

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
P.O. BOX 429  
TRENTON, NJ 08625-0429

Docket No. IA-2004-054

---

**TOWNSHIP OF MIDDLETOWN,**

-Employer-

and

**MIDDLETOWN TOWNSHIP PBA & SOA  
LOCAL NO. 124,**

-Associations-

---

OPINION

AND

AWARD

ARBITRATOR: Robert E. Light, mutually chosen by the parties pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission.

MEDIATION SESSIONS: May 25, 2004, August 3, 2004, September 29, 2004, October 18, 2005, and November 2, 2005.

HEARINGS: May 26, 2006, November 3, 2006, June 27, 2007, June 30, 2008, and November 25, 2008. Both counsel thereafter filed post-hearing briefs, reply briefs, and supplemental material.

APPEARANCES: For the Township  
Bernard M. Reilly, Esq.

For the Associations  
Fred M. Klatsky, Esq. – Klatsky Sciarabone & DeFillippo

## **PROCEDURAL BACKGROUND**

Pursuant to Chapter 85, Public Law of 1977, the act providing for compulsory interest arbitration of labor disputes in police and fire departments and, in accordance with N.J.A.C. 19:16-5.6 (b), the undersigned, pursuant to the mutual request of parties' Counsel, was mutually selected to serve as Interest Arbitrator in the above matter. This designation was communicated to the parties and the Interest Arbitrator by letter dated March 29, 2004, from Timothy A. Hundley, Director of Conciliation and Arbitration, New Jersey Public Employment Relations Commission.

Mediation sessions were held on May 25, 2004, August 3, 2004, September 29, 2004. During these sessions, the parties successfully resolved all but one issue - the patrol shift schedule. In December 2004, the Township and the PBA executed a collective negotiations agreement effective from January 1, 2004 through December 31, 2007. [Assn Ex. B]. The Agreement includes a provision acknowledging that the parties' only remaining issue is the shift schedule. Article XXXI of the PBA Agreement provides:

The PBA and the Township have met several times to discuss and review proposed PBA and Township changes to the current patrol shift schedule. This issue of modifying the patrol shift schedule shall remain open and the parties shall mediate this issue with a mediator. If the parties do not reach a definitive comprehensive agreement as to changing the patrol shift schedule to the satisfaction of both parties on or before July 1, 2005, then the entire patrol shift schedule change issue may be presented to an arbitrator by either party to make a binding decision pursuant to the laws of New Jersey. The Township agrees that it shall not modify the patrol shift schedule without the written consent and approval of

the PBA until the arbitrator's decision, except if the PBA and the Township agree in writing, or except as required by an emergency. The arbitrator shall have the authority and power to set definitive dates for the arbitration hearing. The arbitrator shall be picked by PERC pursuant to the interest arbitration procedures. [Assn Ex. B].

The Township and the SOA executed a collective negotiations agreement effective from January 1, 2004 through December 31, 2008. The SOA Agreement includes a provision that is substantively similar to the PBA's. [Assn Ex. C].

Mediation sessions over the shift schedule were held on October 18, 2005, and November 2, 2005. Despite the parties' good-faith efforts, the issue remained outstanding. Formal hearings on this sole issue were held on May 26, 2006, November 3, 2006, June 27, 2007, June 30, 2008, and November 25, 2008. A stenographic record of the proceedings was taken.<sup>1</sup> Testimony on behalf of the Associations was received from William Colangelo - Sergeant; Bernie Chenoweth - Patrolman; Robert Stefanski - Sergeant; John Kaiser - Patrolman; James Keenan - Patrolman; Felipe Bedit, Jr. - Patrolman; Patricia Colangelo - Juvenile Detective; and Daniel Murdoch - Patrolman. Testimony on behalf of the Township was received from Robert Oches - Police Chief.<sup>2</sup> The parties agreed that the undersigned shall use the conventional authority vested in him to decide the issues in dispute. [See T3:65-66, T4:4-5].

---

<sup>1</sup> The transcript of the first day of hearing shall be referred to as "T1" and so on.

<sup>2</sup> Oches was also called as a witness during the Associations' direct case.

The arbitrator shall decide the dispute "based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute." In the award, the arbitrator shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.<sup>3</sup>

1. The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
2. Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - a. In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - b. In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C. 34:13A-16.2); provided, however that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

---

<sup>3</sup> The statutory criteria below reflect the amendments made subsequent to the parties' initiation of the interest arbitration process. Neither party specifically addressed criterion g(9) during the hearing or the post-hearing submissions.

