

P.E.R.C. NO. 2002-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MILLBURN,

Petitioner,

-and-

Docket No. SN-2001-63

P.B.A. LOCAL 34,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Millburn for an order directing that the interest arbitration proceedings for superior officers precede the rank and file interest arbitration proceedings. The Commission also denies the Township's request to specify that any PBA or SOA work schedule proposals must incorporate the Township's proposals concerning the holiday reassignment of one officer and the schedules of deputy captain and evening shift officers. The Commission concludes that the arbitrator considering the PBA work schedule proposal must take into account the principles announced in Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (130199 1999), app. pending App. Div. Dkt. No. A-001850-99T1, but Teaneck poses no barrier to the PBA proceeding to arbitration first, especially in view of the PBA's representation that it will agree to make any schedule change contingent upon the same schedule being awarded to the SOA. The Commission further holds that both parties may submit their evidence and arguments to the arbitrator on the effect of a new work schedule on the issues of holiday assignments, deputy captain assignments, evening shift officer assignment, roll call procedures and training opportunities. An arbitrator may evaluate those arguments and evidence based on a full record.

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
(Joel G. Scharff, on the brief)

For the Respondent, Lindabury, McCormick & Estabrook,
attorneys (Donald B. Ross, Jr., on the brief)

DECISION

On June 11, 2001, the Township of Millburn petitioned for a scope of negotiations determination. The petition asserts that work schedule proposals made by P.B.A. Local 34 during interest arbitration proceedings are not mandatorily negotiable.^{1/}

The parties have filed briefs and exhibits. The PBA has submitted the certification of its attorney. These facts appear.

In the 1980's, this Commission issued certifications to P.B.A. Local 3 as the majority representative of the rank-and-file officers and to the Superior Officers Association as

^{1/} The Township also filed an Order to Show Cause seeking to restrain the PBA from proceeding to interest arbitration, which it withdrew when the PBA voluntarily agreed to defer interest arbitration pending this decision.

the majority representative of superior officers. In the past, though, the rank-and-file and superior officers have negotiated jointly, although separate agreements have been executed when negotiations were completed.

The most recent contract covering rank-and-file officers expired on December 31, 1999. During the current negotiations, the PBA, negotiating on behalf of rank and file and superior officers, submitted a proposal for a 4/4 work schedule for all ranks. After four negotiations sessions, the parties were at impasse on several issues, including the work schedule change.

On May 23, 2000, the PBA filed a single petition for interest arbitration on behalf of patrol officers, sergeants, lieutenants and captains. On June 23, the Township requested separate interest arbitration proceedings for rank-and-file and superior officers (sergeants, lieutenants, and captains), based on the separate certifications. On December 8, the SOA petitioned for interest arbitration. Both the PBA and the SOA are in interest arbitration proceedings with separate arbitrators.

The arbitrator assigned to the PBA unit conducted two mediation sessions and then scheduled formal arbitration hearings for July 6 and 16, 2001. The arbitrator assigned to the SOA unit conducted a mediation session on February 20, 2001. No formal interest arbitration hearing date has been set for that unit.

On August 23, 2001, the Township moved to have its scope petition amended to include the SOA unit as a party at interest. The PBA was asked to advise us of its position on that request; although it has not done so, the PBA's attorney also represents the superior officers and has discussed the positions of both units in the PBA's brief. Under all the circumstances of this case, and considering our ultimate determinations, we deny the Township's motion.

The Township does not challenge the negotiability of a 4/4 police department schedule, although it notes that the PBA has suggested several variations of the schedule.^{2/} However, the Township contends that whatever the details of the PBA and SOA work schedule proposals, it has a dominant governmental policy interest in having rank-and-file and superior officers on the same schedule to ensure appropriate supervision and training. It stresses that Teaneck recognized the importance of aligning rank-and-file and superior officer schedules and, further, made implementation of a schedule awarded to a rank-and-file unit contingent upon the same schedule being awarded to the superior

^{2/} We do not describe the department's current schedule since the dispute primarily centers on the application of Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (130199 1999), app. pending App. Div. Dkt. No. A-001850-99T1, to this matter. Neither party sets forth the details of the PBA and SOA proposals for a 4/4 schedule, or the variations discussed in negotiations.

officers' unit. Therefore, it contends that Teaneck requires that the SOA proceed to arbitration first.

The Township also maintains that any PBA or SOA work schedule proposals must accommodate what it argues are three schedule-related governmental policy interests. Thus, it maintains that any work schedule proposal must allow it to continue its holiday-season practice of assigning one officer from the midnight shift to the afternoon shift to cover the Short Hills mall during the peak shopping season. In addition, it argues that any work schedule proposals must allow the deputy captain, the chief's assistant and "alter ego," to work the same shift as the chief. Finally, the Township argues that the 4/4 work schedule proposals are mandatorily negotiable only if they preserve the roll-call and training time provided prior to the evening shift, which entails evening shift officers reporting to work 1.25 hours early.

The PBA responds that it and the SOA are submitting the identical 4/4 schedule in their respective interest arbitration proceedings and thus seek to preserve aligned schedules. Further, it states that both units are prepared to agree that any shift schedule changes awarded to the first unit to obtain an award will not be implemented until the same schedule is awarded to the other unit. It also notes that even if the PBA and SOA were at some point to propose incompatible schedules, Teaneck allows an

arbitrator to award, in certain circumstances, a proposal that would result in different schedules for rank-and-file and superior officers.

