

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between:

CITY OF CLIFTON

"Employer,"

- and -

CLIFTON PBA, LOCAL NO.36

"Union."

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2001-048

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Angelo J. Genova, Esq.
Douglas E. Solomon, Esq.
Joseph M. Hannon, Esq.
Genova, Burns & Vernoia

For the Union:

Richard D. Loccke, Esq.
Loccke & Correia, P.A.

I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this matter involving the City of Clifton ["Employer" or "City"] and the Clifton PBA, Local No. 36 [the "PBA" or "Association"]. Seven days of formal interest arbitration hearings were held concerning the merits of the work schedule proposals put forth by the PBA and the City. Hearings were held on August 28 and 29, 2002. On September 17, 2002, the City filed a Scope of Negotiations Petition with PERC seeking a determination regarding the negotiability of the PBA's work schedule proposal. Additional hearings were held on October 21, 2002 and January 17, February 3 and 24, 2003.

On February 28, 2003, PERC determined that it would decide the pending scope of negotiations petition after completion of the interest arbitration hearings, and with the benefit of the record in this proceeding. A final day of hearing was held on March 20, 2003. Testimony was received on behalf of the PBA from Clifton Police Officer and President of PBA, Local 36 David Brancato; Officer Thomas Seabasty, Woodbridge Police Department and PBA State Delegate; Lieutenant Donald Protz, Woodbridge Police Department; Piscataway Police Officer and PBA President Robert Zavistoski; Detective Lieutenant Sal Bivona, Linden Police Department; Paterson Police Department Detective and PBA President Robert Smith; Captain Christopher Kondreck, Belleville Police Department; Clifton Police Officer and State PBA Delegate Michael McDermott; and Officer Michael Bienkowski, Clifton Police Department. Testimony was

received on behalf of the City from Chief Robert Ferreri; Captain Gary Giardina, Patrol Division Commander; Lieutenant Les Goldstein, Traffic Division Commander; Lieutenant John Link, Training Division Commander; Detective Lieutenant Richard Berdnik, Internal Affairs/Juvenile Division; Lieutenant Michael Meffen, Community Policing Division Commander; Sergeant Joseph Dennis, Patrol Division; Detective Captain Robert Rowan, Investigations Bureau; Lieutenant John Storms Technical Services Division Commander, Chief Mario Brunetta, Vineland Police Department; Captain Michael Peckerman, Parsippany Police department; and Anne Drepps, Municipal Court Director for the City of Clifton. In addition to extensive and comprehensive testimony, both parties introduced documentary evidence and argued orally. Post-hearing briefs were filed on or about July 25, 2003.

On October 30, 2003, after the hearings were closed and the post-hearing briefs filed, PERC ruled the PBA's work schedule proposal is mandatorily negotiable, "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 reduce staffing levels for the Community Policing Division below any articulated minimum levels." City of Clifton and PBA, Local No. 36, P.E.R.C. No. 2004-20. In addition to these holdings PERC issued many standards for evaluating the evidence produced at hearing. Thereafter, both parties were provided an opportunity to submit a reply

brief addressing the PERC decision. The City filled a reply brief dated January 9, 2004.

By letters dated April 12 and 14, 2004, counsel for the City and the PBA respectively advised that they had agreed that effective August 1, 2003, police officers have been receiving agreed upon wage increases of 4.0% effective January 1, 2001, January 1, 2002 and January 1, 2003. These increases have been paid prospectively and according to the PBA, "retroactive pay is currently being worked on between the parties."

FINAL OFFERS OF THE PARTIES

The City and the PBA submitted the following final offers regarding police work schedules:

PBA'S FINAL OFFER

1. Work Schedule

For the patrol division we are proposing a four day on, four day off schedule with a 10.75 hour work day. For community policing and traffic we are proposing a four on, three off work schedule with a 9.5 hour work day. And for the bureau and administrative people we are proposing a five on, two off followed by a five on, three off and so on, five/two, five/three work schedule with an 8 hour and 20 minute work day.

These schedules each work out very closely to the annual hours performed today. They are intended to match the current work obligation in effect. (T. 5).

The details of the PBA's work schedule proposal include:

1. Each member assigned to the 4 & 4 schedule shall be required to be on duty for a period of ten point seven-five (10.75) hours per shift, with a repeating schedule of four days of work followed by four days off, totaling an eight day week.
2. The Patrol Division will consist of five (5) overlapping shifts. All shifts will be steady and will not rotate. The starting times of each shift is determined by the (CFS) study so as to make the maximum use of available manpower.
3. The number of personnel allocated to each of the shifts should be determined by a (CFS) Needs Assessment Analysis. 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. Personnel shift assignments are to be individually chosen according to seniority. Once assigned to a chosen shift the officer must serve a full calendar year before being able to switch to another shift.
5. An officer's vacation time will not change but will be pro-rated. (See conversions on Page #11)
6. The present standard work year is 1990 hours. The 4 & 4 work schedule totals 1962 hours. There will be two days (21 ½ hours) of firearm re-certification and domestic violence training time which has been mandated by the State Attorney General. One additional training day (10¾ hours) for 2C updates, skills development, self-defense, or other training curriculum to be determined by the Chief of Police. Personnel shall forfeit three scheduled days off per year to attend the three training dates. Added together, the 4 & 4 work year totals 1994 combined hours.

PATROL DIVISION 4 & 4 BLUEPRINT

The concept of a 4 & 4 schedule requires that all members assigned to a division are split into two separate, but equal Groups, referred to as Groups A and Group B. During the four days that

Group A is working, Group B is off and vice-versa. Group members are then used to staff the five daily shifts with the number of personnel on each shift dictated by the Needs Assessment Survey. The two group/five shift concept is referred to as the Squad Structured Format.

Using the Squad Structured Format, personnel within an assigned Group work only with the other members of that same Group. This format allows personnel to work the same hours each day with the same personnel and supervisors. This system is a model for Unity of Command and promotes a health working environment.

The proposed schedule would modify and improve upon the structure currently in use by Patrol Division, incorporating the five shifts into the current three platoon configuration. Platoons B and C are each subdivided into two shifts and would be known as Platoons B-1 and B-2, and C-1 and C-2. 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. (See example page #9). The "floaters" provide much greater flexibility to meet changes in the CFS demands and also allow for manpower fluctuations caused by vacations, holidays, illnesses, injuries, schools, etc. They could also be used to assign additional patrol officers into problem areas at specific times of the day, or for directed activities, task forces, etc. all efforts would be made to schedule the individual floaters to work the same shift throughout a given four-day tour.

In accordance with past practices, personal shift assignments will be made annually by bid according to seniority. The designation of floaters would be determined on an inverse basis according to seniority.

