

P.E.R.C. NO.90-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER,

Petitioner,

-and-

Docket No. SN-90-21

BUTLER BLUE COLLAR WORKMAN'S
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission partially restrains binding arbitration of a grievance filed by the Butler Blue Collar Workman's Association against the Borough of Butler. The grievance contests adoption of a sick leave verification policy. The Commission restrains arbitration to the extent the grievance challenges adoption of the sick leave verification policy. The Commission declines to restrain arbitration to the extent the grievance alleges a contractual right to continued payment for required doctors' visits.

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Appearances:

For the Petitioner, Grotta, Glassman & Hoffman
(M. Joan Foster, of counsel)

For the Respondent, Earl William Dean, Association President

DECISION AND ORDER

On October 31, 1989, the Borough of Butler petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance which the Butler Blue Collar Workman's Association has filed. The grievance contests the adoption of a sick leave verification policy.

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

The Association represents the Borough's blue collar employees. The Association and the Borough entered into a collective negotiations agreement effective from January 1, 1987 through December 31, 1988.

Article 18 is entitled Sick Leave. Section 5 states:

Any employee who is absent on sick leave for five (5) or more consecutive working days shall be required to submit a physician's certificate as evidence substantiating the illness at the discretion of the Employer.

The grievance procedure ends in binding arbitration.

The parties are negotiating a new contract. The Borough initially proposed replacing section 5 with this sentence: "The Employer may require verification of sick leave in the form of a doctor's certificate." Association representatives were told that the Borough was expecting to implement a new sick leave verification policy and that it would negotiate over the issue of doctors' fees only.

On July 3, 1989, the Borough Administrator issued the new policy. It provides:

Effective September 1, 1989, the following procedure is being established in instances where an employee's superior determines there is a pattern of sick leave abuse. Sick leave is a benefit that is limited in its use to specific instances of illness that do not allow the employees to perform the duties of their job. An employee's allotted amount of sick leave is not to be used except in those defined circumstances.

Therefore, an employee whose sick time use reaches one of the below listed limits, may be required to provide a doctor's note each time the employee calls in sick beyond the stated limit.

1. An employee who uses more than ten (10) sick days in a twelve (12) month period.
2. An employee who uses more than three (3) sick days in a three (3) month period.
3. An employee whose utilization of sick time demonstrates a specific pattern that would lead the employee's superior to believe there is an

abuse of sick leave occurring. An example of this would be an employee who consistently calls in sick on Mondays and/or Fridays, creating long weekends.

The purpose of this policy is to prevent abuse of sick leave. Abuse of sick leave is a detriment to the tax payers of this town and also places heavier work loads and burdens on the abusing employee's co-workers.

No employees have yet been disciplined or required to produce a doctor's note under this policy.

During subsequent negotiations and fact-finding proceedings, the parties concentrated on economic matters. The sick leave provision was not submitted to the factfinder. The Association did not demand to negotiate over the cost of doctors' visits.

On September 1, 1989, the Association filed a grievance. The grievance asserts that the new sick leave provisions violate the contract, Civil Service regulations and the New Jersey Employer-Employee Relations Act. It states, in part, that in the previous Section 5, the employer had agreed to require a doctor's note after five consecutive days absent and to pay the expense of a visit to the doctor.

The Borough denied this grievance. The Association demanded binding arbitration. Its demand identified the issue as "establishing new sick leave procedures without negotiation" and incorporated its grievance letter. This petition ensued.

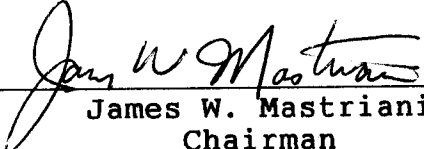
The Borough has a managerial prerogative to adopt a sick leave verification policy. See, e.g., Borough of Butler, P.E.R.C.

No. 87-121, 13 NJPER 292 (¶18123 1987); Jersey City Medical Center, P.E.R.C. No. 87-5, 12 NJPER 602 (¶17226 1986); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). We will therefore restrain arbitration to the extent the grievance challenges the adoption of that policy. The severable issue of who pays for doctors' fees under the new policy is mandatorily negotiable. Elizabeth Fire Officers Ass'n, Local 2040, IAFF and City of Elizabeth, 198 N.J. Super 382 (App. Div. 1985). The grievance asserts in part that the Borough had contractually agreed to pay for previous doctors' visits. We will not restrain arbitration to the extent the grievance alleges a contractual right to continued payment for required doctors' visits.

ORDER

The Borough's request for a restraint of binding arbitration is granted to the extent the grievance contests the adoption of the Borough's new sick leave verification policy. The request is denied to the extent the grievance seeks continued payment for required doctors' visits.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
December 14, 1989
ISSUED: December 15, 1989