

P.E.R.C. NO. 2004-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CLIFTON,

Petitioner,

-and-

Docket No. SN-2003-15

P.B.A. LOCAL 36,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of a work schedule which P.B.A. Local 36 has submitted to interest arbitration for inclusion in a successor collective negotiations agreement with the City of Clifton. In PERC 2003-59, the Commission denied the PBA's request to dismiss the petition as untimely, allowed the arbitration hearings to be completed and a full record to be developed, and held that at the close of the hearings it would decide the petition in light of the complete arbitration record. The Commission concludes that the 4/4 work schedule proposal for the patrol division addresses work hours and does not directly set staffing levels and is mandatorily negotiable. However, the portion of the proposal which mandates that shift starting times and shift staffing levels be set by a CFS study that would link shift times and staffing levels to calls for police services compromises the City's prerogative not to adopt a proportional staffing policy and is not mandatorily negotiable. The Commission further concludes that the City's additional concerns, including the need to purchase new police vehicles, coverage overlaps, and other additional expenditures do not significantly impede governmental policy and can be considered by the arbitrator. The Commission also finds mandatorily negotiable a 4/3 schedule for the non-patrol divisions, except to the extent, if any, it would reduce staffing levels for the Community Policing Division below any articulated minimum levels.

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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Respondent.

Appearances:

For the Petitioner, Genova, Burns & Vernoia, attorneys
(Lynn S. Degen, Joseph M. Hannon and Douglas E.
Solomon, on the briefs)

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

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 P.B.A. Local No. 36 has submitted to interest arbitration for inclusion in a successor collective negotiations agreement.

On February 28, 2003, we issued a preliminary decision denying the PBA's request to dismiss the petition as untimely. Since the arbitration hearing had already begun, and both parties had asked us to consider the transcripts of those proceedings, we allowed the arbitration hearings to be completed and a full

record to be developed. City of Clifton, P.E.R.C. No. 2003-59, 29 NJPER 100 (128 2003). We held that at the close of the hearings, we would decide the petition in light of the complete arbitration record.

The parties filed supplemental briefs following receipt of the interest arbitration transcripts. The exhibits from the interest arbitration proceeding have also been submitted. We deny the PBA's requests for an evidentiary hearing, oral argument, and reconsideration of the decision to deny the PBA's request to file a supplemental submission. The facts have been presented through the arbitration hearing and the issues have been thoroughly briefed. 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 same 5/2, 5/3 schedule the superior officers now work.^{1/} Arbitration

^{1/} The negotiability of the City's work schedule proposal is not in dispute and not the subject of this petition.

hearings were held on August 28 and 29 and October 21, 2002 and on January 17, February 3 and 24, and March 20, 2003. The parties' respective work schedule proposals are the only issues in the arbitration. The parties filed briefs after completion of the arbitration proceeding. We do not consider the PBA's sur-reply brief. N.J.A.C. 19:13-3.5(c).

The City contends that the proposal, if adopted, will significantly interfere with its right to determine staffing levels in the Patrol Division, Community Policing and Traffic Divisions and to supervise police officers effectively.

Staffing

The Field Operations Bureau includes the Patrol, Community Policing, and Traffic Divisions. Patrol officers currently work a 5/2, 5/2, 5/3 work schedule with 8 hour days. There are 66 patrol officers in the Patrol Division, with 9 sergeants and 6 lieutenants. The Patrol Division is separated into three platoons with three squads in each platoon. The A Platoon is scheduled from 11:00 p.m. to 7:00 a.m. and 11:45 p.m. to 7:45 a.m. The B Platoon is scheduled from 7:00 a.m. to 3:00 p.m. and 7:45 a.m. to 3:45 p.m. The C Platoon is scheduled from 3:00 p.m. to 11:00 p.m. and 3:45 p.m. to 11:45 p.m. The squads in each platoon start 45 minutes apart so that all the patrol cars are not changing at the same time. Currently there are 21 patrol officers in A Platoon, 22 in B Platoon, and 23 in C Platoon.

Under the 5/2, 5/2, 5/3 schedule, there are 14 patrol officers scheduled every day for the A Platoon, 14 or 15 for the B Platoon, and 15 or 16 for the C Platoon. Every 22 days, there is an "everybody day," when all officers in the Patrol Division are scheduled to work.