CITY'S FINAL OFFER

1. Work Schedule

As soon as is possible, after the Award of the arbitrator herein is entered, a new work schedule for all employees in the bargaining unit shall be implemented. The work schedule shall be five (5) days of work, followed by 2 days off, followed by five (5) days of work, followed by 3 days off, and so on. This is commonly referred to as the "5-2/5-3" work schedule. Each work day shall be 8 hours and 20 minutes in duration which shall include appropriate meal

and rest periods per prior practice. The "5-2/5-3" work schedule shall be applicable to all patrol personnel. All other personnel, including but not limited to Traffic, Detective Bureau, Administrative Services and Community Policing, shall have an equivalent amount of work provided annually, accomplished with individual unit adjustments to equalize the annual work obligation. This change shall be accomplished by adding appropriate language to the collective negotiations agreement in Article XXXV thereof.

The City and the PBA have offered extensive testimony and documentary evidence in support of their final offers. 82 City and 25 PBA exhibits, and an extensive power point presentation by the PBA were received in evidence. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on

the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

The parties are in agreement that the criteria set forth in g(1), interest and welfare of the public, g(2) comparisons and g(8) continuity and stability of employment, are the relevant factors in this dispute over the work schedule. Additionally g(4), stipulations of the parties, is relevant to the extent that the parties have stipulated that wages shall increase by 4.0% in each year of a four year agreement, and that those increases have been paid prospectively effective August 1, 2003.

BACKGROUND

The City of Clifton is a municipality located in Passaic County. It is a suburban urban municipality covering 11.2 square miles, having a population of approximately 71,305. In the last few years, there have been several new developments in the City. The larger new residential and commercial projects

include the 206 condominium units in the new River Walkway development, and 637 units being added to the back of the City Hall complex, a new supermarket in the Styertown Shopping Center, and Clifton Commons with 285,000 square feet of retail space including a 16 screen movie theater. (T. 23-26). Officer Brancato testified that the movie theater requires normal police activities as well as off duty police activities. (T. 24).

There are several roadways that pass through Clifton including Interstate 80, the Garden State Parkway and the NJ Turnpike. Additionally, Rt. 21 was completed in 2000 or 2001 to connect Passaic with Newark, passing through Clifton. According to Officer Brancato, since then the number of stolen vehicles in Clifton has increased. (T. 18-19).

Despite the recent increase in stolen vehicles, Clifton has been rated the 32nd safest city in the United States (T. 37). The crime rate generally increased by 2.4% due largely to an 18.9% increase in autothefts, but the rate for violent crimes, including homicide, rape, robbery and aggravated assault decreased by 15% in 2001.

The City's total municipal tax rate increased from 3.84 in 1997 to 4.32 in 2001. At the same time the equalization ratio has decreased from 1.02125 to 0.8771. The tax collection rate has remained stable, increasing slightly from 98.72% in 1998 to 98.95% in 2001. The City maintains a surplus and increased

its surplus balance from \$1,682,070.00 in Fiscal Year 2001 to \$2,420,766.00 in Fiscal Year 2002 or \$738,696.00.

The Clifton Police Department is composed of approximately 149 police including 117 rank-and-file police officers represented by the PBA, as well as 15 Sergeants, 11 Lieutenants, 3 Captains, represented by the SOA, and the Chief of Police. (T. 9-10; 29). The three major bureaus within the Police Department are the Investigations Bureau, Administrative Services Bureau and the Field Operations Bureau. (T. 30). The Administrative Services Bureau has responsibility for administrative functions, technical services, training, planning and research, budgeting, personnel, purchasing, government grants, outside employment, inspection services, supervision of county prosecutors liaison, police vehicle fleet management, capital bonding requests, supervision of 18 civilian dispatchers, the college incentive program, retiree benefits, monitoring of criminal justice information, enforcement of 11 cell blocks and prisoners, evidence and property management, provision of maps and reports to management and completion of all state and federally mandated reports. (T. 30-31). The Field Operations Bureau is responsible for the Patrol Division, which has four basic functions: "the prevention and repression of crime, the apprehension of offenders, the maintenance of peace and the protection of life and property."

The Community Policing Division is charged with creating a police presence within the community. It operates out of five stations or target zones

within the City to provide "hands on" police services. (T. 959-960). Lt. Meffen testified that officers in the Community Policing Division also assist with patrol and school traffic. (T. 960-961). Officer Brancato also testified that the Police Department has 6-8 officers from the Community Policing Division assigned to the high school when it is opening and closing. (T. 21). The Community Policing Division also includes a school resource officer and provides DARE programs at the other schools

The Traffic Division is charged with enforcing motor vehicle laws, providing education on traffic matters, writing motor vehicle summons, assisting with school traffic and assisting the Patrol Division. (T. 811-812).

Recently, new or revived programs have included putting defibrillators in the patrol cars, domestic violence counseling, a gang liaison officer, and Detective Bureau coordination with Paterson and Passaic. (T. 13-14). After September 11, 2001, the tactical response team has been resurrected and reinvigorated. (T. 14).

Before this round of negotiations, police officers and superior officers worked a 5/2, 5/2, 5/3, work schedule. On August 12, 2002, the City reached tentative agreements with the SOA and the PBA that included the following provision covering work schedules:

Work schedule modification - As soon as is possible, after the Award of the arbitrator herein is entered, a new work schedule for all employees in the bargaining unit shall be implemented. The work schedule shall be five (5) days of work, followed by 2 days off, followed by five (5) days of work, followed by 3 days off, and so on. This is commonly referred to as the "5-2/5-3" work schedule. Each work day shall be 8 hours and 20 minutes in duration which shall include appropriate meal and rest periods per prior practice. The "5-2/5-3" work schedule shall be applicable to all patrol personnel. All other personnel, including but not limited to Traffic, Detective Bureau, Administrative Services and Community Policing, shall have an equivalent amount of work provided annually, accomplished with individual unit adjustments to equalize the annual work obligation. This change shall be accomplished by adding appropriate language to the collective negotiations agreement in Article XXXV thereof.

The SOA ratified the tentative agreement and the 5/2, 5/3 work schedule, with 8 hour and 20 minute shifts, has been implemented for Superior Officers. The PBA did not ratify the tentative agreement. Police officers continue to work a 5/2, 5/2, 5/3 work schedule and the issue of work schedules has been submitted to interest arbitration in this proceeding.

