P.E.R.C. NO. 2002-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CLIFTON,

Appellant,

-and-

Docket No. IA-99-69

CLIFTON FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION, LOCAL 21,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms, with a modification, an interest arbitration award issued to resolve negotiations between the City of Clifton and Clifton Firemen's Mutual Benevolent Association, Local 21. The Township asks the Commission to vacate the award which granted the FMBA's proposal for a 24/72 schedule for a one-year trial period. The award provided that at the end of the trial period the City could petition this arbitrator to eliminate the 24/72 schedule and if the FMBA objected, the arbitrator would hold a hearing, after which he would determine whether the City had shown "reasonable cause" to revert to the 10/14 schedule.

The Commission concludes that the arbitrator comprehensively analyzed the evidence and arguments; gave due weight to the relevant statutory factors; and reached a reasonable determination that the FMBA had met its burden of justifying the schedule change for a one-year trial period. The Commission, however, modifies the trial period portion of the award. The Commission concludes that the best and least complicated mechanism for evaluating the 24/72 schedule, absent the parties' agreement to continue or discontinue the work schedule, is during the post-contract expiration interest arbitration process, where another arbitrator will be appointed. The Commission also concludes that requiring the City to establish "reasonable cause" to revert to the 10/14 schedule is not consistent with Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), app. pending App. Div. Dkt. No. A-001850-99T1. Under Teaneck, the burden is again on the FMBA to justify the schedule, not for the City to show that the new schedule should not be continued.

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 Appellant, Ruderman & Glickman, P.C., attorneys (Mark S. Ruderman, of counsel; Ellen M. Horn, on the brief)

For the Respondent, Fox & Fox, LLP, attorneys (David I. Fox, Daniel J. Zirrith, Jennifer E. Walker and Gregory A. Busch, of counsel)

DECISION

The City of Clifton appeals from an interest arbitration award involving a negotiations unit of rank-and-file firefighters, firefighter/EMTs, lieutenants, captains and deputy chiefs. See N.J.S.A. 34:13A-16f(5)(a). It asks us to vacate the award, which granted the Clifton Firemen's Mutual Benevolent Association, Local 21's proposal for a 24/72-hour (24/72) work schedule on a one-year trial basis.

The sole issue in the arbitration was the FMBA's proposal to change from a 10/14-hour (10/14) work schedule to a 24/72 schedule (Arbitrator's opinion, p. 2). The parties had agreed to all other terms of a four-year contract from January 1, 1999

through December 31, 2002 (Arbitrator's opinion, p. 2). The terminal procedure was conventional arbitration, since the parties did not agree upon another procedure. N.J.S.A. 34:13A-16d(2).

The parties' final offers were as follows.

The FMBA proposed a 24/72 schedule to be implemented for a one-year trial period. Under the proposed schedule, firefighters would work an eight-day tour of one 24-hour day, followed by 72 hours (three days) off; followed by another 24-hour day on and three days off.

The FMBA also proposed a procedure by which, at the end of the trial period, the City could petition the arbitrator to eliminate the 24/72 schedule; if the FMBA then objected, the appointed arbitrator would hold a hearing, after which he would determine whether the City had shown "reasonable cause" to revert to the 10/14 schedule (Arbitrator's opinion, p. 5). The FMBA's final offer provided that the City could not revert to the 10/14 schedule prior to the arbitrator's decision and that, if the City did not petition to eliminate the 24/72 schedule, or if its request was denied, the awarded schedule would be included in the parties' agreement permanently (Arbitrator's opinion, p. 5). Finally, the FMBA proposed that existing vacation, sick, personal, and compensatory days be adjusted during the trial period to maintain the same level of benefits as under the existing 10/14 schedule (Arbitrator's opinion, p. 8).

The City proposed that the 10/14 schedule be maintained. Under this schedule, firefighters work an eight-day tour of two ten-hour days from 8:00 a.m. to 6:00 pm., followed by one day off, followed by two nights where firefighters work from 6:00 p.m. to 8:00 a.m., followed by 72 hours (three days) off. Under both the 10/14 and 24/72 schedules, firefighters work 48 hours every eight days and, over eight weeks, an average of 42 hours per week (Arbitrator's opinion, pp. 63, 90).

However, as an alternative to maintaining the 10/14 schedule, the City proposed a modified 10/14 schedule in response to the FMBA's concern that, under the current schedule, firefighters had only ten hours off between the two consecutive night shifts. Under the modified 10/14 schedule, firefighters would work two consecutive days, 8:00 a.m. to 6:00 pm.; followed by one night on the 6:00 pm. to 8:00 a.m. shift; followed by one day off; followed by a 6:00 p.m. to 8:00 a.m. night shift on the fifth day, followed by two days off (Arbitrator's opinion, p. 63).

The arbitrator awarded the FMBA's proposal concerning the 24/72 schedule; he ordered that it be implemented for a one-year trial period and that it "remain in effect and unless it is altered or replaced by this Interest Arbitrator pursuant to the procedure set forth below" (Arbitrator's opinion, p. 122). The procedure was the one proposed by the FMBA. The arbitrator also ordered that contract provisions for leave time be adjusted as proposed by the FMBA (Arbitrator's opinion, pp. 5, 123-124).

The City appeals, contending that the arbitrator did not give due weight to the relevant factors in N.J.S.A. 34:13A-16g; the award is not supported by substantial credible evidence in the record as a whole; and the award's post-trial period review procedure violates N.J.S.A. 2A:24-8 and the standards in Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), app. pending App. Div. Dkt. No. A-001850-99T1.

The standard of review in interest arbitration appeals is now established. We will vacate an award if the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. See, e.g., Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); accord Teaneck; City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999); Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Division 540, ATU, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Cherry Hill. An arbitrator must provide a reasoned explanation for an award, N.J.A.C. 19:16-5.9, and, once he or she has done so, an appellant must offer a particularized challenge to

the arbitrator's analysis and conclusions. Lodi. As we discussed in Teaneck, additional considerations pertain in reviewing an award ordering a work schedule change. We reiterate and expand on those considerations later in this opinion.

We start with a procedural history of the arbitration and a summary of the arbitrator's opinion and award.

The 24/72 schedule was vigorously proposed by the FMBA and just as strongly opposed by the City. There were eight days of hearing, as well as testimony and certifications from nearly thirty individuals. Close to 200 exhibits were submitted, over 1000 pages of testimony were transcribed, and the arbitrator issued a 124-page opinion (Arbitrator's opinion, pp. 90-91).

