P.E.R.C. NO. 2000-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CLINTON,

Petitioner,

-and- Docket No. SN-99-72

CLINTON P.B.A. LOCAL 329,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Township of Clinton's motion for reconsideration of the Commission's decision in P.E.R.C. No. 2000-3. In that decision, the Commission found mandatorily negotiable a revised work schedule proposal that Clinton P.B.A. Local 329 seeks to submit to an interest arbitrator. The Township contends that the Commission's decision is neither supported by the facts nor consistent with precedent. The Commission reaffirms its holding and finds that an arbitrator may consider this work schedule issue.

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.

P.E.R.C. NO. 2000-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CLINTON,

Petitioner,

-and- Docket No. SN-99-72

CLINTON P.B.A. LOCAL 329,

Respondent.

Appearances:

For the Petitioner, Archer & Greiner, P.C., attorneys (Michael W. Sozansky, Jr., on the brief)

For the Respondent, Abramson & Liebeskind Associates, labor relations consultants (Arlyne K. Liebeskind, consultant, on the brief)

DECISION

On August 16, 1999, the Township of Clinton moved for reconsideration of P.E.R.C. No. 2000-3, 25 NJPER 365 (¶30157 1999). In that decision, we found mandatorily negotiable a revised work schedule proposal that Clinton P.B.A. Local 329 seeks to submit to an interest arbitrator. The Township contends that our decision is neither supported by the facts nor consistent with precedent, thus establishing the required extraordinary circumstances for the current motion.

The PBA originally proposed a change from five squads working four days on and two days off on eight-hour shifts to six squads working four days on and four days off on ten-hour shifts.

The Township's petition argued, among other things, that the proposal would cause coverage gaps and require hiring additional officers.

We stated in our decision that the PBA responded to the Township's petition with a concession that its work schedule proposal would be contingent upon the Township's filling positions vacated by three retirees. The PBA modified its proposal to include a caveat that the proposal would not go into effect until three replacement officers are hired. In the alternative, the PBA sought to reopen negotiations over work schedules should the force be brought up to its normal complement. In its motion, the Township argues that there are no vacancies and that therefore our analysis based upon the PBA's statement that there are three vacancies was incorrect.

According to the Township, the PBA's original proposal would have required it to hire additional officers rather than fill three vacancies. Nevertheless, we believe that the Township's arguments about coverage gaps and the need to hire additional officers were mooted by the PBA's decision to modify its proposal to make it contingent upon the hiring of three additional officers. We need not address whether those hirings would be new or would fill vacancies. In either case, the employer would no longer have concerns about gaps in coverage.

In its reply to the PBA's modified proposal and in its current motion, the employer argues that the overlaps in coverage

should its staffing levels increase by three and should the PBA's work schedule be adopted render the proposal not mandatorily negotiable. However, the fact that a work schedule proposal may result in some overstaffing does not, per se, make the proposal non-negotiable. In making a negotiability determination, we are required to balance the employees' interests against any significant interference with governmental policy. Local 195, IFPTE v. State, 88 N.J. 393 (1982). Gaps in coverage significantly interfere with a public employer's ability to provide police protection. Overstaffing does not implicate the same concerns since it provides arguably too much rather than too little police protection. Just how much overstaffing would warrant rejecting a proposed work schedule is a matter of degree that can be evaluated by an interest arbitrator on a full record.

The employer's reliance on Borough of Prospect Park, P.E.R.C. No. 92-117, 18 NJPER 301 (¶23129 1992), is misplaced. In that case, the union's work schedule proposal would have left gaps in police coverage, would not have provided necessary supervisory coverage, would have caused considerable overlaps in coverage on parts of all shifts, and would have resulted in the employer having more coverage than needed during entire shifts. Based on those facts, we determined that the proposal was not mandatorily negotiable. The PBA's modified proposal is different and raises more limited concerns. Further, Prospect Park was decided before the interest arbitration statute was reformed, before we were

given jurisdiction to review arbitration awards to ensure the arbitrator considered the public interest and welfare and other statutory criteria, and before we issued our decision in Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997), setting forth the analysis we will apply in considering the negotiability of work schedule issues involving uniformed officers. It was also issued before Teaneck Tp., P.E.R.C. No. 2000-33, __ NJPER ___ (¶_____ 1999), where we explained that, before awarding a major work schedule change, an arbitrator must carefully consider the fiscal, operational, supervision and managerial implications of such a proposal.

In reply to the PBA's modified proposal, the Township also argued that the proposed schedule would require it to hire an additional supervisor to staff an additional squad. That concern was reported in our decision, but not discussed other than to note the PBA's response that it could be addressed by putting the senior sergeant or supervisor on each shift in charge, as is done currently. Accordingly, we grant reconsideration to explain why the Township's concern does not affect our holding.

The employer asserts that the PBA's proposal would not allow for the continuity of supervision currently in place and would result in a decreased level of supervision, unless an additional supervisor is provided for the additional squad. It argues that its concerns in maintaining a continuous level of supervision (one per squad) is a managerial prerogative.

We agree that the Township has a prerogative to decide how many supervisors to have on each squad. The PBA's proposal would create an additional squad and, if the proposal were to be adopted and implemented, the Township would have to decide how that squad would be supervised. The proposal does not set the number of supervisors or require that the Township maintain or reduce the number of supervisors. Any impact on supervision is an important factor for an interest arbitrator to consider, Teaneck, but it does not render the proposal not mandatorily negotiable.

As our original decision stated, we make no judgment on the merits of the work schedule issue in interest arbitration. We simply hold that the arbitrator may consider all the evidence and arguments on this issue. Maplewood. We then have jurisdiction to review the award in the event of an appeal by either party. See Teaneck.

ORDER

Reconsideration is granted. P.E.R.C. No. 2000-3 is affirmed.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

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

DATED: November 15, 1999
Trenton, New Jersey
ISSUED: November 16, 1999