POSITIONS OF THE PARTIES

The PBA

Initially, the PBA points out that after the SOA ratified the tentative agreement with the City that included the City's work schedule proposal, the City implemented the new work schedule for the SOA only. The PBA emphasizes this change in work schedule for superior officers resulted in a situation where the superior officers and the rank and file officers work on different schedules. The PBA maintains that the City's implementation of its work schedule proposal

for the SOA precludes any argument that an award of the PBA's work schedule would result in the superior officers and the rank and file officers working different schedules to the department's detriment. The PBA emphasizes that in the past, Clifton's Police Officers have worked different schedules from its Superior Officers and presently are working different schedules. Further, the PBA points to inconsistencies in the City's position resulting from the City's implementation of the proposed work schedule for superior officers. As a result, the PBA emphasizes that SOA and PBA personnel currently work on different schedules, which cuts against the City's argument that the PBA's proposal would result in PBA personnel working a schedule different from that worked by superior officers.

Turning to the merits of its proposal the PBA argues that the work schedule it proposes would better serve the interest and welfare of the public. The PBA cites the witnesses from parallel law enforcement agencies who have experience with the proposed 4-4 work schedule which shows the practice, procedure, and function of its proposal.

Woodbridge Police Officer and PBA State Delegate Thomas Seabasty testified as to the experience with a change from a four on two off schedule to a four on, four off schedule, which was implemented after a joint effort by both parties. (T. 40-42). According to Officer Seabasty, the 4/4 work schedule provided greater flexibility and limited the need to have maximum manpower

between two o'clock and six o'clock in the morning and allowed the department to institute power shifts between 4:00 p.m. and 2:00 a.m. (T. 42). Officer Seabasty testified further that the 4/4 shift allows officers to work steady, rather than rotating shifts, and did not cause problems with the amount of available equipment or police cars. (T. 44). Officer Seabasty explained that shift bidding is by seniority, but the chief has the prerogative to put new hires into slots that have not been bid and to rotate them through different areas of the department to give them exposure. (T. 45). Officer Seabasty testified that the 4/4 schedule allowed the patrol force to meet the needs of the community as it has grown and to provide outstanding coverage, and to increase special activities, such as a bike squad. (T. 46-47). On the personal side, Officer Seabasty explained that the 4/4 schedule allowed for more planning and stability and for off-duty work. (T. 48). According to Officer Seabasty, the need for overtime has decreased with the 4/4 schedule. Officer Seabasty testified that he sees his superior officers at the beginning and end of each shift and most of their dispatch is done by computer. (T. 50).

Woodbridge Police Lieutenant and former PBA President Donald Protz described the 4/4 schedule as a "force multiplier" because more people are available when they are needed. (T.65). According to Lieutenant Protz, management is able to adjust, from year to year, the number of people per shift based upon the prior year's events and crime statistics and trends. (T. 65).

Lieutenant Protz explained that the 4/4 schedule results in officers working with different supervisors, which he views as an asset. (T. 67).

Lieutenant Protz testified as to the overlapping supervision in Woodbridge, explaining that Officer Seabasty has six sergeants who provide supervision at various times during the course of a day. (T. 72). Lieutenant Protz testified that under the 4/4 manpower fluctuates up and down at various times during the day as a function of shift overlaps and management's manpower decisions. (T. 76-83).

Piscataway Police Officer and PBA President Robert Zavistoski testified that he has worked a 4/4 work schedule in Piscataway since 1988, when it was changed from a rotational 5-3, 4-3, 5-2 to a fixed 4-4 by negotiation. According to Officer Zavitoski, the implementation of the 4-4 schedule did not result in the need to add additional officers. (T. 87). Officer Zavitoski explained that in Piscataway the day shift begins at 6:45 a.m. and working until 5:30 p.m.; the afternoon shift begins at 3:30 p.m. until 2:15 a.m. and the midnight shift starts at 8:30 p.m. and works until 7:15 a.m. (T. 88). According to Officer Zavitoski there is cross supervision in Piscataway. Officer Zavitoski testified that since the 4-4 schedule was implemented the calls for services have increased, along with the population and local traffic. According to Officer Zavitoski, the 4-4 schedule has allowed the department to meet the increased number of calls without a

significant increase in manpower. Officer Zavitoski explained the benefits of the 4-4 schedule from the officer's standpoint:

From the officer's standpoint there's a lot of stability in your life. You work four longer shifts, then you have four days off. Gives people the steady shifts with families. We also bid by seniority. There are couples that have new children, newborns. They'll opt for the afternoon shift so when their wife goes to work they can stay home with the child....A number of our officers have gone and gotten bachelor's degrees and advanced degrees. Given you a better quality of life as a police officer. You're well rested. ...I believe better able to perform your job. (T. 91).

Officer Zavitoski explained further the benefits of a steady 4-4 versus a rotational 5-2:

...[E]ven though you work a steady shift you have a longer time off, the four days off. If you work a steady five/two midnights very few people, I know even my own experience, when you work that shift you can't in two days, you can revert back to working days and your personal life with your wife, children and family and then go right back to midnights again. Almost in a constant state of jetlag.

This way with four days off there's a longer adjustment period and you can adjust more and be more productive. (T. 91-92).

According to Officer Zavitoski, overtime tends to decrease with a 4-4 shift because of the overlap of shifts, and safety is enhanced by allowing increased numbers of officers on busy shifts. (T. 93-94). Officer Zavitoski testified that police work 1978 hours per year on the 4-4 schedule compared to 2080 on a 5-2 schedule. (T. 99). According to Officer Zavitoski, in Piscataway, originally there was a pool arrangement that the first 43 hours each year were on a non-overtime

basis, but that has been negotiated out of the agreement as part of a trade off involving training time. (T. 100-101).

Linden Police Detective Lieutenant Salvatore Bivona testified that the Linden Police Department has worked under a 4-4 schedule of 10 ¾ hours per day since 1982. Before that, there was a straight 5-2 shift, preceded by a 4-2 rotating shift, and that was preceded by a 4-2 steady shift. According to Lieutenant Bivona, the 4-4 schedule was negotiated and implemented. Lieutenant Bivona testified that the 4-4 schedule has allowed for training that was not possible under the straight 5-2 schedule and has also allowed the Linden Police Department to take part in the County narcotics strike force. (T. 112-113). Citing a study completed by the International Association of Chiefs of Police from 1962, Lieutenant Bivona explained that manpower needs to be placed where it is needed during high crime time, which is generally between 7:00 p.m. and 1:00 a.m. (T. 114). According to Lieutenant Bivona, the 4-4 schedule provides extra flexibility over the 5-2 schedule because shifts can be altered by an hour or two to add coverage where it is needed. As a result of the four days between shifts, officers can adjust to schedule changes more easily and work more efficiently. According to Lt. Bivona, at present efforts are underway in Linden to modify the shift start times and supervisory shifts to break the unity of command so that different superior officers will supervise different patrol officers. (T. 131).