3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
4. Stipulations of the parties.
5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq.).
6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
7. The cost of living.
8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

9. Statutory restrictions imposed on the Employer. Among the items the Arbitrator or panel of Arbitrators shall assess when considering this fact are the limitations imposed upon the Employer by Section 10 of P.L. 2007, c.62 (C.40A:4-45.45).

## **FINAL OFFER OF THE ASSOCIATIONS**

### ***Shift Change Proposal Interest Arbitration November 25, 2008 – Arbitrator Robert Light Middletown PBA & SOA Schedule Shift Proposal 4-4, 4-3 work schedule***

A. Divisions of Middletown Township Police affected by shift change:

The current proposal will only affect those officers assigned to the patrol division. Therefore, all of the other police officers in the Middletown Township Police Department will remain in the current shift or schedule, according to the terms of the contract in effect.

B. Currently there are six squads:

1. Currently there are six squads with one lieutenant, and one sergeant. Attached hereto as Exhibit A, is the July 11, 2005 detailed listing of the squads.
2. Not involved in the schedule change are the Traffic Bureau, Detective Bureau, Service Division and other officers who are out on IOD, sick leave, etc.
3. Currently, the patrol works five days on, two days off, five days on and three days off.
4. Each of the six squads rotates on a weekly basis. For example, if squad 1 starts in the midnight shift and works for five days, then has two days off; then the squad returns to work five days on the power shift, then is off for three days; and returns to work five days on the day shift, has two days off, and returns to work five days on the evening shift, has three days, and then starts the rotation again on the midnight shift.

#### **Current Shift Rotation**

<u>Shift</u>	<u>Days</u>
Midnight (Midnight – 8:00 a.m.)	5 days
Off	2 days
Power (varies)	5 days
Off	3 days
Day (8:00 a.m. – 4:00 p.m.)	5 days
Off	2 days
Evening (4:00 p.m. – Midnight)	5 days

C. Number of squads required in proposed new schedule 4-4, 4-3 work schedule:

The current structure of the 5-2, 5-3 schedule will essentially stay the same. Instead of having six squads acting within the police department, we will have two platoons. Each platoon will have three squads, a day-shift squad, an evening squad, and a midnight squad.

<u>Platoon A</u>	<u>Platoon B</u>
Day-shift	Day-shift
Evening shift	Evening shift
Midnight shift	Midnight shift

D. Number of hours in proposed 4-4, 4-3:

1. A given squad in the platoon will work a 10-hour and 15 minutes workday. The particular platoon will work a 10-hour and 15 minute workday for four days, have four days off, work four days again, and then have three days off. Therefore, this will also be a 15 day cycle. This cycle will repeat throughout the calendar for an indefinite time period.
2. The total number of hours that we will work in the 4-4, 4-3 schedule will be the same as our current schedule

<u>5-2, 5-3 Schedule</u>	<u>4-4, 4-3 Schedule</u>
1,946 hours per year	1,995 hours per year

3. The current schedule has a 15-day work cycle with five days on, two days off, five days on and three days off. Divide 365 by the 15-day cycle equals 24.33. 10 work days in each cycle equals 243.3 work days, times 8 hours per day equals **1,946.66**.
4. The proposed schedule of four on, four off, four on and three off with ten hour and 15 minute workday calculates to **yearly hours of 1,995**. Divide 365 by the 15-day work cycle equals 24.33, times 10 hour and 15 minutes work days equals 249.38, times 8 work days in each cycle, equals a total of 1,995 hours per year. The proposed schedule has a 15 day work cycle, just like the current work schedule has a 15 day work cycle.
5. **Therefore, total yearly hours worked increases from the current 1946 hours to 1995 hours.**



E. Shift Hours:

1. There will be three shifts to each 24-hour day. A day shift, an evening shift, and a midnight shift. A swing shift to cover shift changes will no longer be required, since there will be a minimum of over 6 hours per day of overlap of shifts on duty to cover police calls. The proposed shifts are as follows:

Days	6:45a – 5:00p	(10 hours and 15 minutes)
Evenings	2:45p – 1:00a	(10 hours and 15 minutes)
Midnights	10:45a – 9:00a	(10 hours and 15 minutes)

2. Alternatively, at the preference of the Chief or Arbitrator, the shifts may be as follows:

Days	7:00a – 5:15p	(10 hours and 15 minutes)
Evenings	3:00p – 1:15a	(10 hours and 15 minutes)
Midnights	11:00a – 9:15a	(10 hours and 15 minutes)

Traffic currently starts at 7:00am, and will continue to start at 7:00am.