The staffing levels throughout the day for the Patrol Division are determined by superior officers, subject to the approval of the chief of police. The department analyzes calls for service, the nature of the calls, when crimes are being committed, the need for self-initiated work, and the overall manpower pool within the department. The City believes that relatively equal staffing levels of the platoons and squads provide the most effective police coverage. Thus, the Patrol Division schedules staff on a relatively equal basis throughout the day even though calls for service are greater during the B and C Platoon hours. According to the City, this staffing pattern works because the B and C Platoons have support units available to them during their shifts, whereas A Platoon (11:00 p.m. to 7:00 a.m. and 11:45 p.m. to 7:45 a.m.) does not have other support units within the department available.

Given its desire to have relatively equal staffing levels, the City schedules 14-16 officers to be on duty at any given time. However, sick leaves, vacation leaves and other forms of time off reduce the number of officers who actually are on duty.

Given that reality, the City has established minimum and optimum staffing levels, both of which are relatively equal regardless of the time.

Optimum staffing for A Platoon is eight plus one road supervisor; seven after 4:00 a.m. Minimum staffing for A Platoon is seven plus one road supervisor; six after 4:00 a.m [Exhibit C-34]. Optimum staffing for B and C Platoons is nine plus one road supervisor. Minimum staffing for B and C Platoons is eight plus one road supervisor.

The PBA has proposed a 4/4 work schedule for the Patrol Division. It has six components which we summarize as follows:

1. Each officer will work 10.75 hours per shift, with a repeating schedule of four days on and then four days off.
2. The Patrol Division will consist of five overlapping steady shifts. The starting time for each shift will be determined by a Needs Assessment Study referred to as Calls For Service (CFS).
3. The number of personnel allocated to each shift should be determined by the CFS. For example, if an average of 55% of all calls for police services are occurring during a specific ten hour period daily, then 55% of all available working officers that day should be on duty during those hours.
4. Shift assignments are to be chosen by seniority once each year.
5. Vacation time will not change but be pro-rated.
6. The present work year is 1990 hours. The 4/4 schedule totals 1962 hours. With three

training days, the work year total is 1994 hours.

The PBA proposes a 4/3 work schedule for the Community Policing, Investigations Bureaus, Traffic Division, and Administrative Division. Each of these units would work a 9 hour and 26 minute day, on a seven day rotation of four days worked and three days off. With training days, the total number of hours scheduled each year is the same as under the current 5/2, 5/2, 5/3 schedule.

Under the PBA's 4/4 proposal, all members assigned to the Patrol Division are split into two equal size groups, A and B. During the four days that Group A is working, Group B is off and vice-versa. Groups members are then used to staff the five daily overlapping shifts with the number of personnel on each shift dictated by the CFS. The PBA argues that "proportional staffing" is a more effective way to fight crime than "equal staffing."

The shifts of one group, as proposed but subject to adjustment, would be as follows: Platoon B-1 would work 4:00 a.m. to 2:45 p.m. Platoon B-2 would work 7:00 a.m. to 5:45 p.m. Platoon C-1 would work 2:30 p.m. to 1:15 a.m. Platoon C-2 would work 5:30 p.m. to 4:15 a.m. Platoon A would work 10:30 p.m. to 7:15 a.m. Accordingly, shift scheduling would be as follows:

4:00 a.m. to 7:00 a.m.	10 officers
7:00 a.m. to 2:30 p.m.	15 officers
2:30 p.m. to 5:30 p.m.	16 officers
5:30 p.m. to 10:30 p.m.	15 officers

10:30 p.m. to 1:15 a.m. 18 officers
 1:15 a.m. to 4:00 a.m. 10 officers

Start times and the number of officers in each platoon could be adjusted by management. It is not clear, however, that the 4/4 would allow for scheduling the same number of officers on duty at all times as the current schedule; i.e. 14 to 16 officers. However, the proposal does provide that two junior patrol officers within each of Platoons B-1, B-2, C-1 and C-2 and the junior sergeant in Platoon B-2 would be identified as floaters and be available to work either shift within their respective platoon.

The Community Policing Division currently works a 5/2 schedule. Five officers are scheduled to work at schools. The division is divided into two shifts: 8:00 a.m. to 4:00 p.m. and 2:00 p.m. to 10:00 p.m. during school or 3:00 p.m. to 11:00 p.m. when school is closed. The PBA proposes a 4/3 schedule with a 9.5 hour day: 8:00 a.m. to 5:26 p.m. and 2:00 p.m. to 11:26 p.m. Staffing changes would be as follows:

Day of Week	5/2	4/3
Sunday	0	0
Monday	7	4
Tuesday	14	9
Wednesday	14	14
Thursday	14	14
Friday	14	10
Saturday	8	5

The Traffic Division currently works a 5/2 schedule with an eight-hour day from 7:30 a.m. to 3:30 p.m., Monday through Friday.