Belleville Police Captain Chris Kondreck testified that in 1996 the police work schedule was changed from 4-2, with eight hour days to 4-4 with 10 hour days. (T. 255-256). According to Cpt. Kondreck, this schedule was implemented at the behest of the municipal administration, after discussion with the union in an effort to cut overtime costs. (T. 257). Cpt. Kondreck explained that by scheduling shift overlaps with a 4 hour overlap on each shift, at the time of day when call volume is highest, overtime can be minimized. (T. 258-259). According to Cpt. Kondreck, the 4-4 schedule permits directed patrols as well as adjustment to meet specific needs such as traffic flow and school posts. (T. 259-260). Cpt. Kondreck testified that the Belleville Police force has decreased from 111 officers in 1996 to 104 officers today, but the work schedule has allowed for absorption of the work, increased training, implementation of new programs such as community policing, and overtime costs have dropped from \$160,000 in 1995 to \$89,000 in 2000. (T. 260-262). Cpt. Kondreck testified further that even though calls have increased, overtime has decreased, and sick leave usage has decreased from 6.7 days per man in 1995 to 2.9 days per man in 2000, morale is higher because family time as well as time for outside employment has increased. (T. 265).

Paterson Police Department Detective and PBA President Robert Smith negotiated a change in the work schedule from 4-2, with an eight hour and 15 minute day, to 4-4, with a ten hour and 45 minute day, with the City of Paterson in 1997. Det Smith testified about changing to the 4-4 schedule as follows:

Well, the first thing we had to do was we ran a chart to find out the spikes in the crime. That really dictates the hours that the shifts are going to work. The object of the four and four is the – safety is paramount for the officer and also the citizens because at the time the crime is spiked quite naturally you got all the manpower out in the street, you got really an army-out there. And also it had a big effect on our sick time. Our sick time went down.

Now, the first six months that we first instituted the four and four, we used to have squad one, two, three, four and five. You can't work this four and four without anything less than five squads. It would be a nightmare. And what happened was the calls for services dip down on at a certain time of the night. Well' we didn't have a power shift there. We had a – squad one was a skeletal crew because quite naturally the crime is going down at that particular time and then Squad 2 was the power shift squad, three was a power shift and then four and five. So after six months the chief realized that on squad five, which was midnights, the calls were less but the calls were hotter, the bar fights and the shootings and everything else like that, so he had to take squad three and now make squad four the power shift because squad four naturally contains 28 guys, squad two contains 28 guys and their divided up into A Platoon and B Platoon. So that straightened all out and if the chief needs to he moved those hours according to the crime stats. If he sees that he's got to move those hours up an hour, that's within his realm to do that.

Another good part about that four and four is that the chief can call upon today and say how many men do I have working December 21st? And the captain should be able to give that to him because you got to pick your days off in January or actually in October of the year prior to it and you're going to pick your holidays and your days off. So he at all times knows the amount of people he's going to have on the street. Another good feature about the four and four and especially the power shift.

Det. Smith testified that the 4-4 shift with the attendant overlaps caused a significant decrease in overtime as well as in sick leave usage. (T. 194). Additionally, Det. Smith noted that by scheduling municipal court appearances for a day when the officer is working, court administration has been facilitated as well. (T. 195).

Most importantly, Det. Smith testified that after four days off officers are almost ready to come back to work because "four days with your wife is a long time." (T. 196).

According to the PBA, the 4-4 work schedule would provide the following benefits:

- Increased operational flexibility
- Increased operational efficiency
- Provides increased ability for the department to match available personnel to peak activity to meet current and future public safety needs as they evolve.
- No additional manpower required
- No new staff changes
- No new equipment required
- Reduces negative impact of shift work on employees
- Provides a valuable recruitment tool (see recruitment posters in the PBA evidence booklet)
- No change in current annual work obligation
- Reductions in Municipal Court Overtime costs
- Faster response time
- Decreased Sick time (see testimony of numerous agencies who testified in the record comparing the proposed schedule to their previous schedules)
- Increased amounts of training time making available higher levels of employee proficiency and accuracy (specific examples in PBA power point presentation)
- Better responsiveness to calls for service without additional officers being required
- Eliminates down time during shift change (see power point presentation comparison of work activity by hour during the day as compared to the old chart dips in availability at shift change)

- No conversion problems with respect to accrued time, vacation time, personal leave, etc.
- Aids Management in its ability to match resource allocation with needs assessment.
- Improved morale
- Trip reduction advantage including reduced commuting costs
- Improved employee morale (see testimony of PBA witnesses as well as testimony of officers who have converted to the PBA chart in other comparable agencies).

Characterizing its proposed work schedule modification as a "force expander", the PBA emphasizes that the schedule would provide increased ability and flexibility to meet operational needs without adding people or incurring overtime. The PBA points out that under the old work schedule the same number of people work during the day and at night. As a result, the same number of individuals are working during the quiet hours as are working during the hours of peak activity. According to the PBA, this is not the best way to deploy people and results in frequent overtime, at the expense of City taxpayers. The PBA cites the testimony of several witnesses who work at comparable law enforcement agencies that overtime decreased with the 4-4 schedule.

The PBA also asserts that the 4-4 schedule would improve unity of command and span of control because officers would work consistently with the same co-workers and superior officers.

The PBA characterizes the dispute over work schedule as one between proportional staffing and linear staffing, which divides the patrol force by three

and schedules a nearly identical number of personnel on duty at all times of the day. Acknowledging that the City's charts appear to put more officers on duty during daytime hours, the PBA notes that those charts include administrative and special duty personnel who work normal daytime business hours and their work hours do not address the issue of proactive patrol operations and reactive responses to emergencies. The PBA cites its charts showing a comparison between the discrete times of day when additional service is required and the current schedule. The PBA also points out that the linear distribution of personnel under the old schedule fails to match available police resources with calls for service during peak time periods. Additionally, the PBA demonstrates that the current shift gaps, which occur just after 7:00 a.m., 3:00 p.m., and 11:00 p.m., create time periods where significantly fewer police officers are available and correspond closely to peak time periods for calls. Specifically, the PBA points to the staffing gaps between 7:00 and 8:00 a.m. and the increase in the number of calls at the same time of day. Similarly, calls increase between 3:00 and 4:00 p.m., when staffing availability is lower due to shift changes. Calls tend to be decreasing when shifts change at 11:00 p.m.

In contrast, the PBA asserts that its proposal, which would provide proportional staffing, would provide greater coverage at peak periods and would eliminate gaps in coverage at peak periods. Specifically, the PBA asserts that its proposed work schedule would permit scheduling over 20 officers beginning at

7:00 a.m. and over 30 officers beginning at 2:00 p.m., in advance of the 3:00 p.m. peak in call volume.

