

P.E.R.C. NO. 88-150

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SPRING LAKE,

Petitioner,

-and-

Docket No. SN-88-43

P.B.A., LOCAL 50,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by PBA Local 50 against the Borough of Spring Lake. The grievance alleges that the Borough violated the parties' collective negotiation agreement when it required a police officer to submit a doctor's note for every future day of sick leave. The Commission finds that the Borough has the prerogative to establish a sick leave verification policy.

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Appearances:

For the Petitioner, Mark S. Ruderman, of counsel

For the Respondent, Joseph N. Dempsey, of counsel

DECISION AND ORDER

On December 23, 1987, the Borough of Spring Lake ("Borough") filed a Petition for Scope of Negotiations Determination. The Borough seeks a restraint of binding arbitration of a grievance filed by P.B.A., Local 50 ("PBA"). The grievance alleges that the Borough violated the parties' collective negotiations agreement when it required a police officer to submit a doctor's note for every future day of sick leave.

The parties have filed briefs and documents.^{1/} These facts appear.

The PBA is the majority representative of the Borough's patrol officers and sergeants. The parties entered an agreement

^{1/} We deny the PBA's request for oral argument.

effective January 1, 1987 through December 31, 1988. Article VII, section C states: "The appointing authority may require proof of illness of an employee on sick leave, whenever such requirement appears reasonable. Abuse of sick leave shall be cause for disciplinary action." The grievance procedure ends in binding arbitration.

On September 28, 1987, the police chief sent patrol officer Gerald Preston a letter stating that he had missed 11 working days due to illness since January 1, 1987. The chief requested written reasons and a doctor's slip for Preston's latest absences.

On October 2, 1987, the PBA filed a grievance asserting that the chief could only request a reason after two consecutive days of illness and Preston had only been absent one day, and that Preston's overall sick leave days were within the contractual limit of 15. The next day, the chief wrote the PBA president that he was withdrawing his letter.

On October 5, 1987, the chief wrote Preston a second letter. It stated that absences would not be counted as sick leave unless Preston produced a doctor's note for each absence before returning to work.

On October 9, 1987, the PBA filed a second grievance contesting the second letter. That grievance, noting that the chief had not given any reasons, asserted that the request violated Article VII, section C.

On October 17 and 27, 1987, the PBA invoked steps two and three of the grievance procedure. It claimed that the second letter violated Article VII, section C and that the chief failed to give reasons for his request.

On November 10, 1987, the PBA invoked the fourth step, an appeal to the police commissioner. Its supporting letter asserted that requiring a doctor's note for future absences violated Article VII, section C. The next day, the police commissioner denied the grievance. He concluded that the pattern of Preston's absences made the request reasonable and that the Borough had a managerial prerogative to demand doctors' notes.

The Borough argues that it has a non-negotiable managerial right to require sick leave verification. The PBA does not contest the right to require verification, but contends that a demand after only one day of absence is unreasonable and that employees should not have to pay for doctor's notes.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154]

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and fire fighters.^{2/} 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]

Thus this grievance is arbitrable if it concerns either a mandatory or permissive subject for negotiations.

^{2/} The scope of negotiations for police and fire 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).

The establishment of a sick leave verification policy is not mandatorily negotiable. Union Cty. Reg. H.S. Dist., P.E.R.C. No. 84-102, 10 NJPER 176 (¶15087); City of East Orange, P.E.R.C. No. 84-68, 10 NJPER 25 (¶15015 1983); Rahway Sewerage Auth., P.E.R.C. No. 83-80, 9 NJPER 52 (¶14026 1982); Freehold Bd. of Ed., P.E.R.C. No. 83-10, 8 NJPER 438 (¶13206 1982); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95, 96 (¶13039 1982). However, a policy's application may be submitted to contractual grievance procedures. Piscataway. Further, the issue of who pays for a doctor's note is mandatorily negotiable. In City of Elizabeth v. Elizabeth Fire Officers Ass'n, 198 N.J. Super. 382 (App. Div. 1985), the Court affirmed our analysis of this issue:

We think that the commission struck the proper balance in this case. By holding that the city had a managerial prerogative to require sick leave verification at any time, the commission protected the governing body's interest in identifying and dealing with sick leave abuse. By severing the question of who pays for the required doctors' reports, the commission protected the legitimate economic interests of employees in avoiding unnecessary financial obligations and in negotiating a full package of health care benefits. Together, these holdings accommodate the legitimate interests of management and labor without unduly interfering with managerial prerogative. [Id. at 386]

See also East Orange.

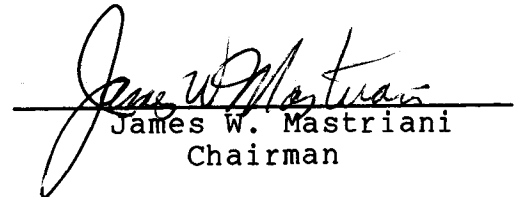
This case law governs this dispute. Since there has been no withdrawal of a sick leave benefit and no costs yet imposed as a result of the employer's directive, we hold that the requirement that Preston submit a doctor's note for each future absence may not

be contested through binding arbitration. City of Newark, P.E.R.C. No. 85-13, 10 NJPER 505 (15231 1984).^{3/}

ORDER

The Borough's request for a restraint of binding arbitration is granted to the extent the PBA challenges the establishment of a sick leave verification policy requiring Gerald Preston to submit a doctor's note for each future sick leave day.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
June 23, 1988
ISSUED: June 24, 1988

^{3/} We do not restrain arbitration to the extent the grievance may encompass other issues negotiable in the abstract, such as a statement of reasons for taking a certain personnel action.