There are six officers in this division. The PBA proposal is to change to a 4/3 work schedule with a 9.5 hour shift that runs from 7:30 a.m. to 5:00 p.m. Under this proposal, three patrol officers would be scheduled to work on Mondays and Fridays; six would be scheduled Tuesdays through Thursdays. Minimum staffing is three.

According to the City, the inevitable result of the PBA's work schedule proposal is that all three divisions of the Field Operations Bureau would be staffed at levels unacceptable to the City on a daily basis. By scheduling 10 officers from 4 a.m. to 7 a.m., the proposed work schedule would implicate minimum staffing quicker when there are absences, vacations or illnesses, than if 14 officers are scheduled. The City explains that while minimum staffing per shift is seven or eight officers, it has historically scheduled 14 to 16 officers in order to have coverage in the event of absences. To maintain current staffing levels in the Community Policing and Traffic Divisions, the City states that it would have to hire more officers.

The City also maintains that the proposal would create more coverage than needed between 8:30 p.m. and 1:15 a.m., while resulting in coverage overlaps of 10 or 15 minutes on each shift. The City also maintains that having 18 officers scheduled at certain times would require the City to purchase additional vehicles or have two-officer patrol cars.

Finally, the City maintains that the 4/3 proposal for the Traffic and Community Policing divisions will result in understaffing on certain days, thereby requiring it to assign officers from other units or hire more officers.

Supervision

Under the current schedule in the Patrol Division, there is a sergeant for each squad and two lieutenants in each platoon. The squad sergeant in A Platoon Squad 1 would always supervise the patrol officers in that squad and would also supervise the patrol officers in A Platoon Squads 2 and 3 at times. Based on the platoon/squad format, a patrol officer would be scheduled to be supervised by five different superior officers - three sergeants and the two lieutenants in his or her squad.

Under the proposed 4/4 schedule, with superior officers working the agreed-upon 5/2, 5/3 work schedule, squad sergeants would not work with patrol officers in their squad on an everyday basis. Over a 120 day cycle, a patrol officer would work with his or her squad sergeant 41 out of 60 work days. Chief Robert Ferreri states that if patrol officers were to work the 4/4 while their superiors remained on the 5/2, 5/3, a patrol officer would be supervised by two or possibly three different sets of supervisors during one shift, and would also have different supervisors on different days.

In sum, the City argues that the PBA's proposed work schedule would significantly interfere with its managerial prerogative to determine staffing levels and would put patrol officers on a different work schedule than their superior officers. Thus, it argues, it has demonstrated the "particularized need" required to render a work schedule non-negotiable.

The PBA counters that the 4/4 schedule is a common schedule that would allow officers to spend more time with their families. With respect to staffing, it contends that, when coupled with the use of floaters, the schedule would provide increased scheduling flexibility; fulfill minimum staffing requirements; and increase training time while reducing overtime for municipal court and targeted overtime assignments. It also asserts that the City's "equal staffing" policy has "fatal flaws" because it does not tie staffing to service demand types and levels during the day and week. In addition, the PBA argues that the City's minimum staffing policy contradicts the City's assertion that it needs to schedule from 14 to 16 officers per shift. With respect to the City's concerns about shift overlaps and the need for additional vehicles, the PBA notes that there is already a 45-minute overlap for each shift. Finally, the PBA's February 1, 2001 proposal states that the City has enough marked and unmarked cars to meet the vehicle requirements of the 4/4 schedule. With respect to

supervision, the PBA argues that City has offered no concrete evidence of problems that would result if patrol and superior officers worked different schedules. It maintains that at present there is very little contact between rank-and-file and superior officers and that Teaneck Tp. v. Teaneck FMBA, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. ___ N.J. ___ (2003), prohibits a work schedule of a rank-and-file unit from being held captive to future negotiations with a superior officers unit.^{2/}

In Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police officers and firefighters. The Court stated:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of

^{2/} The PBA also maintains that the 4/4 would provide a more defined chain of command, a benefit that was described in its initial proposal, when both the SOA and PBA were seeking the 4/4.

inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

[Id. at 92-93; citations omitted]

We consider only whether a contract proposal is mandatorily negotiable. It is our policy not to decide whether proposals, as opposed to grievances, concerning police and fire department employees are permissively negotiable since the employer has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

No statute or regulation preempts negotiations by mandating that the Borough use a particular work schedule. Compare Local 195, IFPTE v. State, 88 N.J. 393, 405-406 (1982). The question, then, is whether, based on a balancing of the parties' interests in light of the facts, the work schedule issue involves a mandatorily negotiable term and condition of employment. Local 195 at 404; see also City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574 (1998). We consider the proposal in light of our recent body of case law concerning work schedule changes proposed for interest arbitration.

Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997), a case involving a firefighters, reviewed the relevant statutory provisions and the cases on the negotiability of work schedules. It then summed up our approach when labor or management seeks to present a facially valid work schedule proposal during interest arbitration. We stated:

When the Legislature required negotiations over terms and conditions of employment, it recognized that both management and employees would have legitimate concerns and competing arguments and it decided that the negotiations process was the best forum for addressing those concerns and arguments and the best way to improve morale and efficiency. See N.J.S.A. 34:13A-2; Woodstown-Pilesgrove [Reg. H.S. Bd. of Ed. v. Woodstown Pilesgrove Ed. Ass'n, 81 N.J. 582] at 591. When the Legislature approved interest arbitration as a means of resolving negotiations impasses over the wages, hours, and employment conditions of police officers and firefighters, it recognized that both management and employees would have legitimate concerns and competing evidence and it decided that the interest arbitration process was the best forum for presenting, considering, and reviewing those concerns and evidentiary presentations and the best way to ensure the high morale of these employees and the efficient operation of their departments. N.J.S.A. 34:13A-14 et seq. Indeed, the Legislature expressly instructed interest arbitrators to consider the public interest and welfare in determining wages, hours, and employment conditions and contemplated that such considerations would be based on a record developed by the parties in an interest arbitration proceeding. N.J.S.A. 34:13A-16g(1). See also Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994). The question, then, is not which party should prevail in negotiations or

interest arbitration or whether a particular proposal raises some legitimate concerns, but whether the facts demonstrate that a particular work schedule issue so involves and impedes governmental policy that it must not be addressed through the negotiations process at all despite the normal legislative desideratum that work hours be negotiated in order to improve morale and efficiency.

Maplewood recognized that we and the courts have found exceptions to the rule of work schedule negotiability when the record showed a particularized need to preserve or change a work schedule in order, for example, to ensure appropriate supervision, prevent gaps in coverage, or otherwise protect a governmental policy determination. See Maplewood, 23 NJPER at 113-114 and cases cited therein; cf. City of Millville, P.E.R.C. No. 2003-21, 28 NJPER 418 (¶33153 2002) (restraining grievance arbitration where management showed a particularized need to make a work schedule change).

Teaneck approved this approach. See 353 N.J. Super. at 305. We have followed it in other cases, generally allowing work schedule proposals to be considered by an arbitrator, even where an employer has raised legitimate concerns that must be considered in arbitration. See City of Long Branch, P.E.R.C. No. 2000-94, 26 NJPER 278 (¶31110 2000) (arbitrator may evaluate built-in overtime requirements of existing and proposed schedules and consider employer's argument that proposed schedule would lead to staffing shortfalls and require too much overtime);

Clinton Tp., P.E.R.C. No. 2000-3, 25 NJPER 365 (¶30157 1999), recon. den. P.E.R.C. No. 2000-37, 26 NJPER 15 (¶31002 1999) (employer's concerns about potential overlaps in coverage legitimate, but did not warrant cutting off arbitration process; revised proposal that addressed concerns about coverage gaps was mandatorily negotiable); Cumberland Cty., P.E.R.C. No. 97-116, 23 NJPER 236 (¶28113 1997) (labor cost issue did not make an existing work schedule not mandatorily negotiable).

Teaneck also established standards for interest arbitrators reviewing work schedule proposals. Those standards were based in part on traditional arbitration principles and in part on court and Commission decisions recognizing the strong governmental policy interest in ensuring appropriate discipline, supervision, and efficient operations in a public safety department. Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), aff'd in pt., rev'd in pt. and rem'd, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. ___ N.J. ___ (2003). Thus, we stated that a party proposing a change bears the burden of justifying it and that before awarding a major work schedule change, an arbitrator must consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions. Ibid. We add now that issues of essential managerial prerogative cannot be relied upon by an interest arbitrator as a basis for awarding a union-

proposed change in a work schedule. To the extent an employer presents evidence or argues that a union proposal will adversely impact its ability to deploy its police force as it deems best to protect citizens, an arbitrator may consider union evidence that seeks to rebut such assertions. But in the end, it is the positive impact on employee work and welfare that must justify the award of a union-proposed work schedule change, not any perceived improvement in how to manage the police department.