F. Midnight Shift

1. The PBA/SOA has an alternative that the Arbitrator and/or Chief may select in reference to the midnight shifts. As set forth above, the midnight shifts will be the same ten hours and 15 minute workdays. However, if the Arbitrator and/or Chief wants the midnight shift can be ten hour workdays, which is a reduction of about four hours per month. But, these four hours will be worked as free court time, as set forth below.
2. The second alternative described above which reduces the midnight work shift from 10 hours and 15 minutes to 10 hours would require each officer who works the midnight shift to make one Court appearance per month of up to four hours, and the Township will not have to pay for this office to appear in court, and this is non-cumulative per month. For example, if an officer is not called in in January, then the officer still only has to donate up to 4 hours in February for one court appearance. Therefore, after 4 hours, the officer would be paid the normal overtime per contract.

G. Conversion of vacation, sick, personal and compensatory time-off to the 10-hour, 15-minute workday:

We are proposing to provide for a conversion of certain types of time to properly reflect a 10-hour, 15-minute workday.

1. *Sick Time* – a) Sick Time will be converted to hours. Currently, each officer has 15 sick days at 8 hours for a total of 120 hours. The cap on sick time will remain as set forth in paragraphs H.2, H.3, and H.4, which is the cap on payment of sick days at retirement.  
  
b) If any Court or Arbitrator declares or orders that the 15 sick days should not be based on hours but be based on days, then the Township has the right to reopen this matter.
2. *Accumulated Time* – Any and all accumulated sick time and vacation time will be converted in the same format as listed in the above example. The cap on accumulated sick time will also be converted to hours for the patrol division.
3. *Vacation Time* – Vacation time will be converted to hours. If an officer is entitled to 13 days of vacation time per our contract, the officer currently has 104 hours of vacation time (13 days time 8 hours = 104 hours). Any part of a day, a fraction, will be rounded off to the nearest half or whole number. For example, 10.4 would be rounded off to 10.5 vacation days.
4. *Personal Days* – The 5 personal days at 8 hours which equals 40 hours, will be converted to 4 personal days, at 10 hours and 15 minutes per day for 41 hours.
5. *Compensatory Time* – Compensatory time will remain as in, based on an hour per hour credit. Any and all overtime, court time hours, etc. will be compensated at time-and-on-half ( $1 \frac{1}{2}$ ), as listed in our contract.
6. *Death in Family* – The current three days leave awarded for a death in the family will stay the same with three 10-hour and 15-minute days.
7. *Minimum Call-In Time* – The current 4-hour minimum for court time, call-in time, etc. will remain the same.
8. *Holiday Pay* – The patrol division agrees to leave holiday pay at the current payroll calculation of 14 holidays based upon an 8-hour workday, for a total of 112 hours. Therefore, holiday pay will remain the same at 112 hours.
9. *Schools* – If an officer is assigned to training or to a school for 8 hours, then the school will be considered to encompass the entire 10-hour and 15 minute shift.

H. Bids for Shifts:

Bidding for shifts will take place once a year in the month of November of each year. The bidding system follows a calendar year system. At such time each member of patrol will request the shift of his or her choice to work. This request is for a shift that the officer will work for an entire calendar year. The bidding for such shifts will be based on seniority. Therefore, the most senior police officer will be entitled to an unopposed choice for a shift. Attached hereto is the specific bidding methodology.

I. New Hires:

Effective for all new police officers hired after January 1, 2009. After the new police officer completes his/her Field Training Program, the police officer/employee will be rotated on a six-month basis through all of the applicable shifts (days, evenings, and midnights) at management's discretion. The officer will be rotated through the shifts for a two-year time period. However, no more than two new officers may be placed in any shift.

At the end of the two-year rotation period, the applicable officer will bid for his/her shift of choice based upon the conditions set forth earlier in "Bids for Shifts."

## **FINAL OFFER OF THE TOWNSHIP**

**Option 1:** Maintain current schedule

**Option 2:** Non-rotating straight shifts - 5 days on, 2 days off/5 days on, 3 days off, 8 hour 25 minutes per work day, 2 additional training days per year, totaling approximately 2070 or 2078 scheduled work hours per year (alternating based upon platoon). [See Ex. T-2].

