

P.E.R.C. NO. 2011-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC,

Petitioner,

-and-

Docket No. SN-2010-071

PBA LOCAL 243,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a work schedule proposal PBA Local 243 seeks to submit to interest arbitration for a successor agreement with the County of Atlantic. The County filed a scope of negotiations petition seeking a determination that the hours and days of work in its Legal and Investigative, Warrants, Canine, and Bicycle Units are not mandatorily negotiable and could not be included in a successor agreement with the PBA. The Commission holds that the PBA's proposals would not significantly interfere with the ability of the Sheriff to meet its governmental policy need to provide effective law enforcement services and the interest arbitrator may consider the proposals.

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, Richard C. Andrien, Assistant
County Counsel, of counsel

For the Respondent, Plotkin Associates, L.L.C. (Myron
Plotkin, on the brief)

DECISION

On March 8, 2010, the County of Atlantic petitioned for a scope of negotiations determination. The County seeks a determination that the hours and days of work in its Legal and Investigative, Warrants, Canine, and Bicycle Units are not mandatorily negotiable and cannot be included in a successor collective negotiations agreement with PBA Local 243. We find that the PBA's work schedule proposals are mandatorily negotiable.

The parties have filed briefs and exhibits. The County has filed certifications from Sheriff Frank Balles. The PBA has filed a certification from PBA President Roy Trutta. These facts appear.

The PBA represents Sheriff's Officers and Sheriff's Investigators. The parties most recent collective negotiations agreement expired on December 31, 2009.^{1/} Article IV is entitled Work Schedules. Section A provides that all employees shall work a forty-hour week encompassing five consecutive days of unbroken eight-hour shifts, which shall include a working lunch period. Such workdays shall be followed by two consecutive days off. It also provides that the regular starting time of work shifts will not be changed without reasonable notice to the affected employees. The agreement then specifies certain specific work schedules, including:

Legal and Investigative - The hours of operation of the Legal and Investigative unit will be flexible as determined by the Sheriff, but within the framework of the unbroken eight (8) hour shift, forty (40) hour schedule set forth in A above.

Warrants - Monday through Friday

- a. 0800 - 1600 hours
- b. 1600 - 2400 hours
- c. Officers assigned to these units shall work five (5) consecutive days with two (2) consecutive days off subject to paragraph A above

During successor contract negotiations, the PBA proposed to memorialize the existing schedules for two recently-created units, the Canine Unit and the Bicycle Unit. The Sheriff seeks to apply the current language controlling the Legal and

^{1/} The Atlantic County Sheriff and the County of Atlantic are joint employers.

Investigative Unit to the Warrants, Canine and Bicycle Units and to do so outside the collective negotiations process.

There are 11 officers in the Warrants Unit. The Sheriff states that the current schedule does not allow for early morning shifts, which are ideal for serving warrants and making arrests.

There are two officers in the Canine Unit. The Sheriff states that the public need for Canine Unit services varies and a flex schedule is necessary to address the varying public demand for its services.

There are four officers in the Bicycle Unit. The Sheriff states that seasonal increases in population demand varying hours for Bicycle Unit services, particularly along the County bike path. Similarly, he states that daylight savings and changes in weather will reduce hours and public demand for the unit.

The PBA did not initially submit any formal proposals regarding modifications to the existing contract language for the Legal and Investigative or Warrants Units. Following the filing of this petition, on May 27, 2010, the PBA made the following proposals:

Warrants Unit - Work Week

- a. The normal work week shall be Monday to Friday.
- b. Said work week can be "flexed" upon seven (7) days written notice as long as said work week consists of five (5) consecutive days on followed by two (2) consecutive days off.
- c. Weekends will only be assigned for unit specific assignments.

- d. A supervisor shall be on duty on a weekend if assignments to weekend duty are made.

