

P.E.R.C. NO. 96-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY,

Petitioner,

-and-

Docket No. SN-95-51

PBA LOCAL 167,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a corrections officer represented by PBA Local 167 against Mercer County. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended the officer for three days for alleged chronic and excessive use of sick leave. The request for a restraint is denied to the extent the grievance claims that the employer violated the officer's contractual right to sick leave and his statutory right to family leave. If the arbitrator finds that the grievant's contractual or statutory rights have been violated, any discussion by the arbitrator of the merits of the suspension would be advisory.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY,

Petitioner,

-and-

Docket No. SN-95-51

PBA LOCAL 167,

Respondent.

Appearances:

For the Petitioner, Alfred B. Vuocolo, Jr., Acting County Counsel (Jeanne E. Gorrison, on the brief)

For the Respondent, Szaferman, Lakind, Blumstein, Watter & Blader, attorneys (David B. Beckett, on the brief)

DECISION AND ORDER

On November 23, 1994, the County of Mercer petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by a corrections officer represented by PBA Local 167. The grievance asserts that the County violated the parties' collective negotiations agreement when it suspended the officer for three days for alleged chronic and excessive use of sick leave.

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

^{1/} In the appendix to its brief, the County included a brief by another employer in another case. We deny the PBA's request that we strike that brief from the County's submission to the extent it sets forth legal arguments not dependent on the facts of that case.

The County is a Civil Service employer. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration. Section 10.3 provides that when an employee is the subject of a disciplinary action resulting in a suspension of five days or less, Local 167 may appeal that suspension to binding arbitration. Section 16.4(g)1 states that employees may be absent for more than fifteen days in one calendar year, provided that they submit acceptable medical evidence for any additional time off. In such cases, employees are placed on without pay status. This section specifies:

In cases where an illness is of a chronic or recurring nature causing recurring absences of one day or less only one submission of such proof may be necessary for a period of six months.

Thomas Burzachiello is a corrections officer at the County Detention Center. In the first half of 1994, he used up more than the fifteen sick leave days to which he was entitled under Civil Service Law and the parties' contract. He then missed more work days and was placed on without pay status for those days.

On June 23, 1994, the warden suspended Burzachiello for three days after finding him guilty of chronic and excessive use of sick time. Burzachiello grieved his suspension. He asserted that his wife was chronically ill with lupus; his son was chronically depressed; and he suffered from colitis.

The Director of Public Safety denied the grievance. He found that the minor disciplinary action was not appealable and that the warden had acted reasonably.

Burzachiello appealed to the County Administrator. He repeated his contentions and added that his absences to care for his wife and son were covered under family leave statutes, N.J.S.A. 34:11B-1 et seq. and 29 U.S.C. §2601 et seq. The County Administrator conducted an informal hearing and denied the grievance. He noted that Burzachiello had not given the advance notice required to receive family leave or officially requested family leave.^{2/}

Local 167 demanded arbitration. The demand stated:

The employee has among other things been suspended for three days in violation of collective agreement provisions guaranteeing sick leave, has been disciplined without good cause, and has been disciplined in violation of laws guaranteeing family leave that are applicable to the public employer and should be deemed incorporated within the agreement.

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

^{2/} After this decision, Burzachiello submitted a letter formally requesting family leave and it was apparently agreed that Burzachiello would be granted unpaid leave to care for his wife and son in the future.

Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we cannot consider the contractual merits of this grievance or any contractual defenses the employer may have.


The PBA asserts that the employer has violated Burzachiello's contractual right to sick leave and his statutory right to family leave by suspending him. Contractual provisions granting sick leave days are mandatorily negotiable if not preempted and grievances alleging that such provisions have been violated are legally arbitrable. See, e.g., Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). Further, statutes setting terms and conditions of employment such as family leave are generally incorporated into collective negotiations agreements and grievances alleging that such statutes have been violated are legally arbitrable. See, e.g., West Windsor Tp. v. PERC, 78 N.J. 98, 116 (1978). The arbitrator may therefore consider whether Burzachiello was entitled to the sick leave and family leave he claims. However, in Hudson Cty., P.E.R.C. No. 95-69, 21 NJPER 153 (¶26092 1995), app. pending App. Div. Dkt. No. A-4698-94T1, we held that the New Jersey Supreme Court has precluded binding arbitration of minor disciplinary determinations involving police officers unless and until the Legislature specifically authorizes agreements to arbitrate such disputes. Applying that case to these facts, we must restrain binding arbitration of the merits of the disciplinary determination against Burzachiello. See also Monmouth

Cty., P.E.R.C. No. 95-70, 21 NJPER 155 (¶26093 1995) (restraining arbitration over three-day suspension of correction officer). If the arbitrator finds that the grievant's contractual or statutory rights have been violated, any discussion by the arbitrator of the merits of the suspension would be advisory only. Teaneck Tp. Bd. of Ed. v. Teaneck Tp. Teachers Ass'n, 94 N.J. 9 (1984).

ORDER

The request of the County of Mercer for a restraint of binding arbitration of the merits of the three-day suspension is granted. The request for a restraint is otherwise denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Buchanan, Finn, Klagholz, and Wenzler voted in favor of this decision. Commissioner Boose voted in favor of the first part of the Order and against the second part of the Order. Commissioner Ricci abstained from consideration.

DATED: May 23, 1996
Trenton, New Jersey
ISSUED: May 24, 1996