## **BACKGROUND**

The Township of Middletown is a municipality located in Monmouth County. It covers 42 square miles and has a population of over 66,000. As of June 18, 2007, the Township's Police Department was composed of 102 police officers, including rank-and-file police officers represented by the PBA, Sergeants and Lieutenants represented by the SOA, Deputy Chiefs and the Chief of Police who are excluded from the bargaining units. The Department is primarily divided into the Patrol Division, Traffic Bureau, Detective Bureau, and Service Division. There were approximately 68 officers in the Patrol Division - 56 rank-and-file officers, 6 Sergeants, and 6 Lieutenants.

For over 35 years, officers in the Patrol Division have worked a rotating 5-2, 5-3 work shift schedule with 8-hour work days. The current work shift schedule is accurately described in Section B of the Associations' Final Offer provided above. There are four (4), 8-hour work shifts each day. Three (3) of the work shifts cover one-third of each day without an overlap in their start and end times – midnight to 8:00 a.m., 8:00 a.m. to 4:00 p.m., and 4:00 p.m. to midnight. The fourth shift is known as the "power shift". Chief Robert Oches has employed by the Township as a police officer since 1974. Chief Oches worked the following ranks/assignments before becoming Chief in 2005 – Patrolman, Detective, Detective Sergeant, Detective Lieutenant, Acting Captain, Deputy Chief. Chief Oches described the "power shift" in his Certification:

The officers in the "power shift" Squad are typically broken up, so as to provide officers on patrol shifts during time

periods that overlap the regular Squad shift periods. Thus, as shown on the attached Exhibit showing patrol shift deployment under the current schedule, typically the "power shift" Squad members would be broken up and assigned so that three (3) officers would work a 6:00 a.m. to 2:00 p.m. patrol shift, three (3) officers would work a 2:00 p.m. to 10:00 p.m. patrol shift, and three (3) officers would work a 8:00 p.m. to 4:00 a.m. patrol shift. [Oches Cert., Paragraph 4].

This matter is before me because the Associations proposed to change the current schedule and the parties reached an impasse over this issue. The Associations' Final Offer, as provided above, is for a steady, non-rotating 4-4, 4-3 work shift with 10 hour 15 minute work days. The Associations' Final Offer eliminates the "power shift". Although the Township seeks to maintain the current schedule, it provided an alternative proposal that, similar to the Associations' Final Offer, eliminates the "power shift".

The parties' arguments for and against the Associations' proposal are summarized below.

## **POSITION OF THE ASSOCIATIONS**

Counsel for the Associations urges the undersigned to Award their shift schedule proposal. Counsel emphasized throughout the proceedings that the Associations' proposal better serves the public's safety and interest. Counsel supports the Associations' position with the following comparisons between the current schedule and the Associations' final proposal:

- The current work schedule for each officer in the Patrol Division comprises of 1,946 hours. The proposed schedule will increase the number of hours to 1,995. Therefore, each patrol officer will work an additional forty-nine (49) hours per year at no additional cost to the Township. Based upon sixty (60) patrol officers, this amounts to 2,940 additional work hours annually at no additional cost to the Township.
- The proposed schedule includes approximately twenty-four (24) days upon which both platoons will work together. [See Assn Ex. E].
- The current schedule does not include a daily overlap of work hours between the day, evening, and midnight shifts. In contrast, the proposed schedule includes a daily overlap of two (2) hours and fifteen (15) minutes between shifts for a daily total of six (6) hours and forty-five (45) minutes at "critical times".
- Patrol officers spend about forty-five (45) minutes at the beginning of each shift in lineup and/or inspecting equipment before going on patrol. By increasing the regular work shift from eight (8) hours to ten (10) hours and fifteen (15) minutes, forty-nine (49) work days are eliminated for each officer. The reduction in the number of work days adds over thirty (36) hours of actual patrol time for each officer annually (49 days x 45 minutes per day). Based upon sixty (60) patrol officers, the proposed schedule adds approximately 2,205 patrol hours.

- Patrol officers spend about twenty (20) minutes at the end of each shift gassing their vehicles and turning in their keys and the tickets issued. By increasing the regular work shift from eight (8) hours to ten (10) hours and fifteen (15) minutes, forty-nine (49) work days are eliminated for each officer. The reduction in the number of work days adds twenty-four (24) hours and thirty (30) minutes of actual patrol time for each officer annually (49 days x 20 minutes per day). Based upon sixty (60) patrol officers, the proposed schedule adds approximately 1,470 patrol hours.