Finally, the PBA maintains that nothing in Teaneck requires a superior officer unit to proceed to interest arbitration before a rank-and-file unit, even where both units have identical work schedule proposals. Therefore, the PBA contends that the Township's petition should be dismissed. It does not respond to the Township's arguments concerning the holiday reassignment of one officer; the schedule for the deputy captain; or the schedules of evening-shift officers. However, it states that its proposals are subject to fine-tuning in mediation and arbitration.

In Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police officers and firefighters. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982).^{3/} 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

^{3/} The scope of negotiations for police and fire employees is broader than for other public employees because P.L. 1977, c. 85 provides for a permissive as well as mandatory category of negotiations.

discretionary powers of a public employer, the next step is to determine whether it is a term and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, 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.

[Id. at 92-93; citations omitted]

We consider only whether the PBA proposal is mandatorily negotiable. It is our policy not to decide whether contract proposals, as opposed to contract grievances, concerning police and fire department employees are permissively negotiable since the employer has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The Township acknowledges its negotiations obligation under Teaneck, where we reiterated our case law holding that an interest arbitrator may generally consider both parties' arguments and evidence on a work schedule proposal unless it is clear from the proposal's terms that it would significantly impede governmental policy by, for example, causing severe coverage shortages or supervision problems. See Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997); see also City of Long

Branch, P.E.R.C. No. 2000-94, 26 NJPER 278 (¶31110 2000); Clinton Tp., P.E.R.C. No. 2000-3, 25 NJPER 365 (¶30157 1999), aff'd P.E.R.C. No. 2000-37, 26 NJPER 15 (¶31002 1999). In Teaneck, an appeal from an interest arbitration award ordering a work schedule change, we also set forth the analysis arbitrators should undertake before, first, awarding any major work schedule change and, second, awarding a change that results in different schedules for superiors and subordinates.

With respect to the latter point, Teaneck held that where a proposal, if awarded would result in superior officers and rank-and-file employees working different schedules, the proposal raises serious questions as to whether supervision would be impaired. 25 NJPER at 455. Therefore, we ruled that in evaluating the public interest and welfare, an arbitrator is required to consider the desirability of having both units on one schedule regardless of whether he or she has jurisdiction over both units. Ibid. We stated that where an arbitrator believes a proposal should be implemented for multiple units or not at all, he or she could award the proposal but make implementation contingent upon it being agreed to or awarded for the other unit. Ibid.

However, Teaneck did not hold that a proposal that would result in different work schedules for superior officers and rank-and-file employees was non-negotiable as a matter of law.

Instead, Teaneck found that an arbitrator may award such a proposal only if he or she finds that the different work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns. 25 NJPER at 455.

Any arbitrator considering the PBA work schedule proposal must take into account Teaneck's principles, but Teaneck poses no barrier to the PBA proceeding to arbitration now, particularly in view of the PBA's representation that it will agree to make any schedule change contingent upon the same schedule being awarded to the SOA. Teaneck simply requires that an arbitrator consider the desirability of having common schedules and, indeed, preserves the possibility that an arbitrator may choose to award a proposal that will result in different schedules if he or she finds that different schedules will not impair supervision or that there are other compelling reasons to grant the schedule. Moreover, any departmental work schedule change in Teaneck would have flowed from a schedule first awarded to the rank-and-file unit.

We turn now to the Township's contentions that any PBA or SOA work schedule proposals must accommodate what it alleges are certain governmental policy needs related to the work schedule.

With respect to the holiday season reassignment of one officer, we have restrained arbitration of grievances contesting individual shift changes where the employer showed a governmental policy need for the changes. See, e.g., City of No. Wildwood, P.E.R.C. No. 97-98, 23 NJPER 119 (¶28057 1997); Warren Cty.,

P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985). However, this case concerns the PBA's right to proceed to interest arbitration and present an overall department work schedule proposal. On this record, we cannot say that the proposed work schedule is incompatible with the current reassignment practice or that the PBA opposes that practice. The Township may present its arguments to the arbitrator or seek a restraint of binding arbitration of any grievance arising out of a holiday reassignment.

Similarly, the Township's position that the deputy captain needs to work the same schedule as the chief does not appear to be inconsistent with an overall 4/4 work schedule for the department. Moreover, the Township has not shown on the limited record in this proceeding that it has a governmental policy need for the deputy captain to work the same schedule as the chief. The parties may present their evidence and arguments on this point to the arbitrator. See Teaneck (Township's position concerning deputy chiefs' work schedule could be explored in negotiations or interest arbitration and was not inconsistent with a 24/72 work schedule for most firefighters and fire officers).

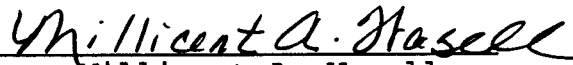
Finally, the Township maintains that the staggered shift feature of the PBA and SOA 4/4 proposals -- a feature which it does not otherwise describe -- would make it impossible to preserve the roll-call procedures and training opportunities now available on the evening shift. While an arbitrator must consider evidence on how a work schedule affects these needs, there is insufficient information about the details of the PBA and SOA

proposals to say that they would be incompatible with current training and roll-call procedures or that the proposals would not accommodate these needs in other ways. Again, the parties may present their evidence and arguments to the arbitrator, who may evaluate them based on a full record.

ORDER

The request of the Township of Millburn for an order directing that the SOA interest arbitration proceeding precede the PBA interest arbitration is denied. We also deny the Township's request to specify that any PBA or SOA work schedule proposals must incorporate the Township's proposals concerning the holiday reassignment of one officer and the schedules of the deputy captain and evening-shift officers.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: November 29, 2001
Trenton, New Jersey
ISSUED: November 30, 2001