The FMBA argued that the 24/72 schedule would further the public interest by improving morale; reducing fatigue and firefighter and civilian injuries; increasing productivity; enhancing communications and training; and reducing sick leave and overtime costs. The FMBA's primary witnesses were New Jersey fire chiefs who had had experience with the 10/14 schedule and whose departments now operate on a 24/72 schedule (Arbitrator's opinion, pp. 41-60).

The City countered that firefighters on a 24/72 schedule would not have the stamina and concentration required to fight fires, perform inspections, and be trained throughout a 24-hour shift. The City argued that, as a consequence, the schedule would increase fatigue and injuries and decrease the safety of firefighters and the public. It also maintained that the

infrequency with which firefighters report for duty on a 24/72 schedule would diminish job commitment and hamper training, productivity, firefighter recalls and follow-through on discipline (Arbitrator's opinion, p. 62-86). Its primary witnesses were Walter DeGroot and John Dubravsky, the former chief and current chief, respectively, of the City's Fire Department, as well as a physician, Dr. David R. Carnow. Carnow testified that the 24/72 schedule would exacerbate the mental, physical, thermal and chemical stressors that firefighters face.

The parties agreed that the 24/72 schedule was a non-economic issue and that the statutory factors concerning the lawful authority of the employer; the financial impact of the award; and the cost of living were difficult to apply (Arbitrator's opinion, pp. 87-88). There was no dispute that the 24/72 schedule would involve the same number of employees working the same number of hours with the same number of supervisors.

The arbitrator found, based on Teaneck and interest arbitration awards involving work schedules, that the FMBA had a "very heavy" burden in seeking to change the 10/14 schedule. He concluded that the FMBA had met this burden, finding that the evidence convincingly showed that implementation of the schedule would promote the public interest and welfare, N.J.S.A. 34:13A-16g(1), which he found to be the most important statutory factor and one that implicated such issues as safety, fatigue, training, productivity, recall procedures, morale and working conditions (Arbitrator's opinion, pp. 88-89, 116, 120). He also

concluded that the 24/72 schedule would improve employee morale and therefore the continuity and stability of employment, N.J.S.A. 34:13A-16g(8), and that a comparison of wages, salaries, compensation and conditions of employment, N.J.S.A. 34:13A-16g(2), favored implementation of the schedule (Arbitrator's opinion, p. 119).

The arbitrator also found that the employer's lawful authority and cost of living were not relevant criteria to the dispute and that the financial impact factor pertained only to the extent the schedule would affect sick time use and overtime. Finally, the arbitrator observed that, unlike Teaneck, award of the schedule would not result in supervisors and employees working different shifts, since Local 21 includes both superior officers and firefighters (Arbitrator's opinion, pp. 87-89, 121). Compare Teaneck, 25 NJPER at 455.

In awarding the schedule, the arbitrator was persuaded by the fire chiefs and superior officers who testified for the FMBA, all of whom testified as to their positive experience with the 24/72 schedule. By contrast, he found that the current and former chiefs' views that operations would be adversely affected by the 24/72 schedule were not based either on research into the schedule or an analysis of the experience of the many communities that had implemented it (Arbitrator's opinion, pp. 97, 112, 121). He reached the same conclusion concerning the opinion of Carnow, the

City's medical expert (Arbitrator's opinion, p. 101-102). We highlight the key aspects of the arbitrator's opinion.

In analyzing the public interest, the arbitrator stressed that the issue of fatigue was "extremely important" because it directly affects the delivery of firefighting services and the safety of firefighters and the public (Arbitrator's opinion, p. 95). He concluded that the 10/14 schedule was potentially fatiguing because it includes only a ten-hour break between the two consecutive night shifts, after which break, with commuting and family obligations, the firefighter often does not return to work rested. By contrast, the arbitrator concluded that a firefighter was much more likely to report to work rested when he or she had been off for 72 hours. Further, the arbitrator stressed that the 72-hour period allowed more time for a firefighter to recuperate and more time for smoke and other toxins to be released from a firefighter's system after an exposure (Arbitrator's opinion, pp. 95-100).

In finding that the 24/72 schedule was more beneficial than the 10/14, the arbitrator cited, among other FMBA evidence, testimony by Roselle Fire Chief Robert Hill and Hillside Fire Chief Frank Caswell. Hill testified that the 24/72 schedule made his job much easier because he had "fresh firefighters" on every shift whereas, under the 10/14, there was "always a problem" with some firefighters coming to work fatigued because of their off-duty activities. Hill also explained that, within the 24-hour

shift, he could control any "fatigue factor" by giving firefighters rest or downtime after fire calls or training exercises. Caswell testified that the 72-hour period between shifts allows both for smoke and chemicals to be released from a firefighter's system and for a firefighter to recoup from the stresses of firefighting (Arbitrator's opinion, pp. 95-100).

Based on this and other evidence, the arbitrator ruled that the 24/72 schedule would reduce fatigue and improve safety (Arbitrator's opinion, p. 103). He also found that the 24/72 schedule would improve firefighter morale, which FMBA witnesses had described as particularly important given the stressful and dangerous nature of the fire service (Arbitrator's opinion, pp. 109-112). The arbitrator concluded that there was no evidence to show that the 24/72 schedule would increase fatigue or sick time use; hamper training or recalls; impede follow-through on discipline; or diminish job commitment (Arbitrator's opinion, pp. 111, 121).

However, while the FMBA had argued that the 24/72 schedule would enhance training and communications and decrease sick leave and overtime, the arbitrator did not cite potential improvements in these areas as grounds for awarding the schedule. While he did advert to the potential for decreased sick leave and overtime at the end of his opinion, such potential reductions were not the focus of his analysis (Arbitrator's opinion, pp. 103-108, 121).

With respect to the comparability criterion, the arbitrator found that the 24/72 hour schedule was a common one in New Jersey; that 70% of fire departments nationally had some form of 24-hour schedule; and that the recent trend in New Jersey fire department negotiations was to move to the 24/72 schedule. He cited testimony to the effect that both large and small fire departments in New Jersey operate under the schedule. He noted that N.J.S.A. 40A:14-46 permits firefighters to remain on duty for 24 hours and that 35 New Jersey fire departments either use the 24/72-hour schedule or will do so within one year (Arbitrator's opinion, pp. 90, 116-118).

In establishing a one-year trial period, the arbitrator stated that he hoped that experience under the schedule would "dispel the negative attitude that the City harbors and that the City of Clifton will experience the same positive results that innumerable communities within the State have realized" (Arbitrator's opinion, p. 120).