[See Assn Brief, pp. 10-23].

Based upon the figures outlined above, Counsel submits that the Associations' proposal provides the Township with 6,615 additional hours of actual patrol time at no additional cost. [Assn Brf, p. 24].<sup>4</sup>

Counsel indicates that the daily overlap between squads contained in the Associations' proposal represents twenty-eight percent (28%) of the day. Counsel maintains the Association's proposal "negate[s] most of the overtime" that results from officers responding to calls "at or near the end of his shift, such as domestic violence, burglary, fights, etc." Counsel asserts that the proposal "completely solves" the lack of patrol during the beginning and end of each shift resulting from routine lineup, inspection, and gas-up. Counsel claims the daily overlap time will enable the Chief to conduct "proactive police work, such as drunk driving target areas, patrol around the high school, etc." According to Counsel, the Township's proposal to modify the current schedule does not contain the same benefits. Counsel points out that the daily overlap provided in

---

<sup>4</sup> Counsel emphasizes in his Reply Brief that the number of additional hours addressed herein will increase if the number of police officers in the Patrol Division were adjusted to a more accurate estimate of 68. [See Assn Reply Brief, pp. 11-13, 15-22].



the Township's proposal does not sufficiently cover the amount of time required for an officer's beginning and end of shift routine. [Assn Brf, pp. 25-28].

Counsel describes the existing schedule as "archaic and barbaric". Counsel contends there is no dispute, as evidenced through the various witnesses presented, that steady shifts will improve "the health, morale, and well being of all patrol division officers". Counsel submits that steady shifts will benefit the Township and its patrol officers in several ways. Counsel indicates that steady shifts improve officers' sleeping and eating patterns as well as their quality of family life. Counsel asserts that steady shifts will also reduce officers' stress and their use of sick leave time.<sup>5</sup> [Assn Brf, pp. 29-43].

Counsel outlines the similarities between the parties' proposals:

- Steady shifts;
- Work days longer than eight (8) hours;
- Substantial overlap days between squads;
- Daily shift overlap;
- Additional work hours without additional compensation;
- Three (3) daily work shifts; and,
- Elimination of the power shift.

[Assn Brf, pp. 44-46].

---

<sup>5</sup> The health, morale, and well being of patrol division officers were continuing themes Counsel for the Associations raised during the testimony received from all of the witnesses presented during these proceedings.

Notwithstanding the similarities outlined above, Counsel contends the Associations' proposal resolves "many more scheduling problems, than the Township proposal." [Assn Brf, p. 46].

Counsel makes the following observations with respect to the Township's substantive arguments. First, neither party's proposal to change the existing schedule contains a power shift. Second, equalizing the number of work hours for officers in the Patrol Division to those in the Administrative Division will not equalize their benefits and working conditions. Counsel emphasizes that the Patrol Division remains a twenty-four (24) hour operation (Administrative – day shift only, Saturdays/Sundays off). Third, unlike Patrol, officers in the Detective Division receive an annual stipend of \$750. Fourth, despite the Chief's concerns that he will have difficulty in assigning officers pursuant to the Associations' proposal, the Chief continues to have the "sole authority to deploy the men wherever he wants." Lastly, extending the workday and providing daily overlap will reduce overtime. [Assn Brf, pp. 47-52].

Counsel addresses the legal arguments raised by the Township. Counsel claims that to the extent the Township asserts a managerial right over the schedule it is an issue the Township was required to challenge through PERC rather than through this arbitration proceeding. Counsel cites Teaneck v. Teaneck FMBA No. 42, 353 N.J. Super. 289 (App. Div. 2002) in support of the Associations' position. Counsel also indicates that the Township's reliance on Clifton & Clifton PBA Local No. 36, PERC No. 2004-20, is erroneous because,

unlike here, the Arbitrator in that matter addressed an instance in which the proposed work schedule for the rank and file officers was "substantially different" from that of the superior officers. Thus, there are no issues of supervision. [Assn Reply Brf, pp. 1-8, 16].

Counsel asserts that "the arbitrator is obligated to either award the Middletown Township steady shift proposal or the PBA/SOA steady shift proposal." Counsel emphasizes that the Township's final proposal of July 20, 2007 does not include a proposal to maintain the current schedule. [Assn Reply Brf, pp. 9-10].

In conclusion, Counsel submits that the Associations' proposal must be awarded in its entirety.

## **POSITION OF THE TOWNSHIP**

In support of the adoption of the County's final offer(s), counsel cites the following points under the statutory criteria and other relevant arguments.

