

P.E.R.C. NO. 2011-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FRANKLIN,

Petitioner,

-and-

Docket No. SN-2011-011

FRANKLIN TOWNSHIP PBA LOCAL NO. 154,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that the work schedules of police officers represented by Franklin Township PBA Local No. 154 may be submitted to interest arbitration. The Commission holds that it cannot conclude from the recommendation of the Township of Franklin's consultants that either the current work schedule or negotiations over a different work schedule would significantly interfere with the Township's ability to meet its governmental policy need to provide effective law enforcement services. The parties may present their respective evidence in support of their work schedule proposals to the interest arbitrator who must scrutinize the wisdom of both proposals from both operational and financial viewpoints.

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, Decotiis, Fitzpatrick & Cole, LLP,
attorneys (Avis Bishop-Thompson, of counsel)

For the Respondents, Klatsky Sciarrabone & De Fillippo,
attorneys (David J. De Fillippo, of counsel)

DECISION

On August 9, 2010, the Township of Franklin petitioned for a scope of negotiations determination. The Township seeks a determination that the work schedule of police officers represented by Franklin Township PBA Local No. 154 is non-negotiable in light of an express contract provision and governmental policy. We find that work schedules are, in general, mandatorily negotiable and that the issue may be submitted to interest arbitration.

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

Franklin PBA Local No. 154 represents police officers below the rank of sergeant in the Township of Franklin. The parties

entered into a collective negotiations agreement effective from January 1, 2007 through December 31, 2009. The PBA has petitioned for interest arbitration.

Article 6 of the PBA agreement provides, in pertinent part:

It is understood that at the present time and at the time of this agreement, most members of the PBA are working a four (4) day on, four (4) day off shift. It is understood that the rate of overtime compensation becomes effective at an hourly threshold lower than that called for in the Fair Labor Standards Act. The 4 & 4 shift is for example purposes only and it is understood that management reserves the right to change shifts as needed.

The 4-4 work schedule has been in effect since 2004. A new work schedule was negotiated when the parties settled the 2004-2007 contract. Before implementation of the 4-4 schedule, most officers worked a 4-2 schedule with shifts of 8 hours and 15 minutes. Also, before a new 4-3 work schedule, officers in the Detective Bureau worked a 5-2, 8-hour schedule.

Before the 2004-2007 contract, all officers worked 2080 hours per year. Under the 4-4 and 4-3 schedules, officers work approximately 1950 hours per year. In June 2004, the work schedule of the Patrol Division was reduced to 1946 hours as a result of the parties' subsequent negotiations over training days. The contract language that states, "is for example purposes only and it is understood that management reserves the

right to change shifts as needed" was carried over from prior agreements dating back to 1991.

In 2009, the Township retained Matrix Consulting Group to conduct an operational audit of the Township's departments. The study was designed to provide an assessment of the efficiency and effectiveness of Township operations, identifying strengths and improvement opportunities relating to organization, staffing and management. The Report compared three shift schedules, 4-2, 5-2 and the current 4-4 and found the 4-4 was "the least efficient of the three shifts, requiring approximately 7 officers to staff one patrol car 24-hours each day." It found the 4-2 shift to be more efficient, although slightly less efficient than a 5-2 schedule, requiring five officers to staff one patrol car 24 hours per day. The project team made these recommendations concerning the police department:

Under the current schedule, three (3) fewer officer positions are needed to maintain targeted service levels;

The current shift schedule also creates the need for more officers than needed under an 8-hour or 12-hour shift. Analysis of an 8-hour shift schedule indicates that 19 fewer officers would be needed at recommended proactive time levels and to meet the current minimum staffing plan. Some of these officers could be used for additional street level proactive enforcement. However, 14 officer positions can be reduced.

Under the 4-2 8-hour shift schedule, the Township should reduce the number of sergeant positions from 11 to 8 or continue with the

current number of sergeants and reduce the number of lieutenant positions from 5 to 3.

By resolution dated March 23, 2010, the Township Council voted to implement all of the Matrix recommendations involving the police department. On March 30, the Township Manager advised union representatives that the Township intended to unilaterally change the Patrol Division's work schedule from a 4-4 to a 4-2 schedule effective January 1, 2011. If implemented, the work year for these officers would be increased to 2080 hours per year. In a meeting with union representatives, the Township Manager indicated that the reasons for the change are financial. On June 17, 2010, the PBA indicated its opposition to any change in the patrol work schedule. The PBA then petitioned for interest arbitration. The PBA also filed an unfair practice charge challenging the Township's intent to change the work schedule and increase the work year of PBA (CO-2011-065). The Township then filed this scope of negotiations petition.

The Township acknowledges that work schedules for police officers are generally mandatorily negotiable, but argues that an employer may obtain a contractual right to control work schedules. It asserts that Article 6 affords it the right to change shifts. The Township also argues that it has a managerial prerogative to fix the overall work schedule, even if financial considerations may partially motivate its actions.

The PBA responds that there may be limited circumstances when an employer can unilaterally change work schedules, but in those instances, the employer is required to demonstrate a specific, documented need or operational objective. The PBA asserts that no such showing was made in this case. The PBA disagrees that the contract grants the Township the right to change work schedules.

We cannot conclude from the recommendations of the Matrix Consulting Group that either the current work schedule or negotiations over a different work schedule would significantly interfere with the Township's ability 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), 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); see also Atlantic Cty., P.E.R.C. No. 2011-19, 36 NJPER 328 (¶128 2010); Monmouth Cty., P.E.R.C. No. 2010-30, 35 NJPER 393 (¶132 2009); City of Trenton, P.E.R.C. No. 2010-20, 35 NJPER 361 (¶121 2009). In issuing scope of negotiations determinations, we do not consider the wisdom of the disputed contract language or

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 Township's proposal is not awarded, the employer may seek our review of the arbitrator's reasoning.

ORDER

The current work schedule and any proposal to change the current work schedule is mandatorily negotiable.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. Commissioner Colligan recused himself. Chair Hatfield abstained.

ISSUED: November 23, 2010

Trenton, New Jersey