On appeal, the City agrees with the arbitrator that the cost of living and lawful authority criteria were not relevant, and that the financial impact factor pertained only as it related to sick time. It also agrees with the arbitrator's characterization of the issues encompassed within the public interest. However, it challenges the arbitrator's analysis of that statutory factor, as well as his consideration of the comparability criterion. It also contends that the arbitrator

erred in finding that the FMBA had met its "very heavy burden" of justifying a schedule change, arguing that that burden could only have been met if the FMBA had shown that the 10/14 schedule did not "work" for the City. It asks that we vacate the award and remand it to another arbitrator or, in the alternative, modify the award as it pertains to the trial period. We start by reviewing the principles that shape our approach to this appeal.

We underscore, as we did in Teaneck, that before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions. 25 NJPER at 455. That requirement derives both from the arbitrator's obligation to consider the relevant statutory factors, N.J.S.A. 34:13A-16g, and from Court and Commission decisions recognizing a strong governmental policy interest in ensuring appropriate discipline, supervision and efficient operations in a public safety department. See Teaneck, 25 NJPER at 455 and cases cited therein.

We also reiterate that the party proposing a work schedule change has the burden of justifying it. Teaneck, 25 NJPER at 455; cf. Hillsdale, 137 N.J. at 82. That burden is consistent with the fact that interest arbitration is an extension of the negotiations process and that, within the context of the statutory criteria, an interest arbitrator should fashion an award that the parties, as reasonable negotiators, might have agreed

to. Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997). Over the course of a negotiations relationship between a particular employer and majority representative, department work schedules are not routinely or frequently changed and they should not be changed by an arbitrator without strong reasons.

However, we disagree with the City that a change can be awarded only if the proponent shows that a current schedule does not "work." An arbitrator should consider whether there is evidence of problems with an existing schedule, but interest arbitration must allow for a schedule change that an arbitrator reasonably concludes is warranted after a full and fair consideration of all of the statutory criteria. Where a schedule change is awarded because of potential benefits, as opposed to problems with a current schedule, it is appropriate for an arbitrator to establish a mechanism that allows the parties to evaluate the awarded schedule and ensures that it will not become the new status quo unless the predicted benefits materialize. Teaneck, 25 NJPER at 457.

Finally, we comment on the evidence that may typically be presented with respect to a proposed work schedule change. Here, as in Teaneck, the FMBA presented witnesses who testified as to their personal experience with the 10/14 and 24/72 schedules and who indicated as well that many fire departments used the 24/72 schedule. In both cases, the employers countered, in part, with

testimony by their own fire chiefs, who explained their reasons for opposing the change. In each case, the arbitrator analyzed the chiefs' concerns and stressed that the employers had presented no evidence of problems in any of the municipalities using a 24/72 schedule. Teaneck approvingly cited the arbitrator's comment to this effect. 25 NJPER at 457.

Lack of evidence that a particular schedule has caused problems in other departments is a factor that an arbitrator should consider. However, the burden remains on the proponent to justify a change. Stated another way, the party opposing the change need not prove that the proposed schedule will not work. Moreover, even absent documentation or experience-based testimony about alleged problems with a schedule, an arbitrator should carefully consider arguments that describe how the inherent features of a proposed schedule will affect the delivery of essential governmental services in a particular jurisdiction. In some cases, such arguments may be entitled to significant weight.

Within this framework, we consider the City's contention that the arbitrator did not give due weight to the components of the public interest criterion and did not properly analyze the comparability factor.

The gravemen of the City's appeal is that the arbitrator did not give due weight to the alleged deficiencies in the 24/72 schedule as described by Carnow, the only medical expert to

testify, and by DeGroot and Dubravsky, both of whom have over 30 years of firefighting experience. We will later discuss the arbitrator's consideration of these individuals' opinions on particular points. However, at the outset, we find that the arbitrator reasonably exercised his discretion when, in weighing the evidence, he generally credited the testimony of the FMBA witnesses over DeGroot, Dubravsky, and Carnow.

In doing so, he highlighted three points. The first is that the FMBA witnesses had experience under both schedules, whereas Dubravsky and DeGroot did not (Arbitrator's opinion, pp. 93, 102, 121). The second is the arbitrator's unchallenged finding that the City's witnesses, including Carnow, did not base their opinions on research into the 24/72 schedule (Arbitrator's opinion, p. 102, 112). In this vein, Carnow stated that he would not be convinced that the 24/72 schedule was workable even if he were shown evidence of decreased injuries and sick leave in 20 communities (6T811). The arbitrator also highlighted a third point: DeGroot has been opposed to the schedule for at least 35 years and, although committed to the delivery of quality fire services, has held to his longstanding views -- expressed in a 1972 report by the New Jersey Career Fire Chiefs Association - without studying the recent implementation of the schedule in many communities (Arbitrator's opinion, p. 112).

These factors, while not determinative, were appropriately considered by the arbitrator in evaluating, and

providing a context for, the witnesses' objections to the schedule, particularly since those objections took the form of predictions about the negative effects of the schedule rather than concrete examples of how the schedule would adversely affect department operations.1/

Public Interest and Welfare

Fatigue and Fire Safety

The City does not question the arbitrator's conclusion that firefighter fatigue impedes effective firefighting and, therefore, the safety of firefighters and the public. Nor does it challenge the key findings that underpinned his award: first, that the 10/14 schedule has a significant potential for fatigue because it includes only a 10-hour gap between the two consecutive night shifts; and second, that the 24/72 schedule always affords a firefighter 72 hours to recuperate from a fire exposure, thereby enabling the firefighter to report to work rested. Nor does the City dispute the accuracy or relevance of a Union Township study

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1/ The City emphasizes that, contrary to the arbitrator's findings, Dubravsky had at one time worked a 24-hour tour and found it to be "very stressful" (Arbitrator's opinion, p. 93; Aa1742; 8T1080-8T1081). Dubravsky's experience, however, was at the beginning of his career when firefighters worked a 24/48 schedule (8T1080-8T1081). Thus, he does not have experience on the 24/72 schedule. In any case, Dubravsky never linked his experience on the 24-hour tour with the types of problems that he anticipated would flow from award of the schedule. The arbitrator's analysis is not undermined by this point.

showing that firefighter injuries were reduced by 23%, and civilian injuries by 38%, during the six-year period after the Township switched from the 10/14 to the 24/72 schedule. Union Township Battalion Chief Paul Chrystal attributed these reductions to increased inspections and firefighters' ability to recuperate after a strenuous tour of duty (Arbitrator's opinion, p. 95; Aa1056-Aa1057; 2T233-2T234).2/ Instead, the City primarily contends that whatever the deficiencies of the 10/14 schedule, DeGroot, Dubravsky, and Carnow showed that the 24/72 schedule presents greater problems. Further, it maintains that the arbitrator should have more fully discussed its alternative work schedule. We disagree.

