

P.E.R.C. NO. 2003-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CLIFTON,

Petitioner,

-and-

Docket No. SN-2003-15

CLIFTON P.B.A. LOCAL NO. 36,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that it will decide a scope of negotiations petition filed by the City of Clifton after completion of interest arbitration proceedings between the City and Clifton P.B.A. Local No. 36. The petition was filed while the interest arbitration hearings were already in progress. The Commission declines to dismiss the petition as untimely, and notes that the City's supervision concerns did not arise until after a memorandum of agreement was rejected by the PBA. The City is directed to submit transcripts of the arbitration hearings together with the parties' documentary submissions.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Genova, Burns & Vernioia, attorneys
(Joseph M. Hannon, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Michael A. Bukosky, on the brief)

DECISION

On September 17, 2002, the City of Clifton petitioned for a scope of negotiations determination. The City seeks a negotiability determination with respect to a work schedule proposal that Clifton P.B.A. Local No. 36 has submitted to interest arbitration for inclusion in a successor collective negotiations agreement.

The parties have filed briefs, certifications and exhibits. The City has also submitted, and both parties ask us to consider, transcripts of the five days of interest arbitration hearings that have been held thus far. Further, the PBA has requested an evidentiary hearing to rebut some of the City's representations concerning supervision. These facts appear.

The PBA represents all sworn patrol officers, excluding superior officers. The collective negotiations agreement between the City and the PBA expired on December 31, 2000.

In November of 2000, both the PBA and the Clifton Superior Officers Association began negotiations with the City for successor collective negotiations agreements. On February 2, 2001, the PBA petitioned for interest arbitration. It listed, among other items, Article XXXV, Work Schedule, as a non-economic issue in dispute. The PBA also prepared a twelve-page document, dated February 1, 2001, that describes its proposed 4/4 and 4/3 schedules and states on its cover page that it was submitted to the City. The SOA also petitioned for interest arbitration and listed the work schedule as an issue. When the SOA and PBA petitions were filed, both units worked a 5/2, 5/2, 5/3 schedule.

On February 13, 2001, the City responded to the PBA petition, listing seven issues it sought to have the arbitrator consider.

On August 12, 2002, before interest arbitration hearings had begun, the PBA, the SOA, and the City entered into a Memorandum of Agreement. The Memorandum set forth wage increases and provided that:

[A]s soon as possible, the parties agree to implementation of a new work schedule for all employees in the bargaining units. The work schedule would be five (5) days on, followed by 2 days off, followed by five (5) days

on, followed by 3 days off. Each workday would be 8 hours and 20 minutes. The schedule would be applicable to all patrol personnel. All other personnel, including but not limited to, Traffic, Detective Bureau, Administrative Service and Community Policing would have an equivalent amount of work annually which would be accomplished through unit adjustments to equalize the annual work obligation.

The SOA ratified the memorandum of agreement and now works under a 5/2, 5/3 work schedule. The PBA membership did not ratify the memorandum and, accordingly, these parties proceeded to interest arbitration. The City has proposed to change the schedule for this unit from the 5/2, 5/2, 5/3 to the 5/2, 5/3 - the same schedule the superior officers now work. Hearings were held on August 28 and 29 and October 21, 2002 and on January 17 and February 3, 2003. The parties' respective work schedule proposals are the only issues in the arbitration.

The PBA urges us to dismiss the petition as untimely because it was filed long after the time period specified in N.J.A.C. 19:16-5.5(c) and the City never raised negotiability concerns during several months of negotiations. The City maintains that the petition is timely, because it was not until August 2002, when the PBA rejected the memorandum of agreement and the SOA accepted it, that its supervision concerns arose. Further, it states that the first two days of hearing provided

new information on the schedule's impact on staffing and supervision.

This petition was filed while the interest arbitration hearings were already in progress, and both parties ask us to review the transcripts in reaching our scope determination. Our rules state that an arbitrator shall be permitted to take evidence, but shall not render a decision, on any issue which is the subject of a scope petition. N.J.A.C. 19:16-5.7(h). Given this framework, and the fact that the City had just begun to present its case on February 3, 2002, the last day for which we have the hearing transcript, we believe the best course is to allow the arbitration hearings to be completed and for a full record to be developed.^{1/} At the close of the hearings, we will consider the petition in light of the complete arbitration record. We decline to dismiss the petition as untimely, and note that the City's supervision concerns did not arise until after the memorandum of agreement was rejected in August 2002.


ORDER

The Commission will decide the City of Clifton's scope of negotiations petition after the completion of interest arbitration hearings. The City is directed to submit the transcripts of the interest arbitration hearings as soon as

1/ The evidentiary hearing that the PBA requests would unnecessarily duplicate proceedings before the arbitrator.

possible after the close of hearing, together with the parties' documentary submissions.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Ricci and Sandman voted in favor of this decision. None opposed. Commissioners Katz and Mastriani were not present.

DATED: February 27, 2003
Trenton, New Jersey
ISSUED: February 28, 2003