P.E.R.C. NO. 2002-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PEAPACK AND GLADSTONE,

Petitioner,

-and- Docket No. SN-2002-23

MORRIS-SOMERSET P.B.A.
LOCAL NO. 139,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a proposal made by the Morris-Somerset P.B.A. Local 139 to include a work schedule provision in a successor collective negotiations agreement with the Borough of Peapack and Gladstone is mandatorily negotiable. The Commission concludes that an interest arbitrator may consider the parties' factual presentations and arguments in light of the statutory criteria and prior Commission decisions and, if necessary, the Commission can review any work schedule award to ensure that the criteria have been considered and its guidelines have been followed.

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

P.E.R.C. NO. 2002-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PEAPACK AND GLADSTONE,

Petitioner,

-and- Docket No. SN-2002-23

MORRIS-SOMERSET P.B.A.
LOCAL NO. 139,

Respondent.

Appearances:

For the Petitioner, Gebhardt & Kiefer, P.C., attorneys (Sharon H. Moore, on the brief)

For the Respondent, Lindabury, McCormick & Estabrook, P.C., attorneys (Donald B. Ross, Jr., on the brief)

DECISION

On January 3, 2002, the Borough of Peapack and Gladstone petitioned for a scope of negotiations determination. The Borough seeks a determination that a successor contract proposal submitted by Morris-Somerset P.B.A. Local No. 139 is not mandatorily negotiable. The PBA seeks to include a work schedule provision in the successor contract.

The parties have filed briefs and exhibits. These facts appear.

The PBA represents a unit of eight patrol officers, detectives, corporals, and sergeants. The parties' most recent

contract expired on December 31, 2001. They are in negotiations for a new agreement and the PBA has petitioned for interest arbitration. It has proposed including a provision on work schedule and schedule changes in the new agreement. No copy of a proposed provision has been submitted to us.

Article VIII of the last agreement is entitled Hours of Work, Overtime and Compensation Time. Section A provides:

> Work shifts shall be determined by the Chief of Police and shall consist of a predetermined number of hours within one twenty-four (24) hour period. In the event that a work shift is other than eight hours, the length of the work shift shall be of a length which, when calculated for a full year using the applicable repeating cycles, most closely approximates the 2,080 hours which would be achieved through a 7-day cycle, 40-hour work week. Except in an emergency, no officer shall be required to work more than sixteen (16) consecutive hours.

The schedule must be posted quarterly, at least 30 days before each three month period. Any changes must be made 30 days in advance, except in emergencies. The agreement provides procedures for switching shifts and filling shift vacancies.

According to the Borough, police officers have worked a mix of 12, 10, and 8 hour shifts over the terms of the last two contracts. Shifts have been changed or rotated when the force has been reduced due to disability leaves, military leaves, resignations, and other unspecified situations.

The Borough further asserts that its officers prefer working 12 hour shifts and working the same shifts consistently.

The PBA has thus sought, unsuccessfully, to include a fixed work schedule of 12 hour shifts in the last two contracts. In 1997, the Borough retained a former police chief, Michael Dunn, to advise it on shift scheduling. The Borough has not submitted a copy of Dunn's report, but it asserts that he advised against 12 hour shifts because of the small size of the force and possible safety problems if the force was short-staffed and some officers had to work more 12 hour shifts without enough rest. It also asserts that its chief has attempted to schedule 12 hour shifts consistent with retaining the flexibility needed to deploy the force and that scheduling 12 hour shifts is a nightmare when the force is reduced by one or two officers. No certifications have been submitted to support these assertions or to specify the incidence and effects of short-staffing. Nor has the PBA submitted any certifications.

The Borough asserts that, given the small size of its police force, it has a managerial prerogative to retain unrestricted flexibility to change work schedules and shifts. It relies on Borough of Atlantic Highlands and Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984), and Irvington PBA Local 29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980).

The PBA asserts that work schedules are mandatorily negotiable except where the facts establish a particularized need

to preserve or change a work schedule to effectuate governmental policy. The PBA further asserts that the Borough has not submitted certifications or other evidence establishing a particularized need sufficient to remove the issue of work schedules from the negotiations process. It relies on Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), app. pending App. Div. Dkt. No. A-001850-99T1; Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997); and other cases.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the scope of negotiations analysis for police officers and firefighters:

> 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 or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, 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.
> [87 N.J. at 92-93; citations omitted]

We will consider only whether the proposal is mandatorily negotiable. We do not decide whether contract proposals concerning police officers or firefighters are permissively negotiable since the employer need not negotiate over such proposals or consent to their retention in a successor agreement. 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 conclude that it does.

In Maplewood, we reviewed the relevant statutory provisions and the cases on the negotiability of work schedules. We 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 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.

We have continued to follow that approach. See, e.g., Teaneck; State of New Jersey and New Jersey Law Enforcement Supervisors Ass'n, (Primary Level Supervisors Unit), P.E.R.C. No. 2001-71, 27 NJPER 276 (¶32100 2001); State of New Jersey and New Jersey Superior Officers Law Enforcement Ass'n (Lieutenants), P.E.R.C. No. 2001-72, 27 NJPER 281 (¶32101 2001).

In addition to our cases addressing the negotiability of work schedule provisions, we have also reviewed interest arbitration awards to ensure that any work schedule provisions are

consistent with the criteria set forth by N.J.S.A. 34:13A-16g, including the public interest and welfare. Teaneck; City of Clifton, P.E.R.C. No. 2002-56, __ NJPER ___ (¶_____ 2002). In these cases, we have underscored that the party proposing a work schedule change has the burden of justifying it and 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. Teaneck, 25 NJPER at 455; Clifton (Slip. opin. at 11). In Teaneck, we modified an award that did not protect the need to coordinate for efficient supervision. Compare Irvington (given absence of supervision on midnight shift, employer had prerogative to rotate shifts).

The facts in this case are sketchy and undeveloped. We appreciate that small police departments may face difficulties in scheduling to cover for absent officers, but the facts presented do not demonstrate that the parties' work schedule dispute so involves and impedes governmental policy that it must not be addressed through the negotiations process at all. The interest arbitrator may consider the parties' factual presentations and arguments in light of the statutory criteria and our decisions in Teaneck and Clifton. If necessary, we can review any work schedule award to ensure that the criteria have been considered and our guidelines have been followed.

ORDER

The PBA's proposal to include a provision on work schedule and schedule changes is mandatorily negotiable.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato and Sandman voted in favor of this decision. Commissioners Katz and Ricci were not present.

DATED: April 25, 2002
Trenton, New Jersey
ISSUED: April 26, 2002