Counsel contends "the current rotating 5/2, 5/3 shift schedule provides a balanced and sufficient patrol manpower scheduled for duty on each shift, on each day, throughout the year. As established without dispute, the current shift schedule has operated effectively, and provided effective and efficient police services to the community, for in excess of 35 years." [Tp Reply Brf, p. 2]. Counsel maintains there is "absolutely no substantive basis" presented in support of the Associations' proposal. Counsel indicates there are several reasons why the Associations' proposal has an adverse impact upon the Township:

The only evidence on the critical issue of impact on police department operational efficiency was presented by the Township. That evidence demonstrated the tremendous impact on public safety and efficient operation that would be visited by the PBA proposal due to its radical imbalances in police manpower scheduled for duty. As detailed by the Certification of Police Chief Oches, under the current police shift schedule, there is scheduled to be on duty throughout approximately 22 hours of each and every day of the year one full Squad (8 or 9 patrolmen) plus 2 to 3 officers from the power shift, resulting in a scheduled compliment of usually 11 or 12 patrol officers (plus superiors). Under the PBA proposal, this relatively balanced manpower scheduling would be changed into a total and logically untenable imbalance, with only a minimal staff level of one Squad (8 or 9 patrolmen) being scheduled for duty on all shifts for the large majority (approximately 341) of the days of each year and two Squads being simultaneously on duty for about 2 days per month, 24 "overlap" days per year. On these few overlap days there would be approximately 16 to 18 patrol officers on duty during the two hour "shift overlap" periods. The PBA made no effort or presentation as to how this imbalance of

on-duty officers would not severely hamper effective police staffing and public safety on the 341 "non-overlap" days, or what, if any, productive use could be made of the tremendous oversupply of officers on "overlap" days.

Any reasoned review of the current shift - - - with a steady balance number of scheduled on duty officers available to provide for unscheduled absence coverages and provide for sufficient additional officers over minimal staffing manpower needs - - - as compared to the PBA proposal - - - with its minimal number of scheduled officers for all shifts on 341 days per year and its large imbalance and oversupply of scheduled officers on 24 "overlap" days per year - - - on its face confirms the non-negotiability of the PBA demand. The PBA proposal on its face would obviously adversely [a]ffect operational efficiency and the providing for public safety through a balanced scheduling of police resources and manpower.

As the Chief testified, having only 1 squad with 8 or 9 patrol officers scheduled for duty, with a minimum staffing requirement of 7 patrol officers to man 7 patrol districts and the PBA contractual right for up to 2 patrol officers (of the 8 or 9) to unilateral pre-schedule vacation days, leaves each and every shift in the 340 non-overlap (1 Squad) days vulnerable to requiring replacement officers on overtime to cover for unscheduled absences by any remaining Squad officers calling in sick, personal, or out on injury or training. Those absences are now largely covered by the extra "power shift" officers. Since the PBA proposal removes the power shift, it removes the availability of scheduled officers be available to even cover minimum district staffing levels. Under the PBA proposal, the Police Department would be operating with a bare minimum of on-duty patrol officer on the vast majority of days/shifts (341 days out of 365 days per year).

The facts presented by the Police Chief, as to the tremendous loss of operational efficiency and the large anticipated need for officers to be called in on overtime on the 341 "non-overlap" days to replace officers absent from the minimal number scheduled, stands un rebutted. Simple logic confirms that operating with the minimal scheduled staffing level of one Squad for 341 days per year will result in a decrease to public safety and a substantial increase in overtime. [Tp Brf, pp. 32-35; see also Certification of Chief Oches, Tp. Ex. 5].

Counsel submits the Associations' proposal "would result in the on-duty Patrol Squad being minimally staffed on the vast majority of shifts throughout the year, and would substantially impair managerial prerogatives, public safety, and the efficient fiscally sound operation of the Police Department." [Tp Brf, pp. 4-5].

Counsel discounts the Associations' claim that their proposed work schedule adds over 6,600 productive work hours annually because it reduces the time officers spend performing their beginning and end of shift routines. Counsel emphasizes that the Township's officers remain on duty while performing these tasks and are readily available to respond to police calls. Counsel points out that the Associations failed to present empirical evidence to support this claim. [Tp Reply Brf, pp. 12-14].