Maplewood and Teaneck were decided in the context of proposed firefighter work schedules that would not have affected staffing levels. Police departments and police work schedules raise additional concerns. Our Supreme Court has recognized that "because police officers are different from other public employees, the scope of discretion accorded to the public entities that administer police departments is necessarily broad." Jersey City at 572, citing Irvington PBA Local No. 29 v. Town of Irvington, 170 N.J. Super. 539, 545-546 (App. Div. 1979), certif. den. 82 N.J. 296 (1980) (the importance of managing a police department cannot be equated with the need of a board of education to unilaterally fix the working hours of its secretaries) and Paterson at 98 ("municipal decisions about how to organize and deploy their police forces to comply with economic needs are unquestionably policy decisions and affect the public welfare," and are therefore not negotiable).

Against this backdrop, we turn to the record and arguments in this case.

If a work schedule proposal set staffing levels directly, we would find it not mandatorily negotiable and restrain arbitration. See Middle Tp., P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987) (public employer has a non-negotiable right to determine number of police officers on duty at any one time). We would also restrain arbitration if a proposal expressly adopted a policy of equal or proportional staffing. We believe that the choice between equal or proportional staffing is an essential managerial concern within the City's broad discretion to determine how to deploy its police force. See Howell Tp., P.E.R.C. No. 2003-74, 29 NJPER 183 (¶55 2003) (with respect to assignment of officers based on service demands, employer has prerogative to decide how best to deploy police officers to protect citizens). Even if a proposed work schedule did not directly set staffing levels or policy, we would restrain arbitration if the work schedule would significantly interfere with the employer's ability to decide how to deploy its police officers.

In this case, the proposal addresses work hours. It does not directly set staffing levels. However, it does mandate that shift starting times and shift staffing levels be set by a CFS study that would link shift times and staffing levels to calls

for police service. That mandate compromises the City's prerogative not to adopt a proportional staffing policy. To that extent, we hold that the proposal is not mandatorily negotiable and that these aspects of the proposal cannot be submitted to interest arbitration.

We next address whether the remaining aspects of the proposal would so involve and impede governmental policy that they must not be addressed through the negotiations process at all despite the normal legislative desideratum that work hours be negotiated in order to improve morale and efficiency. Maplewood. We conclude that the City's additional concerns about the proposal do not rise to that level, although they must be carefully considered by the arbitrator.

With respect to the alleged need to acquire new police vehicles, the proposal does not by its terms require such, and an arbitrator may evaluate a contention that changing to a 4/4 schedule would require additional expenditures. Compare Morris Cty., P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd 10 NJPER 103 (¶15052 App. Div. 1984), certif. den. 97 N.J. 672 (1984) (employer had managerial prerogative to reduce size of vehicle fleet); State of New Jersey, P.E.R.C. No. 2001-71, 27 NJPER 276 (¶32100 2001); Cumberland (labor cost issues did not preclude arbitrator from considering work schedule proposals).

Similarly, the City's concerns about coverage overlaps and overstaffing do not warrant cutting off arbitration. As we explained in Clinton, P.E.R.C. No. 2000-37, gaps in coverage significantly interfere with a public employer's ability to provide police protection, but overstaffing does not implicate the same concerns since it arguably provides too much rather than too little police protection. Accordingly, an interest arbitrator may evaluate whether overstaffing would warrant rejecting a proposed work schedule. Clinton; see also State of New Jersey; contrast Prospect Park (work schedule not negotiable where it would cause staff shortages on 39 shifts, more coverage than needed on 20 shifts, a lack of supervision on 19 shifts, and 15 minutes of duplicative coverage between shifts).

Given our analysis in Clinton, we have carefully considered the City's arguments about understaffing on some shifts. However, it is not clear that the PBA's proposal would necessarily cause coverage gaps. The PBA's 4/4 proposal for the Patrol Division schedules more officers than specified by the City's minimum staffing levels, which require seven or eight patrol officers on duty, except between 4:00 a.m. and 7:00 a.m., when the complement may be reduced to six. Shift scheduling under the PBA's proposal even exceeds the City's optimum staffing levels of between seven and nine officers on duty. While the City contends that it must schedule 14 to 16 officers at all

times in order to cover periods of greater police activity and accommodate police officer absences, the PBA maintains that there is little or no danger of coverage gaps given that its proposal provides for floaters and the City has an 80-officer force from which to draw.