With respect to the alleged problems with a 24-hour shift, the arbitrator recognized that there is a greater potential for fire exposure during a 24-hour shift than during a 10-hour or 14-hour period. However, he observed that similar problems obtain

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2/ In challenging the arbitrator's analysis, the City does cite an exhibit showing that, for 1998, Clifton had a lower frequency of worker's compensation claims per 100 officers (25), than either Passaic (27.7) or Paterson (32.6), mutual aid communities that are on the 24/72 schedule (Aa186). While the arbitrator did not discuss this exhibit, it does not undercut his conclusion that the 24/72 would likely increase fire safety. Dubravsky acknowledged that Paterson had more fires than Clifton and that that circumstance would likely result in Paterson firefighters experiencing more work-related injuries (7T973-7T974). With respect to the City of Passaic, the difference between its 1998 worker's compensation experience and that of Clifton is not as significant as that between Clifton and Paterson.

on the 10/14 schedule, without the counterbalancing advantages of the 24/72. For example, the arbitrator noted that, given the consecutive night shifts, the 10/14 potentially exposes a firefighter to 28 hours of firefighting within a 38 hour period, without the three-day recuperative period afforded by the 24/72 schedule (Arbitrator's opinion, pp. 95-100).

In response to the concern about fighting fires for 24 hours straight -- or multiple fires within a 24-hour period -- the arbitrator stressed that "rehabilitation is essential and required" in any extended firefighting (Arbitrator's opinion, p. 100). Rehabilitation refers to the availability of medical and other support services at a fire (Aa134), and is required well before a firefighter has been fighting for 10, 14 or 24 hours. DeGroot testified that "good practice" is to have rehabilitation after three or four hours (5T599). Caswell asserted that rehabilitation is essential whatever the work schedule and that, in the unlikely event that there is more than one general alarm in a day, the situation could be handled through mutual aid and rehabilitation (1T97; 1T107).

In that vein, the concern about engaging in firefighting for 24 hours should be placed in perspective. The unrebutted testimony of Local 21 President Nicholas Marchisello was that fires of more than two hours occur only one or two times per year; that about two hours out of each 24-hour period are devoted to

fire calls; and that firefighter/EMTs are out on ambulance calls for an average of 5-6 hours over a 24-hour period (3T303-3T305).3/

Marchisello also testified that, in his four years with the department, he experienced only one general alarm -- defined as a fire in which all fire companies respond; mutual aid is called; and firefighters may be required at the scene for "days" either to engage in firefighting or to assist in the fire investigation (3T304-3T306). DeGroot testified that the City has multiple "workers" in a 24-hour period on about three or four occasions per year. A "worker" is a serious fire where all on-duty firefighters respond (4T381; 5T596-5T598).

In addition, the record shows that during both the night shift in Clifton and the 24-hour schedule as typically operated, firefighters are, absent an emergency, able to sleep during the late evening hours (T116; 4T405). Further, during 1993 and 1996, many Clifton firefighters worked 24-hour tours as a result of a hiring freeze; 24-hour tours were also worked during 1999 (5T567-5T571; Aa1346; Aa1548-Aa1549). Although DeGroot stated that there were problems as a result, those problems were not described (5T569).

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3/ The firefighter/EMTs assigned to the City's three ambulances primarily respond to EMS calls and are only occasionally involved in firefighting (3T296-3T297).

Finally, we believe the prevalence of a 24-hour tour nationwide, and a 24/72 schedule in New Jersey, bears both on comparability and the employer's concerns about safety and the public interest. The record shows that some form of 24-hour shift is and has been the norm nationwide (2T267; Aa130). While that circumstance does not provide a basis to award the 24/72 schedule, it does suggest that fire protection standards can be maintained with firefighters working 24-hour shifts.4/

In this posture, the arbitrator reasonably credited the testimony of the chiefs who testified for the FMBA, all of whom had experience under both the 10/14 and 24/72 schedules and all of whom opined that fatigue was better controlled on the 24/72 schedule (Arbitrator's opinion, pp. 95-97). Those opinions meshed with the arbitrator's comparison of the inherent features of the schedules and the evidence that we have summarized.

By contrast, Dubravsky and DeGroot focused on the difficulty of fighting fires for all, or a substantial portion, of a 24-hour shift. That is a serious concern but their testimony did not address the rarity of such demands; the availability of rehabilitation and mutual aid to ameliorate the stresses of extended firefighting; or the prevalence of the 24-hour shift.

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4/ The 10/14 schedule was put into place in the City in 1969, when the firefighters' workweek was reduced from 56 to 42 hours (4T370; Aa168). City firefighters have also worked 24-hour tours within 60 and 72-hour workweeks (4T371). Nationally, 24-hour tours have also been combined with workweeks of 84, 72, 56, 48 and 42 hours (Aa130).

Further, while they compared a 24-hour shift with a 10 or 14-hour shift, they did not consider how a full tour under each schedule would affect firefighter fatigue and, therefore, the safety of firefighters and the public. For these reasons, there is no basis to disturb the arbitrator's decision to credit the FMBA's witnesses, rather than DeGroot and Dubravsky, on the impact of the 24/72 schedule on fatigue.

We are also persuaded that the arbitrator thoroughly analyzed the testimony of Carnow, the City's medical expert, who wrote that the 24/72 shift exposed firefighters to a "variety of potential health concerns" because of the possibility of extended firefighting and prolonged exposure to smoke and other toxins. He opined that the 10/14 schedule was preferable because of the shorter exposures and the ability to begin recovery sooner, thereby preventing the accumulation of exposures "to the point they cause the body to be damaged" (Aa373).

The arbitrator recognized that these statements merited consideration, but he reached a reasonable determination not to credit Carnow's opinion. The arbitrator noted the substantial exposure possible under the 10/14 schedule during the two consecutive night shifts, as well as Carnow's acknowledgment that it was better to have 72 hours off after a fire exposure than the 10 hours provided between the 10/14 schedule night shifts (Arbitrator's opinion, p. 100). The arbitrator also stressed that Carnow had not analyzed the incidence of injuries and sick leave

in departments on the 10/14 vis-a-vis those on the 24/72 schedule; had not studied the experience of departments that had switched to the 24/72; and was not aware of the amount of time City firefighters spent fighting fires in an average 24-hour period or the number of times per year each fire company responded to a fire. Nor was Carnow aware of the hours worked under a 10/14 or 24/72 schedule (Arbitrator's opinion, pp. 101-102; 6T771-6T780).