Asserting that its work schedule proposal is superior to the City's proposal because it would provide additional flexibility to meet changing scheduling needs. The PBA explains that by changing the start time of a shift by one hour, there is little impact on the officer, no major change in the allocation of personnel, no impact on the officer's circadian rhythm, and the scheduling need is accommodated. The PBA asserts further that the proposed work schedule can accommodate coordination of supervision and lines of authority. Citing the experience of the Woodbridge Police Department, which is similar in size and structure to Clifton, the PBA notes that the flexibility inherent in the Woodbridge Police Department work schedule illustrates the beneficial effects of the 4-4 work schedule as compared to the City's work schedule proposal.

Supervision / Lines of Authority

Easily Coordinated

	4-4		Current
B-1	0400-1445	B	0700-1500
B-2	0700-1745	B	0745-1545
C-1	1730-0415	C	1500-2300
C-2	1730-0415	C	1545-2345
A	2030-0715	A	2300-0700
		A	2345-0745
	10.75 hour day		8 hour work day

Citing the testimony of Woodbridge Police Officer Thomas Seabasty, the PBA points out that Woodbridge has been able to meet the needs of its growing community with a smaller police force and to improve officer health and morale with the 4-4 schedule. The PBA also cites Woodbridge Lt. Protz's testimony that the 4-4 schedule works as a force multiplier and allows for the placement of personnel to meet specific needs.

The PBA cites the testimony of Piscataway Police Officer Zavistoski that Piscataway adopted the 4-4 schedule after negotiations and the flexibility provided by the schedule has allowed the police department to keep up with increased demands and enhanced the Police Department's ability to respond to specific needs and specific situations, and increased efficiency and morale.

Turning to the testimony of Linden Police Lt. Salvator Bivona, the PBA emphasizes his testimony comparing the old schedule to the 4-4 schedule:

What happened in the past, we had eight officers assigned to a shift, to three shifts around the clock. There was no training at the time because we had, there was no overlap at any point in time where guys could be taken off the road and trained other than their once a year qualifying. They had to do it on the day off. Since the four by four came into play we have training as a reality where during the overlap periods we can pull guys off the road, show them videos, do different type of trainings, whatever is coming up with the whole patrol division. We are still able to partake in the narcotics strike force, the county strike force where we send a guy there and in return any raids that they have or monies that they confiscate we get a part of because we have a guy stationed there. We also have a guy sent down to the Union County auto strike force and the same thing, where because we have a guy there they

bring their unit into Linden and set up. That seems to be the major problem right now. We have extra guys because we are able to send a guy there. On the four and two we weren't able to do that. We were like just cutting corners all the time. And this with the surplus of men that we have by doing this gives us the ability to do, to branch out. The guys are happier with this shift so they produce more. There was a time a few years ago where we had a ripple assault burglar the newspaper nicknamed him, where he was breaking ton the houses at night when the people were there and going into the bedrooms and touching them. The patrolmen were so offended by this that because the way the four by four split up we had an additional 30 guys coming in on their own to go on their bicycles to ride around neighborhoods to catch this guy. I thought that was a credit to the guys. It is only based on this shift that you have this half of the police department able to come in. Things like that. (T. 111-116).

Lt. Bivona also testified that the 4-4 has less of an impact on officer's and is more efficient.

Paterson Police Detective Robert Smith described the negotiation and evaluation process that led to the adoption of the 4-4 work schedule in Paterson in 1997 and the positive results:

Well the first thing we had to do was we ran a chart to find out the spikes in crime. That really dictates the hours that the shifts are going to work. The object of the four and four is the – safety is paramount for the officer and also the citizens because at the time the crime is spiked quite naturally you got all the manpower out in the street, you go really an army out there. And also it had a big effect on our sick time. Our sick time went down.

Now, the first six months we instituted the four and four, we used to have squad one, two, three, four and five. You can't work this four and four without anything less than five squads. It would be a nightmare. And what happened was the calls for services dip down on at a certain time of the night. Well, we didn't have a power shift there. We had a-- squad one was a skeletal crew because quite

naturally the crime is going down at that particular time and then Squad 2 was the power shift squad, three was a power shift and then four and five. So, after six months the chief realized that on squad five, which was midnights, the calls were less but the calls were hotter, the bar fights and the shootings and everything else like that, so he had to take squad three and now make squad four the power shift because squad four naturally contains 28 guys, squad two contains 28 guys and they're divided up to A Platoon and B Platoon. So that straightened all out and if the chief needs to he moves those hours according to the crime stats. If he sees that he's got to move those hours up an hour, that's within his realm to do that.

Another good part about that four and four is that the chief can call up on today and say how many men do I have working December 21st? And the captain should be able to give that to him because you got to pick your days off in January or actually October of the year prior to it and you're going to pick your holidays and your days off. Also he at all times know the amount of people he is going to have on the street.... (T. 183).

The PBA asserts that the testimony of Paterson Police Detective Robert Smith supports the argument that continuity and seamless police service is enhanced by the 4-4 schedule because it allows the Chief to target crime problems and create the perception of an army of police. Additionally, seamless patrol is available because the police car is on the road continually with virtually no down time. The PBA emphasizes that Det. Smith is a police officer in Paterson, which borders Clifton and with which Clifton has a mutual aid agreement. Emphasizing that the 4-4 schedule was adopted in Clifton after mutual study and negotiation, the PBA emphasizes the beneficial impacts of the 4-4 that have been observed in Paterson.

The PBA also emphasized that the 4-4 schedule was adopted in neighboring Belleville, also through negotiations. Citing the testimony of Belleville Cpt. Kondreck, the PBA points out that the major objective in adopting the 4-4 schedule in Belleville was to cut overtime costs through shift overlaps. Specifically, Cpt. Kondreck testified that despite a decrease in patrol officers from 111 in 1996 to 104 in 2002 overtime costs have dropped from approximately \$160,000 in 1995 to \$102,000 in 1996 and to \$89,000 in 2000. Additionally, the PBA points out that Cpt. Kondreck testified that sick leave has also dropped from 6.7 days per man to 2.9 days per man in 2000.

Reviewing the power point presentation prepared and presented by Clifton PBA Delegate Michael McDermott, the PBA emphasized the extensive research and documentation involved in preparing the information. Specifically, the PBA points to original sources including the FBI Academy, the FBI Behavioral Science Unit and well as domestic and international jurisdictions. The PBA reiterates the common themes that were emphasized in the presentation, including that the 4-4 work schedule better meets the needs of citizens, provides increased operational flexibility, and enhances officers' safety and performance. The PBA compares the information presented about the 4-4 schedule with the difficulties of Clifton Police Officers including sleeping in cars to bridge the time between their relief from the night shift and the time when they are scheduled for appearances in municipal court. The PBA emphasizes that the 4-4 schedule allows sufficient

scheduling flexibility for officers to appear in municipal court as necessary and does not mandate either assignments or staffing levels.