In this posture, the arbitrator is in the best position to evaluate the relationship between the number of officers scheduled and the City's ability to meet staffing levels it deems best for effective deployment of its police force. The City's particularized evidence and arguments concerning understaffing and coverage gaps are not so incontrovertible as to foreclose arbitration. Contrast Atlantic Highlands (undisputed that proposal would eliminate relief officer position in 11-member police department, thereby causing coverage gaps); Prospect Park (proposal would leave department short needed coverage on 39 shifts). However, in evaluating the parties' arguments, the arbitrator cannot secondguess the City's governmental policy determination that a relatively equal staffing policy is preferable to a proportional staffing policy and cannot award the PBA's proposal if it would effectively preclude the City from deploying the number of police officers it deems necessary to carry out its public safety mission.

As for the proposed 4/3 schedule, the City has not specifically articulated a minimum staffing level for the

Community Policing Division. At hearing, the commander of the Division testified that on a normal basis, they would have five officers as a minimum at the high school: two on one gate, three on the other [T966]. But he also testified that his practice was to maintain a minimum scheduling of two officers per shift before he would grant accrued time off or holidays [T968]. With two overlapping shifts of two, that would leave a minimum of four employees on duty at one time. The employer asserts that in order to maintain current staffing levels, the proposed schedule might require the hiring or assignment of an additional officer to the Community Policing Division. We hold that such impact on the employer's finances is an issue that can be considered by the arbitrator. However, to the extent, if any, the proposal would reduce normal staffing levels for the division below any articulated minimum levels, it is not mandatorily negotiable.

We find mandatorily negotiable the proposed 4/3 schedule for the other non-patrol divisions. The City asserts only that the schedule would cause understaffing on certain days, but it has not shown that any staffing needs caused by absences cannot be filled or any particularized need that would warrant removing this work schedule issue from the negotiations process altogether. Accordingly, consistent with Maplewood, the 4/3 proposal for those other divisions may be considered by the arbitrator.

Finally, we have also carefully considered the City's impairment of supervision arguments. The PBA does not dispute the City's assertion that the 4/4 schedule would increase the number of superiors to whom a patrol officer would report. However, these concerns do not necessitate cutting off arbitration at this stage.

Under Teaneck, the arbitrator must evaluate the City's evidence and arguments and may not award the proposal unless he finds that the different work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns. This standard ensures full consideration of the City's concerns, while also enabling the arbitrator to evaluate the PBA's assertions that the 4/4 is a common schedule that would improve morale by allowing officers to spend more time with their families.

In this vein, we comment on several cases cited by the City. In Irvington, Millville and Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985), arbitration was restrained over grievances protesting an employer's unilateral work schedule change. The restraints were granted largely because of the type of continuity of supervision concerns the City asserts. The difference is that in those grievance contexts, the employers had concrete evidence that problems had resulted from the schedules

that they unilaterally changed, whereas here the City can only anticipate that problems may result. Given the legislative desideratum that work schedules be negotiated, Maplewood and Teaneck hold that in the proposal context, it is generally up to the arbitrator to evaluate competing arguments concerning the likelihood of problems or benefits resulting from a proposed schedule change. See Howell Tp. Exceptions are appropriate where supervision or other problems appear on the face of the proposal or are more clearcut and dominant than they are here. Compare Prospect Park (proposal not mandatorily negotiable where it would have resulted in no supervision on 19 shifts).^{3/}

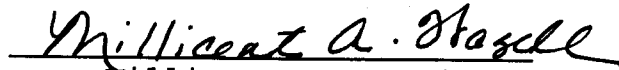
ORDER

The PBA's work schedule proposal is mandatorily negotiable and may be considered by the interest arbitrator except to the extent it requires that shift times and the number of persons allocated to each shift be determined by a Calls For Service Needs Assessment Analysis and to the extent, if any, it would

^{3/} In City of Newark, P.E.R.C. No. 88-87, 14 NJPER 248 (¶19092 1988), we held that a 24/72 work schedule proposal was not mandatorily negotiable because it would have resulted in firefighters being on a different schedule from their superiors. The Teaneck Court cited Newark but held that there was no automatic bar to considering a proposal, such as that in Teaneck, that would result in different schedules for supervisors and their subordinates.

reduce staffing levels for the Community Policing Division below any articulated minimum levels.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

DATED: October 30, 2003
Trenton, New Jersey
ISSUED: October 30, 2003