In sum, Carnow's opinion was not supported by medical research data or any particularized discussion of the "potential health concerns" that would result from a 24/72 but not a 10/14 schedule.

Similarly, the arbitrator thoroughly analyzed another point highlighted by Carnow: that the 24/72 schedule was undesirable because of the protective firefighting suits required by the New Jersey Department of Labor (NJDOL) under the Public Employee Occupational Health and Safety Act (PEOSHA), N.J.S.A. 34:6A-25 et seq. The arbitrator observed that these clothing requirements have been in effect since 1995 and there was no evidence that the clothing had caused difficulties in any community operating under the 24/72 schedule. The arbitrator further commented that it was reasonable to infer that the NJDOL was aware that the 24/72 schedule was a common one when it promulgated the uniform requirements. Finally, he cited a 1997 interest arbitration award rejecting the employer's argument that the new uniform requirements favored its proposal to change from

the 24/72 to the 10/14 schedule. That arbitrator wrote that the employer had not shown any increased injuries as a result of the new uniforms, which had been in use for two years (Arbitrator's opinion, pp. 98-99).

The City has offered no basis for disturbing this analysis. We add that the uniform requirements reflect federal standards and were adopted in accordance with legislation directing that PEOSHA standards conform to federal Occupational Health and Safety Agency (OSHA) requirements. N.J.S.A. 34:6A-29; 30 N.J.R. 4240. Given that the 24/72 schedule is also common nationwide, this circumstance supports the arbitrator's view that the PEOSHA-mandated uniforms are compatible with the 24/72 schedule.

Finally, we disagree that the arbitrator was required to discuss in more detail the City's alternative 10/14 schedule. The City's final offer was to retain the 10/14 schedule and the overwhelming weight of the evidence was directed to either maintaining that schedule or switching to the 24/72 schedule. N.J.A.C. 19:16-5.7(f) does not provide for alternative final offers and DeGroot simply described the schedule while stating that it would lengthen the time between night shifts while retaining 10 and 14-hour shifts (4T465-4T468; Aa188; Aa1772).

The arbitrator in this conventional arbitration could conceivably have awarded a schedule other than the 10/14 or

24/72. See Cherry Hill and Hudson Cty. Prosecutor. However, he was not on this record obligated to discuss his reasons for not selecting an alternative schedule when he fully explained his reasons for awarding the 24/72 schedule on a trial basis and when he could not, given the limited record, fully assess the alternative schedule.

For all these reasons, the record supports the arbitrator's conclusion that the 24/72 schedule would reduce fatigue and improve fire safety.

Training

The City argues that the 24/72 schedule will hamper training because training requires repetition yet the 24/72 schedule precludes programs from being scheduled on two consecutive days. It also contends that available training time will be reduced because firefighters will not be able to concentrate on instruction after the first 10 hours of a 24-hour shift.

The arbitrator, recognizing that training was an essential component of firefighting, quoted four fire chiefs who testified that training had improved on the 24/72 as compared to the 10/14 schedule. In response to the City's concerns, these witnesses stated that they have successfully scheduled night training on the 24/72 schedule and that, in their opinion, the inability to schedule consecutive training days does not impede training (Arbitrator's opinion, pp. 92-94). Union Township

Battalion Chief William Chrystal testified that, on the 24/72 schedule, training officers on the day shift can see firefighters at least once and sometimes twice a week, whereas under the 10/14, two weeks could go by before the training officer could see a particular tour. Chief Hill stated that training nearly "doubled" when Roselle switched from the 10/14 to the 24/72 (Arbitrator's opinion, p. 94; 1T133; 1T138).

The arbitrator also cited testimony by the chiefs to the effect that the 24/72 schedule provides more flexibility, because training can be scheduled from morning through evening hours depending on the events of a particular day. They also described how the 24-hour shift provided more time to critique a fire response immediately after it was completed (1T85-1T86). Finally, the arbitrator cited a 1999 memorandum from the City's training officer stating that training had recently been "below par or non-existent" and was not likely to improve unless deputy chiefs assumed more training responsibility (Arbitrator's opinion, p. 94).

Against this backdrop, we find ample support for the conclusion that there was no evidence that the 24/72 schedule would impede training. Thus, there is no basis to disturb the arbitrator's analysis.

Sick Leave

The City maintains that the arbitrator erred in concluding that there was no evidence that sick leave use will increase under the 24/72 schedule. The background follows.

The parties had different approaches to evaluating how the 24/72 schedule would likely affect sick leave use and overtime. The City reasoned that sick leave use would increase because an individual who took one sick day on the 10/14 schedule would be charged only 10 or 14 hours leave, while under the 24/72 he or she would be using 24 hours of leave. It presented a chart prepared by the New Jersey Career Fire Chiefs' Association showing that firefighters on the 24/72 schedule firefighters used an average of 4.75 24-hour days per year while firefighters working a 10/14 schedule used an average of 4.1 10 or 14-hour sick days per year (Aa184). It also relied on a chart showing less sick leave use in Clifton than in Passaic -- a mutual aid community on the 24/72 schedule (Arbitrator's opinion, p. 106; Aa1742).

In contrast, the FMBA presented testimony from five fire chiefs, all of whom testified that sick leave and overtime went down, in some cases dramatically, when their departments switched to the 24/72 schedule. In addition, the FMBA presented a study from Union Township, which showed a 35% reduction in sick leave and a 58% decrease in overtime when the township moved from the 10/14 to the 24/72 schedule. The study hypothesized that the additional recuperative time afforded by the 24/72 schedule made it less likely that a firefighter injured or fatigued from fire duty would need to take sick leave when next scheduled to work. Overtime was in turn decreased because there was less need to call in an off-duty firefighter to replace an absent colleague (Arbitrator's opinion, pp. 103-105; Aa1052-Aa1053).

In addition, one chief explained that, on the 10/14, firefighters may be at a fire scene when the shift changes at 6 p.m., and will have to remain on duty -- and be paid overtime -- until they are relieved. That scenario is less likely on the 24/72, where there are fewer shift changes. Finally, the FMBA maintained that the comparison between Passaic and Clifton in fact showed that Clifton firefighters used more sick leave, when Clifton's figures were adjusted to reflect employees on injury leave and retiring firefighters who were exhausting accumulated sick leave while on terminal leave (Arbitrator's opinion, pp. 105-109).