Counsel argues that the Associations' proposal interferes with the Township's managerial right to effectively manage the Police Department. Counsel cites the following cases in support of its position: Local 195, IFPTE, AFL-CIO v. State, 88 N.J. 393, 404-05 (1982); Irvington PBA Local 29 v. Irvington, 170 N.J. Super. 539 (App. Div. 1979), cert. den. 82 N.J. 296 (1980); Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J. Super 71 (App. Div. 1983), cert. den. 96 N.J. 293 (1984); Mt. Laurel Tp. V. Mt. Laurel PBA, 215 N.J. Super. 108 (App. Div. 1987); Teaneck Tp. v. Teaneck FMBA Local 42, 353 N.J. Super. 289 (App. Div. 2002); and, Clifton & Clifton PBA Local No. 36, PERC No. 2004-20, PERC Dkt. No. IA-2001-048 (2004). Counsel asserts the following:

As the police shift schedule involve critical areas of public policy and safety - - - at the essence of the purpose of

government - - - any request to arbitrate or force change of such police schedule cannot impinge on the ability of a Police Department to efficiently manage and deploy its forces to their best and most effective advantage, and is not negotiable or changeable by arbitration ruling if it does, or is not demonstrated not to impair efficiency and public safety. [Tp Brief, p. 23].

Counsel maintains the Associations have not met their burden of proving that their proposed changes to the shift schedule do not impair the Department's operational efficiency of the Department or the safety of the public. According to Counsel, the Associations' witnesses "claim - - - that working less days per year on non-rotating shifts will improve less days per year on non-rotating shifts will improve one's job satisfaction and lifestyle - - - is of relatively limited relevance." [Tp Brf, p. 31]. Counsel indicates the Associations fail to address why their proposal does not negatively affect operational efficiency or the safety of the public.

Counsel suggests that to the extent the undersigned finds support for changing the existing schedule he should implement the Township's proposed changes on a trial basis. Counsel stresses, however, that the Township's proposal "has deficiencies and [an] adverse impact to the Police Department's operational efficiency, although to a lesser degree, similar to the PBA proposal." [Tp Brf, p. 37]. Counsel compares the parties' proposals to modify the existing schedule:

[The Township's proposal] has only 123 "overlap" days, resulting in there being 242 "non-overlap" days annually with only 1 Squad scheduled for each shift. However, the Chief believed these deficiencies would be partially

counterbalanced by certain changes, such as patrol officers working close to the 2080 hours per year specified in the Contract. Also, these proposed shift schedule would afford better police coverage during shift change periods than currently exists, would have a much more balanced manpower schedule with many more "overlap" days (123) than the PBA proposal (24), would not require changing contract provisions as to schedule or number of days off, would address the PBA's claim of adverse lifestyle impacts from rotating shifts, and would not adversely impact assignments to detectives/traffic/administrative positions as patrol officers would be working a similar number of hours.

The Chief and Township were clear, and no evidence was submitted in contradiction, that patrol division efficiency, manpower coverage, and public safety was better addressed through the current rotating shift - - - as each day was an "overlap" day through the power shift officers and the manpower schedule was better balanced. [Tp Brf, pp. 37-38].

Counsel emphasizes that the Township's proposal to modify the existing schedule was submitted simply in response to the Associations' desire for non-rotating shifts.

With respect to the statutory criteria, Counsel contends "[t]he only real evidence on the impact on the 16(g) criteria was by Chief Oches." [Tp Brf, p. 39]. Counsel submits that the Chief "detailed the negative impacts of the PBA proposal" on criteria 16(g)(1), (2), (3), (5), (6), and (8).

Based upon all of the above, Counsel maintains that the evidence does not justify the implementation of the Associations' proposal.



## **DISCUSSION**

Prior to reaching this decision, the Interest Arbitrator carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel as set forth both at the hearing and in their submissions, the contract itself and the numerous exhibits introduced. Each statutory criterion of N.J.S.A. 34:13A-16g was considered and given the weight that I determined to be appropriate. Based upon my assessment of this matter, the following criteria were given greater weight than the others: the interest and welfare of the public, the financial impact on the governing unit, its residents and taxpayers, and the continuity and stability of employment.<sup>6</sup> The criterion addressing the stipulations of the parties is relevant to the extent that the parties agree that the work shift schedule is the only issue to be addressed in this proceeding.