The PBA cites the testimony of Clifton Police Chief Robert Ferreri, that there have been many changes in Clifton during the approximately 30 years when the current work schedule has been in place. The PBA maintains that under its proposal, the Chief retains the managerial prerogative and operational flexibility to fine tune the schedule to any level of staffing or any particular configuration of management or supervision. The PBA also points to Chief Ferreri's testimony that more flexibility would result with five components of personnel than with three, as well as more opportunities to change the start and finish times. The PBA emphasizes that Chief Ferreri acknowledged that when training days are included, work hours would increase slightly under the PBA's proposal.

Turning to the issue of unity of command, the PBA points to Chief Ferreri's testimony that during the course of a week a police officer may work for three different sergeants. The PBA argues that when two patrol lieutenants are factored into the supervision equation, there are many combinations of people who are working together or supervising others. The PBA argues further that the schedule it proposes will not add to or decrease the unity of command, but the employer will be free to schedule as it sees fit. The PBA contends that by changing the work schedule of the superior officers, the City has undercut its

argument that continuity of schedule is important. Since the new work schedule was implemented for superior officers but not for police officers in conflict with management's position that a common schedule is important, the PBA asserts that the Employer can not argue that the PBA and SOA must work the same schedule. The PBA asserts that the Employer has destabilized the continuity of working hours between the SOA and the PBA.

Addressing the testimony of Vineland Police Chief Maril Brunetta, the PBA notes at the outset that Chief Brunetta did not like the 4-4 work schedule, had been excluded from its negotiation and resented that the Mayor and Council together with the PBA consulted with an expert from California to set up the work schedule, which Chief Brunetta was required to implement. The PBA notes further that the 4-4 work schedule was in place in Vineland for one year in 2001, and the Chief's conclusions are thus drawn from a very narrow experience.

The PBA emphasizes Clifton Lt. Goldstein's testimony that the current schedule results in people working different time sequences and different combinations because the new work schedule has been implemented for the SOA. The PBA cites the testimony of Lt. Goldstein, who works in the Traffic Division, that the six officers in the Traffic Division report to either him or another superior officer. The PBA emphasizes Lt. Goldstein's testimony that flexibility, through the ability to change hours is an asset.

The PBA raises questions as to the comparability of Clifton and Parsippany, citing the testimony of Parsippany Police Captain Peckerman who acknowledged that only 53 officers were available though 62 positions existed.

The PBA raises questions about the comparability of a force that is already significantly smaller than the force in Clifton, before the 15% reduction in availability of staff. The PBA points out that Cpt. Peckerman has no experience working the 4-4 schedule and was not involved in its negotiation or implementation, and accordingly raises doubts about the relevance of his testimony. With respect to Cpt. Peckerman's concern regarding the amount of overtime in Parsippany, the PBA points out that the hours worked per year in Parsippany are fewer than in Clifton and the difference in regular work obligations would absorb most of Parsippany's overtime. The PBA also contrasts the floating training days included in its proposal with the overtime paid for training in Parsippany.

Addressing the testimony of Clifton Sergeant Joseph Dennis, the PBA points to his testimony that the current cross supervision and cross rating system is an asset. Specifically, Sgt. Dennis testified that each year he, as an individual sergeant, would evaluate three different squads of subordinate officers in order to increase objectivity, as well as uniformity.

The PBA points out that Cpt. Rowan, who was a witness regarding the current work schedule for the City was unable to identify how many days he is

obligated to work each year. The PBA points out that Cpt. Rowan acknowledged that there was more activity during the daytime than during the midnight hours. The PBA asserts that this testimony supports the need for proportionate staffing and having the flexibility to allocate resources to meet needs.

The PBA reiterates that both parties seek to change the work schedule because they are not satisfied that the old work schedule will meet the needs of the department or the public in the future. The PBA maintains that its proposal presents a better option for work schedule change because it would preserve operational flexibility, managerial prerogatives, and meet the needs of the public on a short term and long term basis. According to the PBA, the Employer has tacitly acknowledged that the PBA's proposal will not increase costs. In contrast, the PBA emphasizes that the 4-4 schedule will decrease overtime costs and reduce sick time utilization. According to the PBA, the only employer witness to have direct experience with the 4-4 work schedule was the Vineland Police Chief, who had been excluded from the negotiation process for the schedule, where the schedule had been used for one short year. The PBA emphasizes that the Parsippany police captain had never actually worked a 4-4 schedule and worked with a force who works significantly fewer hours per year than are worked in Clifton.

Finally, the PBA highlights that the Employer's case consists chiefly of challenging the 4-4 work schedule without providing documentation in support of

the work schedule it proposes. The PBA maintains that the Employer's case is more restrictive on management prerogatives and more limiting the ability to respond, without increasing overtime costs, to the public.

The City of Clifton

Initially, the City asserts that the PBA's proposal for a 4-4 work schedule significantly interferes with its managerial prerogatives and the best interests and welfare of the public require rejection of the PBA's proposed work schedule. The City contends that the PBA's proposal would materially interfere with the City's managerial prerogatives to determine staffing levels in the Department, as well as the best means of ensuring appropriate supervision. Citing several decisions by the Appellate Division and PERC, the City points out that "it is the function of the municipality, through its chief of police, to determine the most effective coverage for police protection in the borough." Borough of Atlantic Highlands v. Atlantic Highlands PBA, Local 242, 192 N.J. Super. 71 (App. Div. 1983). Citing Paterson Police PBA v. Paterson, 87 N.J. 78 (1981), the City points to the Court's holding that "[m]unicipal decisions about how to organize and deploy their police forces to comply with economic needs are unquestionably policy decisions and affect the public welfare." The City summarizes its concerns with the impingement on its management prerogative as follows:

...[T]he evidence demonstrates unequivocally that under the PBA proposal for a 4/4 work schedule in the Patrol Division, the City would no longer be able to schedule between 14 and 16 officers at

all hours of the day, week, month and year. Rather, the PBA proposal requires "proportional staffing" rather than "equal staffing", which will result in the Department being staffed with less than 14 patrolmen scheduled at certain times, and with more than 16 patrolmen scheduled at other times. The PBA argues that this is a good thing; that staffing levels should be higher at "peak" time periods when the calls for service are greater and lower at non-peak times. While the City disagrees with the PBA's position concerning staffing levels, the merits of this argument are irrelevant. It is not up to the PBA or to an interest arbitrator to make this determination. Rather, the public interest, as clearly delineated in Commission and Appellate Division case law, requires that the determination as to where to set staffing levels is to be made only by Department management.

The City argues that the PBA's proposal should be rejected because it would change staffing levels to levels different than those desired by management and those staffing levels should be found to be contrary to the public welfare. The City emphasizes PERC's determination that the decision between equal and proportional staffing is not mandatory and urges rejection of the PBAs' arguments regarding proportional staffing. The City also contends that the interests and welfare of the public also require that the PBA's work schedule proposal be rejected because it would significantly interfere with the City's management prerogative to determine the best means of effective supervision of the Department's rank and file police officers.