In this posture, the arbitrator emphasized that, as Dubravsky stated, the City has no sick leave problem and almost no overtime (5T630; 5T661). The arbitrator discussed but did not rely on the Clifton/Passaic exhibit, observing that a comparison was an "exercise in pure speculation," presumably because it was not clear whether firefighters on injury or terminal leave were included in the Passaic statistics. He commented that the City and the FMBA should be proud of the low sick leave usage and that there was no reason to believe that abuse would occur under the 24/72 schedule, particularly given the strong evidence of reductions in sick leave in other municipalities after they implemented the 24/72 schedule (Arbitrator's opinion, pp. 107-109). At the conclusion of his opinion, he added that he believed increased productivity, in the form of reduced sick leave

and overtime, would result from implementation of the schedule (Arbitrator's opinion, p. 121). However, this was not a primary basis for awarding the schedule.

The arbitrator's findings and conclusions are supported by the record.

Preliminarily, we need not address the Clifton/Passaic exhibit, because the arbitrator's analysis did not rest on it. And we are not persuaded by the City's position as to the inevitability of the 24/72 schedule increasing sick leave. While a one-day illness might in some cases result in more sick leave under the 24/72 than under the 10/14 schedule, it also appears that a one-day illness is less likely to coincide with a work day and that a longer-term illness or injury might require less sick leave usage under the 24/72 schedule. While the arbitrator did not discuss the Fire Chiefs' Association chart, that evidence is balanced by the testimony of several fire officers with experience under both schedules.

In these circumstances, there is no basis to disturb the arbitrator's conclusion that the City's excellent sick leave record would likely be maintained under the 24/72 schedule. Further, the arbitrator reasonably found that some reduction in sick leave might occur, given the experience of other New Jersey municipalities (Arbitrator's opinion, pp. 109, 121). However, to the limited extent the arbitrator cited reduced sick leave and overtime as a basis for awarding the schedule, these predicted

benefits do not provide a strong basis for awarding the schedule. While decreases in sick leave and overtime are often offered as reasons to change to a 24/72 schedule, FMBA President Bill Lavin explained that those benefits will be less if, as here, a department has no sick leave problem under a 10/14 schedule (2T265).

Productivity/Job Commitment

The City maintains that the arbitrator did not give due weight to the public interest when he awarded a schedule that, it contends, will decrease productivity because it requires substantial downtime. It also alleges that firefighters will not be able to concentrate for the entire shift; will have less commitment to their careers; and will obtain second jobs. The City also contends that, with fewer work days, firefighters will have weaker ties to the community in which they work, resulting in less public support for the department.

The arbitrator considered most of these arguments, some of which are related to the effect of the 24/72 schedule on firefighter morale, and yet reached a reasonable determination to award the schedule. While he did not separately address the City's productivity concerns, he gave weight to the testimony of FMBA witnesses who stated that their departments operated more efficiently and productively under the 24/72 than under the 10/14 schedule.

As the arbitrator noted, all of the FMBA witnesses testified that the 24/72 schedule had improved firefighter morale, with Imparato commenting that morale was extremely important because of the stressful nature of the job; South Orange Fire Chief Markey recounting that "people became more interested" and "participated more" after the schedule was reinstituted; and Caswell opining that better morale provided for a better worker (Arbitrator's opinion, pp. 110-111). The arbitrator reasonably gave weight to this experience-based testimony, which tied improved morale to improved operations. This testimony was logically antithetical to the conclusion that the 24/72 schedule reduced firefighters' productivity and job commitment.

The arbitrator also reasonably rejected the City's argument that the schedule would reduce public support for the department. While we respect this concern, there is little evidence to support it. While one-half of one percent of City residents signed a petition opposing the schedule, the petition does not address safety or productivity issues but instead objects that the 24/72 schedule will increase time off and likely increase the number of firefighters holding second jobs (Aa1633-Aa1673).

In that vein, the record indicates that some firefighters on both the 24/72 and 10/14 schedules have second jobs (8T1032; 5T594). However, even if we were to assume that that figure would increase with a 24/72 schedule, DeGroot stated that the City already tracks and limits outside employment and could do so on a

24/72 schedule (5T594). See Montclair Tp., P.E.R.C. No. 90-39, 15 NJPER 629 (¶20264 1989).

Finally, we turn to the City's concerns about productivity. The record includes substantial evidence that, as operated in recent years, the 24/72 schedule maintains or increases productivity and efficiency over the 10/14. Hillside Chief Caswell explained that his men are always busy and that they work until 9 or 10 p.m. if something needs to be done, going to bed at 11:30 or 12 p.m. (1T116). The Union Township study showed that fire inspections and non-emergency services increased after the 24/72 schedule was implemented, without any staff increase (Arbitrator's opinion, p. 59; Aa1058-Aa1059). Passaic Chief Imparato stated that he believed his department operated more efficiently under the 24/72, with sick leave and overtime dropping, and the head of the Passaics' fire prevention bureau stated that the City's building and inspection program has expanded in the years since the 24/72 was implemented (Arbitrator's opinion, pp. 59-60; 2T169-2T170; Aa1327). Roselle's Chief Hill testified that his department has handled an increased number of calls without adding staff. Finally, Hill and Caswell maintained that communications were better on the 24/72 shift because information about street blockages, construction projects, and staff assignments has to be communicated only once a day (Arbitrator's opinion, p. 55; 1T103-1T104; 1T134-1T135).

All this testimony supports a conclusion that the 24/72 schedule would maintain or increase productivity although, except for the communications impact, the witnesses did not explain why the schedule leads to said results. However, the City's concerns also have some support in the record.

An undated report from the Institute for Training in Municipal Administration recommends against the 24-hour shift, reasoning that it includes only 8 hours of productive non-emergency time, with the remainder devoted to eating and sleeping (Aa132-Aa133). The report recommends the 10/14 shift, explaining that that shift results in 16 hours of productivity because the day shift works ten hours and the night shift works 6 hours (presumably 6 p.m. to 12 p.m.) (Aa132-Aa133).

In a similar vein, the City cites the testimony of Joseph D'Arco, a former city manager/business administrator from South Orange Village, who recalled his observations of how the 24/72 worked in that municipality during the late 1980s. He described how, on his visits to fire stations, he saw little training or fire planning activity and no esprit de corps (7T834-7T836). A consultant's study concluded that the department was a "passive" one that had not adopted the modern approach of using non-emergency time for training, equipment maintenance and inspections (7T838-7T844; Aa396).

However, while D'Arco linked the observed problems in South Orange to the 24/72 schedule, the report did not recommend

changing the schedule. The current chief, Jeff Markey, stated that the village is still on the 24/72 schedule and that he has implemented the report's recommendations to become more active by, for example, bringing in outside trainers; requiring that captains and lieutenants be certified as fire inspectors; increasing fire inspections; and improving physical training (8T1021-8T1024; Aa396-449).

