had not answered the phone. Street replied that she had been home all day, but was too ill to answer the phone. On May 14, 1997, Officer Street was issued a First Warning Notice charging her with violating SOP 14:11 by not answering her telephone while out sick on May 2.

On May 27, 1997, Street filed a grievance alleging that the first warning notice violated Article XIX by denying the use of sick time. She sought rescission of the first warning charge.

The Warden denied both grievances and responded that neither officer was denied sick time. The Sheriff denied both grievances. The PBA demanded arbitration and this petition ensued.

The Sheriff asserts that establishment of a sick leave verification procedure is a non-negotiable managerial prerogative. The employer further asserts that it does not seek to restrain arbitration over whether the sick leave policy was violated, but seeks only to restrain arbitration over the PBA's challenge to the Sheriff's use of the sick leave verification procedure.

The PBA acknowledges that the employer has a managerial prerogative to verify sick leave. It does not challenge the employer's August 1995 policy. It seeks only to arbitrate whether the sick leave policy was violated or misapplied.

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 County may have.

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 had been properly applied to deny sick leave benefits. We summed up this distinction by saying:

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 establish a sick leave verification policy. See, e.g., Hudson Cty., P.E.R.C. 97-90, 23 NJPER 132 (¶28064 1997); Rahway Valley Sewerage Auth., P.E.R.C. No. 96-69, 22 NJPER 138 (¶27069 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); City of East Orange, P.E.R.C. No. 84-68, 10 NJPER 25 (¶15015 1983); see also Somerset Cty., P.E.R.C. No. 91-119, 17 NJPER 344 (¶22154 1991) (proposal that "there be no sick leave checks at the officer's personal residence" not mandatorily negotiable); 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) (grievance challenging mid-contract modification making sick leave verification policy reporting requirements more burdensome at least permissively negotiable).

The employer does not seek to restrain arbitration over whether the employees violated the sick leave policy. It instead seeks a declaration that it has a managerial prerogative to establish a sick leave verification policy that requires employees out sick to answer their telephones.

The PBA does not challenge the employer's right to establish a sick leave policy that includes telephone calls to the absent employee. It instead contends that this policy does not establish the right to discipline an employee for using call waiting; the policy was applied intrusively and offensively; and the grievants were at home and did not violate the policy.

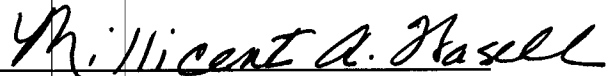
Under these circumstances, there is no scope of negotiations dispute. The PBA does not seek to arbitrate the issue

of concern to the employer -- the right of an employer to require employees out sick to answer their telephones. The employer does not seek to restrain arbitration over the issue of concern to the PBA -- the application of the employer's existing sick leave verification policy. The PBA seeks only to arbitrate a claim that these employees did not violate that policy and therefore were improperly disciplined and denied benefits. The employer does not seek to restrain arbitration over that claim. We therefore dismiss this petition.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: December 18, 1997
Trenton, New Jersey
ISSUED: December 19, 1997