According to the City, the Department management has determined that the best means of effectively supervising its rank and file police officers is the platoon/squad structure. The City explains that under the current platoon/squad structure, police officers are supervised by the sergeants and lieutenants in their

platoon. Each platoon has three sergeants and two lieutenants. According to the City, its proposal would maintain this structure and its police officers would continue to be supervised by the same group of sergeants and lieutenants. The City claims that the PBA's proposal would eliminate the platoon/squad structure. The City asserts that to the extent that it would do so, the PBA's proposal would interfere with its managerial prerogative to determine the best means of providing effective police supervision.

The City contends that the PBA has not sustained its burden of proving a need to change current staffing levels in the patrol division. The City explains that at present its patrol officers work a 5/2, 5/2, 5/3 work schedule with 8 hour days. Based upon the current census of 66 patrolmen, 9 sergeants, and 6 lieutenants in the Patrol Division, the City explains that there are three platoons with three squads in each platoon. Relying upon the testimony of Chief Ferreri, the City details the Patrol platoons and as follows:

The A Platoon shift 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 shift 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 shift 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 patrol cars are not changing at the same time. Currently there are 21 patrolmen in A Platoon, 22 in B Platoon and 23 in C Platoon. Under the 5/2, 5/2, 5/3 schedule, each day there are 14 patrolmen scheduled to work for the A Platoon, 14 or 15 scheduled to work for the B Platoon and 15 or 16 scheduled to work for the C Platoon. The exception to this staffing is the "everybody day" which is a function of the 5/2, 5/2, 5/3 schedule. On an "everybody day" all officers in the Patrol Division are scheduled to work. This occurs only once every 22 days under the 5/2, 5/2, 5/3 schedule. (Citations omitted).

The City asserts that in determining that the best means of staffing the Patrol Division is to have between 14 and 16 patrol officers scheduled to work at all times, the City considered several factors, including calls for service, the nature of the calls, when crimes are committed, the need for self-initiated work and the overall manpower pool within the department.¹

Noting that daily staffing levels in the Patrol Division are determined annually by superior officers based upon shift bids and manpower needs, the City asserts that the PBA's proposal would result in "proportional staffing" instead of "equal staffing" as currently exists. The City claims that implementation of the PBA's proposal would completely restructure daily staffing levels in the Patrol Department as well as redeployment of patrol officers, or create a fundamental shift in the way the department is staffed compared to the current decisions made by the superiors in the Department. Specifically, the City contends that the PBA's proposed work schedule would result in fewer officers being on duty each day and would completely restructure staffing levels on any given day in the Patrol Division and would overhaul the existing Patrol/Squad structure. The City asserts that under the PBA's proposed 4-4 work schedule, the Patrol Division would be split in half with 33 patrol officers working 10.75 hour shifts on any given day. Using each group of 33 patrol officers, the City explains that the

¹ The City defines the "overall manpower pools" as "the number of City police officers within the entire department available for patrol duty, including the Patrol Division. The City maintains that this is important in considering staffing during early morning hours because only the Patrol Division is staffed during the overnight hours.

PBA's proposal would create five squads with unequal numbers of patrolmen in each squad. According to the City, this would result in a reduction in the total number of officers working each day in the Patrol Division to 33 from its current daily complement of 43-45 patrol officers. The City maintains that the PBA's proposal would result in the following staffing levels in the patrol division:

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 5:00 p.m.	16 officers
5:30 p.m. to 8:30 p.m.	15 officers
8:30 p.m. to 1:15 p.m.	18 officers
1:15 a.m. to 4:00 a.m.	10 officers

The City emphasizes that the PBA has acknowledged that its proposal would change the current staffing levels throughout the day within the Patrol Division. The City, in its brief, summarizes its chief objection to the 4-4 work schedule stating, "[t]he central focus and unavoidable result of the 4/4 work schedule is that it will determine the staffing levels throughout the course of the day within the Patrol Division and strip the City of the ability to staff the department as it determines is the best way to provide the necessary police coverage for the community it serves." The City continues, emphasizing that the PBA's proposal would "necessarily determine the manning levels within the department", thus undermining the department's ability to staff at levels that have proven to be effective. The City emphasizes that both Woodbridge Officer Seabasty and Woodbridge Lt. Protz testified that the 4-4 schedule has impacted the number of officers working at various points during the day. The City also points to Lt. Protz's testimony that it is "impossible" to have an equal number of

officers at work during all parts of the day under the 4-4 schedule. The City notes further that Piscataway Ptl. Zavitoski and Paterson Det. Smith testified that when Piscataway and Paterson changed to a 4-4 schedule staffing was increased at certain times of the day, and fewer officers were on duty at other times of the day.

When addressing the PBA's proposal to restructure the staffing of the Patrol Division, the City reiterates that the PBA has a heavy burden of proof to demonstrate that current staffing levels are inadequate and a major alternation of the work schedule is warranted. The City asserts that it has demonstrated that current staffing levels are appropriate and the changed suggested by the PBA are unwarranted.

According to the City, the PBA in its efforts to support its staffing proposal, compared manpower in the Patrol Division to Calls for Service in Clifton, but did not consider all of the factors that the City uses to determine appropriate manpower levels. Turning first to overall manpower, the City contends that overall manpower in the Department does not support the PBA's proposal. The City explains that it compared overall manpower that would be available in all units on a Wednesday and a Monday under its 5-2, 5-3 schedule and under the proposed 4-4 schedule. Based upon this comparison, the City concludes that manpower remains relatively the same with the exception of certain time frames as illustrated below.

Wednesday	4 pm to 6 pm	10 pm to 12 am	1 am to 7 am
PBA Proposal	57-61	39-47	12-13
City Proposal	38-43	34-35	17

Monday	4 pm to 6 pm	10 pm to 12 am	1 am to 7 am
PBA Proposal	41-45	39-41	12-13
City Proposal	34-39	34-35	17

The City maintains that the loss of manpower during the overnight hours that would result from the PBA's proposal is more significant because under either proposal there are fewer officers on duty during those hours. Accordingly, the City argues that its proposal would provide greater assurance for officer safety and a greater standard of care provided to its citizens. The City also notes that on Mondays the manpower differences result in greater manpower levels under the City's proposal due to the PBA's proposal to change work schedules in the City's Traffic and Community Policing Divisions as well.

Addressing the issue that the personnel included in these charts are not regularly responding to calls for service, the City emphasizes that these officers are available if necessary. The City points out that under its proposal, more officers are available to perform patrol duties if necessary at 3:00 p.m. than at 3:00 a.m. The City explains that it has determined that it should not reduce its overnight staffing further so that appropriate police coverage is provided throughout the City at all times.