Based on this evidence, we find that a 24/72 schedule does not prevent requiring a similar amount of productive time -- in any one day -- as is required under the 10/14 schedule. The arbitrator credited the testimony of several fire chiefs concerning their positive experiences with the schedule. This testimony, particularly that of Caswell, supports the proposition that, because firefighters report to duty after three days off, they can remain active under the 24/72 schedule from 8 a.m. until well into the evening hours.

Recalls

The City maintains that the weight of the evidence shows that the 24/72 schedule will impair its ability to recall off-duty firefighters to a fire scene. Evidence of such difficulties and more particularized arguments could weigh against award of the schedule, since this is an area intertwined with public safety. However, the general concerns expressed by the City do not rise to this level.

The City reasons that the 24/72 schedule will enable firefighters to live farther away, thereby increasing the time required to respond, when recalled to a serious fire. It stresses DeGroot's statement that a firefighter who lives more than 30 minutes away cannot timely respond (4T387).

The arbitrator acknowledged City-submitted data from three communities tending to show a correlation between the 24/72 schedule and a lower percentage -- compared to Clifton -- of firefighters who live in town. However, the arbitrator reasoned that individuals move to or from a community for many reasons, such as the quality of schools, and commented that the City had not shown that communities on the 10/14 schedule retained a stable percentage of firefighters living in town. He cited Lavin's testimony that there had been no "mass exodus" after communities moved to the 24/72 schedule and Caswell's testimony that the percentage of firefighters living in Hillside did not change after the department implemented a 24/72 schedule. He also noted the statutory prohibition against a municipality requiring its firefighters to live in the community, N.J.S.A. 40A:14-9.1, and the fact that the City is required by a consent decree to open up appointments to all New Jersey residents (Arbitrator's opinion, pp. 113-115).

However, the arbitrator did not disagree with the City's position that recalls could be impeded if firefighters lived farther away. Instead, he found that the City had not shown a

firm connection between residence and the 24/72 schedule, and that the comparatively high percentage of firefighters living in the City (50%) reflected the quality of life there (Arbitrator's opinion, pp. 112-116).

We agree with this analysis, and add that Marchisello and Dubravsky both indicated that, when extra firefighters are needed, the City relies primarily on mutual aid rather than recalls, with recalled firefighters being used as "pilots" to guide mutual aid companies (3T305; 8T1054; 8T1058). Further, the fire chief from South Orange -- a jurisdiction cited by the City as having a low percentage of firefighter residents -- stated that 30 out of 32 firefighters responded to a recent recall (8T1028).

In these circumstances, we accept the arbitrator's conclusion that there is no evidence that the 24/72 schedule will impede recalls.

Transfers/discipline

The City also argues that the arbitrator did not give due weight to two other elements of the public interest: transfers and discipline.

With respect to transfers, the City states that a fire department "may need" to transfer a firefighter to another shift; cannot reduce the firefighter's off-duty time as a result; and, therefore, must give the firefighter an extra day off. It maintains that under the 24/72 schedule the extra day would be 24 hours as opposed to 10 hours under the 10/14.

The FMBA does not counter this argument and the arbitrator did not address it. However, absent more particularized information and arguments about when and how often transfers have to be made and the projected cost of transfers under the 24/72 schedule, this factor does not undercut the arbitrator's overall public interest analysis.

With respect to discipline, the City contends that the 24/72 schedule could impede a superior officer from "following through" on a disciplinary matter because of the time off between duty days. As the arbitrator found, the City did not present evidence showing that discipline has been impeded in the communities operating under the 24/72 (Arbitrator's opinion, p. 111). Just as important, the City has not described how a disciplinary matter is handled under the 10/14 schedule or particularized how that process would be impeded under the 24/72. Imparato and Chrystal testified that they are able to deal with disciplinary matters on the 24/72, with Chrystal commenting that because discipline is "taken care of immediately" in his department, discipline would be the same under either a 10/14 or 24/72 schedule (2T204; 2T240). And while we have noted the strong public interest in ensuring appropriate supervision in a public safety department, the arbitrator correctly observed that the supervision issues present in Teaneck -- and several of the Court and Commission decisions cited in that case -- are not implicated here, where officers and firefighters are in the same unit. In

these circumstances, there is no basis to disturb the arbitrator's conclusion that the 24/72 schedule will not impair discipline.

Comparability

The City maintains that the arbitrator's comparability analysis was flawed, arguing that he improperly found that the schedule would be beneficial simply because so many municipalities use it. It emphasizes that it "compares favorably" to the sixteen New Jersey municipalities that operate on the 10/14 schedule.

The arbitrator did not award the 24/72 schedule simply because it is a common schedule in New Jersey and nationally. However, he appropriately considered the prevalence of the schedule vis-a-vis the 10/14: both schedules affect work hours and working conditions and, under 16g(2), he was required to compare the wages, salaries, hours and working conditions of the employees involved in the proceeding with, among other comparisons, employees performing similar services in comparable jurisdictions. The City does not suggest that firefighters in 24/72 jurisdictions are an inappropriate comparison group or that firefighters in 10/14 communities are more appropriate.

In this posture, and given the statistics on the number of departments using the 24/72 schedule and the number using a 10/14, the arbitrator reasonably found that the comparability factor favored implementation of the schedule. Of course, the arbitrator was required to consider all the other relevant statutory factors before awarding the schedule. Further, where,

as here, there are arguments that a work schedule proposal will impair the operation of a public safety department and the delivery of essential services, comparability cannot be the determinative factor in awarding the proposal unless the arbitrator analyzes those arguments and finds that the proponent has met its burden of justifying the change. As we have discussed, the arbitrator considered the City's arguments and evidence in this vein.

The City also maintains that the arbitrator did not consider evidence of private sector work schedules and did not sufficiently weigh the fact that almost all municipalities that operate on the 24/72 schedule adopted the schedule voluntarily and with management's approval.

With respect to the latter point, the arbitrator had to consider all of the City's arguments against the proposed schedule. But the fact of opposition does not itself weigh against award of the proposal: disagreement is inherent in the arbitration process and an arbitrator must resolve the unsettled issues. N.J.S.A. 34:13A-16d(2); Cherry Hill.

Finally, the only private sector evidence that the City submitted was Dubravsky's certification to the effect that no one in the private sector works 24 hours straight. However, neither

the 10/14 nor the 24/72 schedule would appear to be common in the private sector.5/

In sum, the arbitrator's consideration of the comparability criterion comported with the statute and was one aspect of the arbitrator's overall analysis.