Warrants Unit Work Shifts

- a. The work shifts for this unit shall be eight (8) consecutive hours between the hours of 0500 (5:00 a.m.) and 2400 hrs. (midnight).
- b. If required to report for work prior to 0800 (8:00 a.m.), a minimum of two (2) teams (four (4) officers) shall be assigned. Such assignment shall be upon the approval by a supervisor.
- c. If officers are assigned to work outside of 0800 (8:00 a.m.) - 1600 hrs. (4:00 p.m.), a supervisor shall be on duty during the work hours outside of 0800 hrs. (8:00 a.m.) - 1600 hrs. (4 p.m.).

Canine Unit Work Week - to be assigned and once assigned will remain permanent. Said work week can be "flexed" upon seven (7) days written notice as long as said work week consists of five (5) consecutive days on followed by two (2) consecutive days off).

Canine Unit Work Shifts

- a. 0800 - 1600 hrs.
- b. 1600 - 2400 hrs.
- c. The above shift times may be changed upon seven (7) days written notice as long as said shifts consist of eight (8) consecutive hours and end no later than 0200 hours (2:00 a.m.).

Bicycle Unit Work Schedules

- a. The work shifts for this unit shall be eight (8) consecutive hours between the hours of 0800 (8:00 a.m.) and 2100 hrs. (9:00 p.m.).
- b. The normal work week shall be between Monday to Sunday.
- c. Said work week can be "flexed" upon seven (7) days written notice as long as said work week consists of five (5) consecutive days on followed by two (2) consecutive days off.

In its responsive brief, the PBA argues that its current proposals and current contractual language would not result in

any coverage or supervision issues and that they allow for flexibility in scheduling as sought by the Sheriff. The PBA contends that the employer's claims are not so compelling and so incontrovertible as to warrant cutting off negotiations and the interest arbitration process altogether.

In its reply brief, the employer objects to our considering the PBA's May 27, 2010 proposals because they were not at issue at the time this petition was filed or the time the employer filed its brief. We will, however, consider the current proposals because they narrow the dispute and focus our attention on whether negotiations and interest arbitration over these proposals can proceed without significantly interfering with the employer's public safety concerns.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters.^{2/} 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 discretionary powers of a public

^{2/} The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982).

employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, 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 firefighters, 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. [87 N.J. at 92-93; citations omitted]

The PBA does not seek to modify the schedule for the Legal and Investigative Unit. The employer has not explained how the PBA's proposal differs from its desire to apply the current language controlling the Legal and Investigative Unit to the other specialty units.

As for the Warrants, Canine and Bicycle Units, the employer argues that negotiating a schedule for these units inherently conflicts with the Sheriff's right to determine when services are provided, the deployment of resources, and the management of economic limitations. The PBA proposals, however, permit "flexing" of the schedules and the employer retains a right to deviate from a negotiated work schedule if a particular

circumstance arises and the negotiated schedule would substantially limit the Sheriff's policymaking powers. Paterson.

We cannot conclude from the employer's certifications and argument that the PBA's proposals would significantly interfere with the ability of the Sheriff to meet its governmental policy need to provide effective law enforcement services. Absent an employer's showing of a compelling need to remove a work schedule proposal from the arena of collective negotiations, our approach, approved in Teaneck Tp. and Teaneck Tp. FMBA Local No. 42, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), aff'd P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), is to have the parties present their arguments and supporting evidence to the interest arbitrator. Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106, 114 (¶28054 1997). In issuing scope of negotiations determinations, we do not consider the wisdom of the disputed proposals. But an interest arbitrator must scrutinize the wisdom of proposed work schedule changes from both operational and financial viewpoints. Teaneck, 25 NJPER at 455. Interest arbitration, if needed to resolve the parties' impasse over the terms of a successor agreement, will require the parties to provide specific evidence to support their respective positions on work schedules. Because an interest arbitrator's ruling may be appealed to us, in the event the PBA's proposal is

awarded, the employer may seek our review of the arbitrator's reasoning.

ORDER

The work schedule proposals of PBA Local 243 governing the Legal and Investigative, Warrants, Canine and Bicycle Units of the Atlantic County Sheriff's Department are mandatorily negotiable and may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Watkins abstained.

ISSUED: August 12, 2010

Trenton, New Jersey