P.E.R.C. NO. 2000-97

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF RARITAN,

Petitioner,

-and- Docket No. SN-2000-73

I.B.T. LOCAL 866,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Raritan for a restraint of binding arbitration of a grievance filed by I.B.T. Local 866. The grievance contests a sick leave policy for sick days taken on Fridays and Mondays. The parties agree that the sick leave verification policy is not mandatorily negotiable. However, Local 866 asserts that the policy was adopted to harass employees during negotiations and violates the duty to negotiate in good faith. That contention must be pursued through an unfair practice charge.

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, Ruderman & Glickman, P.C., attorneys (Steven S. Glickman, on the brief)

For the Respondent, Joseph T. Maccarone, attorney, on the brief

DECISION

On January 20, 2000, the Township of Raritan petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by I.B.T. Local 866. The grievance contests a sick leave policy for sick days taken on Fridays and Mondays.

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

Local 866 represents public works department employees, excluding managerial executives, supervisors, confidential employees, professional employees and police. The Township and Local 866 are parties to a collective negotiations agreement effective from January 1, 1999 through December 31, 2001. The grievance procedure ends in binding arbitration.

The agreement contains a management rights clause which provides that the employer has the right to make reasonable and binding rules and regulations that shall not be inconsistent with the agreement. The sick leave article provides:

> If an employee is absent for reasons that entitle him to sick leave, his supervisor shall be notified promptly. Failure to notify the supervisor may be cause for disciplinary action. If the employee is absent for three or more consecutive days, the Employer may ask for a physician's note if deemed necessary.

On September 15, 1998, the Township adopted the following sick leave verification policy:

> Any employee who has called in sick on a Monday or Friday on two (2) separate occasions during the calendar year shall be called at home on the next Monday or Friday they call in sick, to verify their whereabouts. If they are not spoken to personally, a Municipal Employee will visit their home to verify that they are there. Any employee who leaves sick for four (4) or more hours on a Monday or Friday will also receive a phone call to verify their whereabouts, if they have taken two or more sick days on a Monday or Friday.
>
> If a visit is made to the home of an employee and he or she is not there, the employee shall be given the opportunity to prove that their whereabouts was due to valid sick day reasons. This may include a scheduled doctor's visit for the employee or a member of their immediate family. If no such proof is forthcoming, the employee shall be docked one day's pay but shall have the sick day put back into their allotment.
>
> Excluded from this policy are those instances where an employee is out sick three (3) or more consecutive days, including a Monday and/or Friday. These instances will not be counted towards the Monday/Friday absence accumulation as they are provided for in the union contract.

On May 28, 1999, Charlie Crown, a public works employee, received the following memorandum from the public works superintendent:

> Our records indicate that you have taken two (2) sick days on either a Monday and/or Friday. The dates are Friday, February 26, 1999 and Monday, May 24, 1999.
>
> As you are aware, the Policy, established in 1998, was given to all Public Works employees. Therefore:
>
> On the next Monday or Friday sick day occurrence, you will receive a phone call or visit from a Supervisor to verify your whereabouts, per the Policy.

On June 4, 1999, Crown filed a grievance alleging that the memorandum violated the sick leave and management rights articles of the contract. The grievance was denied at all levels and on December 1, the Association demanded arbitration. The demand for arbitration defines the nature of the grievance to be arbitrated as "the utilization of a non-agreed sick time policy, in direct contradiction with our current contractual agreement." The demand for arbitration also indicates that the demand covers Grievances 99-2, 99-4 and 99-5. Only grievance 99-2 and responses to it were submitted by the Township. This petition ensued.

The Township asserts that it has a non-negotiable managerial prerogative to establish a sick leave verification policy. Local 866 agrees that the Township's establishment of a sick leave verification policy is not mandatorily negotiable, but asserts that the Township adopted the policy during negotiations

to harass employees, thus violating its duty to negotiate in good faith.

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 Township may have.

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. 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]

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., Somerset Cty. Sheriff, P.E.R.C. No. 98-79, 24 NJPER 51 (¶29032 1997); 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 prohibiting sick leave checks at the officer's residence not mandatorily negotiable); Maplewood Tp., P.E.R.C. No. 2000-9, 25 NJPER 374 (¶30163 1999)(proposal prohibiting home checks without a valid compelling reason not mandatorily negotiable).

The parties agree that the employer's policy is not mandatorily negotiable under this case law. Local 866 asserts only that the policy was adopted to harass employees during negotiations and thus violates the duty to negotiate in good faith. That contention must be pursued through an unfair practice charge, not a demand for arbitration. See, e.g., North Bergen Tp., P.E.R.C. No. 99-31, 24 NJPER 470 (¶29217 1998).

ORDER

The request of the Township of Raritan for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commisioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: May 25, 2000
Trenton, New Jersey
ISSUED: May 26, 2000