Evidence Arguments

The City makes two evidence-related arguments that pertain to the impact of a schedule change on the public interest. First, it maintains that the arbitrator should have given greater weight to a report prepared by the New Jersey Career Fire Chiefs' Association opposing the schedule. Second, it contends that the arbitrator erred in giving only minimal weight to written statements by Clifton deputy chiefs criticizing the 24/72 schedule.

The arbitrator appropriately exercised his discretion in weighing this evidence. He noted the Fire Chiefs' report but observed that it was not based on empirical data (Arbitrator's opinion, p. 97). We add that the report was prepared in the early 1970's in order to present the negative aspects of the schedule and that the Association is now neutral on the schedule, with most chiefs believing it to be a local issue (2T177; 4T375-4T376;

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5/ The record shows that another group of public-sector employees, Air Force firefighters, work a 24-hour shift (3T298-3T300).

8T1081-8T1082). In any case, the arbitrator effectively analyzed the points made in the report.

Similarly, the deputy chiefs' concerns about the 24/72 schedule were similar to, although much less detailed than, those expressed by the City during arbitration. The arbitrator analyzed those concerns, together with the FMBA's arguments and evidence, but was not required to give more weight than he did to the deputy chiefs' opinions, particularly since none of them appears to have experience under the 24/72 schedule.

Based on the foregoing, we find that the arbitrator comprehensively analyzed the evidence and arguments; gave due weight to the relevant statutory factors; and reached a reasonable determination that the FMBA had met its burden of justifying the award of the schedule change for a one-year trial period. His award is based on substantial credible evidence in the record as a whole.

We repeat that there must be strong reasons to award a major schedule change, even on a trial basis. They are present in the arbitrator's well supported conclusions that the schedule will improve morale, increase recuperative time, and reduce firefighter fatigue -- thereby improving firefighter safety. The arbitrator's analysis is grounded in extensive testimony in support of the schedule from fire chiefs with supervisory experience under both schedules. We will not disturb his decision to give greater weight to this evidence than to the City's predictions concerning

the possible negative effects of the schedule on department operations.

We also stress that the arbitrator awarded the schedule for a one-year trial period only and that the trial period will allow both parties to evaluate how the schedule has worked. As we will discuss, the schedule will become permanent only if the parties agree or the FMBA, after the trial period, again obtains the schedule in interest arbitration, where it will have the burden of justifying it. That proceeding will enable an interest arbitrator to assess the experience under the trial period in conjunction with the City's evidence and arguments about department operations under the 10/14 schedule.

We turn now to the award's post-trial review procedures.

The City maintains that those procedures violate Teaneck by placing the burden on the City, at the end of the trial period, to show "reasonable cause" to revert to the 10/14 schedule. It also argues that the arbitrator who awarded the schedule should not decide whether it should be continued and that the arbitrator exceeded his power, and violated N.J.S.A. 2A:24-8(a) and (d), by retaining jurisdiction over the work schedule issue even though the trial period will likely not conclude until after the contract he awarded expires.6/ In addition, citing Teaneck, it asks us

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6/ N.J.S.A. 2A:24-8(a) and (d) require that an award be vacated where, among other reasons, it was procured by undue means or where an arbitrator exceeded his or her powers.

to specify that it may return to the 10/14 schedule after the trial period expires.

We conclude that the trial period portion of the award must be modified. That one-year trial period will be implemented within 30 days of the parties' receipt of this opinion, or such other time as the parties may agree and, absent the parties' agreement to continue or discontinue the schedule, it will be evaluated by an interest arbitrator appointed in accordance with our regulations. Given the January 1, 1999 through December 31, 2002 contract term and this March 2002 decision, the contract will expire before the one-year trial period is completed, although the arbitrator could not have known this when he issued his September 2001 award.7/ Thus, evaluation of the trial period will take place during successor contract negotiations. In this posture, the best and least complicated mechanism for evaluating the 24/72 schedule -- absent the parties' agreement to continue or discontinue it -- is the post-contract expiration interest arbitration process, where an arbitrator will be appointed in accordance with our regulations. We do not decide whether an arbitrator who awards a schedule change on a trial basis may retain jurisdiction, during the term of an awarded contract, to consider whether the schedule should be made permanent.

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7/ N.J.S.A. 34:13A-16(f)(b) effectively stays implementation of an award that is appealed to us.

We next consider whether the award's post-trial review procedure is consistent with Teaneck.

In Teaneck, the arbitrator tied continuation of the schedule after the trial period to the achievement of certain benefits. Consistent with that objective, we clarified that, after the trial period, the new work schedule would not become part of the status quo for successor contract negotiations and could not "be continued into the agreement that follows the completion of the trial period unless there is a mutual agreement to do so or an interest arbitrator awards the schedule anew." 25 NJPER at 457. Teaneck also specified that if there is no mutual agreement, "the burden will be on the FMBA to again justify adoption of a new work schedule proposal." Ibid. These standards apply here, where the arbitrator also awarded the 24/72 schedule primarily because it would improve morale, safety, and working conditions.

Therefore, requiring the City to establish "reasonable cause" to revert to the 10/14 schedule is not consistent with Teaneck. Teaneck contemplated that, after completion of the trial period, the parties would have a body of experience that would allow them, or an interest arbitrator, to assess how the schedule had worked. But analytically, they would be in the same position as before the award: absent mutual agreement, the 24/72 schedule

could only be continued if an interest arbitrator awarded it, in a proceeding in which the union had the burden of justifying the schedule. By contrast, the "reasonable cause" provision places the burden on the City to show that the new schedule should not be continued.

Finally, we consider whether the City may return to the 10/14 schedule after the trial period concludes. While Teaneck referred to the old schedule being "effectively restored" following the trial period, we did not mean that the employer could unilaterally revert to the old schedule after the trial period. Instead, the quoted language signified that the burden was on the union to again justify the schedule. We think it would be destabilizing to allow the employer to revert to an old schedule during negotiations or interest arbitration, with the possibility that it might have to change back should an interest arbitrator again award the schedule. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978) and N.J.S.A. 34:13A-21.

For the foregoing reasons, the award is affirmed with a modification to the trial period consistent with this opinion.

ORDER

The arbitrator's award is affirmed with a modification to the trial period consistent with this opinion. That one-year trial period will be implemented within 30 days of the parties' receipt of this opinion, or such other time as the parties may agree and, absent the parties' agreement to continue or discontinue the schedule, it will be evaluated by an interest arbitrator appointed in accordance with our regulations.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: March 27, 2002
Trenton, New Jersey
ISSUED: March 28, 2002