

P.E.R.C. NO. 99-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EAST ORANGE,

Petitioner,

-and-

Docket No. SN-98-92

P.B.A. LOCAL 16,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of East Orange for a restraint of binding arbitration of a grievance filed by P.B.A. Local 16. The grievance seeks to have a police officer placed back on line-of-duty injury leave and to have his sick days and vacation days restored. The Commission finds that since this grievance does not seek tort-based damages and is limited to a claim for restored sick and vacation days, it is not preempted by Workers' Compensation laws and is mandatorily negotiable and legally arbitrable.

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, Jason Holt, Corporation Counsel
(Carolyn Ryan Reed, Assistant Corporation Counsel, on the
brief)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, P.C.,
attorneys (Nancy I. Oxfeld, on the brief)

DECISION

On June 5, 1998, the City of East Orange petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 16. The grievance seeks to have a police officer placed back on line-of-duty injury leave ("LOD") and to have his sick days and vacation days restored.

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

The PBA is the majority representative of police officers, excluding sergeants, lieutenants, captains, deputy chiefs and the chief of police. The parties' collective

negotiations agreement contains a grievance procedure ending in binding arbitration.

Article V is entitled Temporary Leave. Section 1 provides for sick leave for illness or injury that is not work-related. The agreement does not expressly address leaves for work-related injuries.

On July 19, 1997, Officer Tyrone Reynolds filed a grievance seeking to be placed back on LOD status and to have restored 55 sick days and two weeks of vacation time. The grievance sets forth the following set of events.

On June 1, 1995, Reynolds was injured while attempting to arrest a suspect. He was placed on LOD status. He returned to work in September of 1995.

On October 3, 1996, Reynolds required surgery to remove a lump allegedly related to the June 1 injury and was returned to LOD status. On April 14, 1997, after an examination by an insurance company doctor, Reynolds was ordered back to work. He complained that he was still injured with facial nerve damage and two herniated disks in his neck, but he was placed on regular sick leave and was charged 55 sick days and two weeks of vacation time. Reynolds then filed a workers' compensation claim. That claim is still pending.

The City denied the grievance as premature since the workers' compensation claim is unresolved. The PBA demanded arbitration. 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 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 the grievance or any contractual defenses the City may have.

The City contends that arbitration is premature since a ruling has not yet been made by the workers' compensation judge. It asserts that an arbitrator cannot make a ruling contrary to the law as to whether or not the officer's injury is compensable and whether his sick days should be restored. It claims that workers' compensation laws, N.J.S.A. 34:15-1 et seq., preempt arbitration in this matter.

The PBA asserts that we have held that grievances seeking to have sick time restored for work-related injuries are legally arbitrable. Burlington Cty., P.E.R.C. No. 98-86, 24 NJPER 74 (¶29041 1997); Burlington Cty., P.E.R.C. No. 97-84, 23 NJPER 122 (¶28058 1997), aff'd 24 NJPER 200 (¶29092 App. Div. 1998).

We agree with the PBA. As we held in Burlington, P.E.R.C. No. 98-86, workers' compensation laws rest on the premise that an


employer receives insulation from employees' tort actions in exchange for assuming strict liability for workplace injuries. These laws do not address or foreclose a majority representative's efforts to negotiate contractual clauses providing leaves of absence and to enforce such clauses by seeking remedies limited to restoring sick leave days. See City of Camden, P.E.R.C. No. 96-33, 21 NJPER 399 (¶26244 1995); Riverside Tp., P.E.R.C. No. 95-7, 20 NJPER 325 (¶25167 1994); Maurice River Tp. Bd. of Ed., P.E.R.C. No. 87-91, 13 NJPER 123 (¶18054 1987); Jackson Tp., P.E.R.C. No. 82-79, 8 NJPER 129 (¶13057 1982); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in part, 6 NJPER 338 (¶11169 App. Div. 1980). Since this grievance does not seek tort-based damages and is limited to a claim for restored sick and vacation days, it is mandatorily negotiable and legally arbitrable.^{1/} Any issues of reimbursement should Reynolds ultimately be found to be eligible for workers' compensation are premature.

^{1/} We note that the employer has already placed Reynolds on LOD status for approximately nine months. N.J.S.A. 40A:14-137 permits leaves of absence with pay not exceeding one year to police officers injured, ill or disabled from any cause. Woodbridge Tp., P.E.R.C. No. 98-101, 24 NJPER 124 (¶29063 1998).

ORDER

The request of City of East Orange for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan and Finn voted in favor of this decision. Commissioner Ricci voted against this decision. Commissioners Klagholz and Wenzler were not present.

DATED: October 26, 1998
Trenton, New Jersey
ISSUED: October 27, 1998