It has been established that "[t]he burden for a major work schedule change falls on the party proposing the major work schedule change." Clifton & Clifton PBA Local No. 36, PERC No. 2004-20, PERC Dkt. No. IA-2001-048 (2004). Having considered the testimony of the witnesses presented by the Associations, I conclude the Associations have established that steady work shift hours would, more likely than not, improve the health, morale, and well-being of officers working in the Patrol Division. Having said that, however, the Township does not

---

<sup>6</sup> The Associations presented in Exhibit "F" a list of police departments in New Jersey that use a compressed work schedule, but presented little or no testimony addressing the comparability criterion. The Associations did not address this criterion in their post-hearing submissions.

appear to have a problem recruiting or retaining officers within the Department. Despite this established benefit, I find the other potential advantages the Associations set forth in favor of their proposal are speculative at best and unsupported by the record. At a minimum, the Associations did not present evidence that the long-existing work schedule has failed to meet the needs of the Department or has failed to suitably maintain the safety of the public. While Chief Oches acknowledged that officers in the Patrol Division would personally benefit from steady shifts, he nevertheless testified as to why the current work shift schedule, which has been in existence in excess of 35 years, better meets the needs and demands of the Department regardless of whether it is compared to the Associations' proposal or the other proposal advanced by the Township during this proceeding. In his Certification, the Chief provides a detailed explanation for his support of maintaining the current schedule that includes the following:

...[T]his current shift schedule provides major public safety benefits. As noted, four Squads are each on duty for a full 8 hour shift during each day. The current Squad and shift schedule allows "power shift" officers to be scheduled so as to provide balanced police manpower throughout the day, with only a very limited two (2) hour period in the least active hours of the day (4:00 a.m. to 6:00 a.m.) having only nine (9) officers scheduled for work. [Tp. Ex. 5, paragraph 9].

The Chief also describes the drawbacks of the Associations' proposal:

The major and overwhelming deficiencies of the PBA proposal of 10.25 hour shifts, 4 days on/4 days off, 4 days on/3 days off is that it results in a seriously unbalanced and deficient police staffing schedule. There will be very extensive times, and many days - - - in fact the vast majority

of days and times - - - in which the Patrol Division will be operating at minimal staffing levels of only having 1 Squad, of 8 or 9 patrol officers, scheduled to work, prior to absences due to vacation, personal, sick, IOJ, training, or other reasons. \* \* \* [U]nder the PBA proposal there are only 24 "overlap" days per year. Thus, on the other 341 "non-overlap" days per year, there will only be 1 Squad, with 8 or 9 patrol officers, scheduled to work on each shift. The PBA proposal results in the elimination of the power shift, so that there is no available power shift officers to cover the minimum staffing requirements if there was more than 1 or 2 absences of officers from the scheduled Squad. As has been indicated, the scheduled absence of 1 or 2 officers from a scheduled Squad for vacation or personal time is a fairly routine occurrence (and cannot be denied under the PBA contract). Thereafter, with 2 officers already out on scheduled days off, there are many occasions additional scheduled patrol officers call out either sick or for personal time, or cannot appear due to IOJ or training, and those officers must be replaced. Thus, the PBA proposal clearly establishes and provides insufficient manpower to cover regularly expected absences on the vast majority percentage of shifts during the year to adequately staff the minimum patrol requirement without resort to overtime. [Tp. Ex. 5, paragraph 10].


As illustrated above, the Chief strongly favors maintaining the existing "power shift" to ensure he meets his staffing needs. The Chief has been a Township police officer since 1974. He worked his way through the ranks. He is very familiar with the existing work schedule. I find the Chief's testimony to be credible, and I give great weight to his testimony that the current work schedule, while not perfect, enables him to meet the needs of the Department. To summarize, the Associations have not convinced me on this record that the major changes they seek through this proceeding are warranted. I conclude that the interests and welfare of the public would be best served by maintaining the current work shift schedule and denying the Associations' Final Offer.

For the reasons expressed herein, I hereby issue the following:

**AWARD**

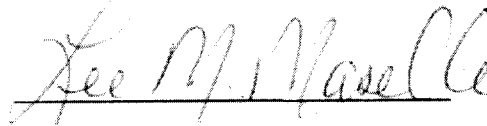
1. The Associations' Final Offer with respect to the proposed changes in the Patrol Division work schedule is denied in its entirety.
2. The current work schedule, which has been in use in the Township in excess of 35 years, shall remain in place for the life of the parties' current Agreements.

Dated:

  
Robert E. Light

State of New Jersey     }  
County of Somerset    }ss:

On this 19<sup>th</sup> day of October, 2009, before me personally came and appeared Robert E. Light to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



LEE M. MASELLI  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires January 20, 2010