The City asserts that crime rates fluctuate from year to year and there is no definite upward pattern that would necessitate a change in the work schedule. To the contrary, the City points out that the crime index and the crime rate have decreased in recent years and the City has received accolades for the overall safety of the community, which the City contends would not be so if staffing were inadequate. Given that the PBA has the burden to prove the need for a dramatic change in the work schedule, the City asserts that the crime statistics do not support the PBA's claim that a change from equal staffing to proportional staffing is necessary.

The City argues that levels of calls for service do not show a need to change current staffing levels. The City submitted a chart showing calls for service based upon the hour of the day. That chart, which shows 22.4% of the calls occur on the A Platoon, 38.8% of the calls occur on the B Platoon and 27.7% of the calls occur on the C Platoon, follows in summary form.

HOURS OF THE DAY	PERCENTAGE OF WORK LOAD
A Platoon	2.8% avg. per hr.
2300-2400	3.5
2400-0100	3.9
0100-0200	3.7
0200-0300	3.3
0300-0400	2.7
0400-0500	1.9
0500-0600	1.6
0600-0700	1.8
B Platoon	4.8% avg. per hr.
0700-0800	3.4
0800-0900	4.5
0900-1000	4.6

1000-1100	5
1100-1200	5.4
1200-1300	5.4
1300-1400	5.3
1400-1500	5
C Platoon	4.7% avg. per hr.
1500-1600	4.9
1600-1700	4.7
1700-1800	4.9
1800-1900	5.2
1900-2000	5.3
2000-2100	4.6
2100-2200	4.2
2200-2300	3.9

Responding to the PBA's position that the work schedule should be dependent upon a Calls for Service (CFS) Needs Assessment Analysis, the City acknowledges that calls for service do increase during the B and C Platoons from 7:00 a.m. to 11:00 p.m., but it asserts that it is simply one factor in the determination of how to deploy manpower. Additionally, the City asserts that the PBA's proposal is not consistent with calls for service. For example, the City points out that under the PBA's proposal 18 patrol officers are scheduled to work between 11:15 p.m. and 1:00 a.m. while only 10 patrol officers are scheduled to work between 1:15 a.m. and 3:00 a.m. despite the similarity in the number of calls during those two time periods and the fact that bars in the City close at 3:00 a.m. The City contends that the PBA's proposal could create a dangerous situation for the citizens as well as for the ten officers working between 1:15 a.m. and 3:00 a.m. The City emphasizes that it has determined that there is a need for at least 14 officers to be scheduled at all times, including the late night hours when the PBA's proposal would result in only 10 officers being scheduled.

The City points out that the concept of proportional staffing is not unique to the 4-4 work schedule and the PBA has acknowledged that the 5-2, 5-3 work schedule does not mandate equal staffing. The City notes that if it determined that there was a need for proportional staffing, it could do so under a 5-2, 5-3 work schedule. The City emphasizes that it has made a management decision as to how best to deploy the Patrol Division and does not do so proportionally. The City explains that the PBA argues that its 4-4 work schedule proposal would include proportional staffing, the City could implement proportional staffing without switching to a 4-4 schedule by re-deploying some patrolmen who currently work on the A Platoon to the B and C Platoons.

The City points out further that the timing of shift changes can be modified under a 5-2, 5-3 work schedule. Responding to the PBA's criticism of the timing of shift changes when compared to the timing of calls for service, the City points out that under the 5-2, 5-3 work schedule it is permitted to establish different start times. As the PBA demonstrated, the City is free to move the start times by an hour or two to address shift changes between 2:30 p.m. and 4:30 p.m. Because the City is free under either schedule to change start times, the City argues that the PBA has not shown that the 4-4 schedule can address perceived problems in shift changes in a way that the 5-2, 5-3 schedule could not. Instead, the City maintains, the PBA's argument is merely that the 4-4 method of deployment is more desirable to the PBA. Accordingly, the City argues that the ability to

change shift starting times is not a basis for a major alteration in work schedule as is sought by the PBA.

The City asserts that the PBA has not shown that its proposal would provide additional manpower or that "floaters" would enhance the Department's staffing flexibility. Specifically, the City maintains that switching to a 4-4 work schedule would result in fewer officers available to the patrol division on a daily basis because only 33 officers would work on a day, rather than 43-45 officers. The City calculates that under the PBA's proposal, 33 officers working 10.75 hours, results in 354.75 man hours per day. The City calculates further that under its proposal, with an average of 44 officers working 8.33 hours per day results in 366.67 man hours per day. The City explains that the PBA's proposal reallocates when the manpower is working, but does not create more man hours.

Addressing the PBA's proposal to assign two "floaters" to each platoon, who could move only within their platoon, the City cites the testimony of Parsippany Police Captain Peckerman that the use of floaters creates a "domino effect" by solving one problem and creating another. The City explains that since a floater can not be moved without a week's prior notice, a floater can not cover holdover situations and last minute absences.

The City also maintains that the 4-4 schedule will decrease the City's flexibility because the department has a rule prohibiting an officer from working

more than 12 hours in a day. As Cpt. Giardina explained, at present, when an officer is absent, the department can hold over an officer currently on duty and call another officer in 4 hours earlier to cover the shift, without calling in an off-duty officer. According to the City, with a 10.75 hour day, the City would have to call in an officer on an off-day or operate short-handed.

The City argues that current staffing levels are more reasonable than the staffing levels in the PBA's proposal and urges that its proposal to change the work schedule to a 5-2, 5-3 work schedule with an 8 hour and 20 minute work day, because it would not change staffing levels in the Patrol Division and would keep the current platoon/squad structure intact. The City explains that the extra 20 minutes per day would be added to the beginning of the shift and used for muster time. Additionally, the City explains that the Patrol Division would be staffed the same way, with 14-16 patrol officers scheduled to work at all times, with officers receiving an additional five days off per year, and the elimination of an "everybody" day. The City also maintains that the 5-2, 5-3 would provide relatively equal staffing taking into account calls for service and total manpower within the department. The City asserts that enhanced flexibility, and proportional staffing can be accomplished, if necessary, under the 5-2, 5-3 schedule.

Turning to staffing levels in the Community Policing Division and the Traffic Division, the City asserts that the PBA has not shown the need to change

current staffing levels in either division. Noting that the main objective of the Community Policing Division is to create a police presence within the Community, the City asserts that under the present schedule, the Community Policing Division is able to provide sufficient coverage at important times of the day, such as high school dismissal. At present, the Community Policing Division currently works a 5-2 schedule of two shifts, from 8:00 a.m. to 4:00 p.m. and from 2:00 p.m. to 10:00 p.m. during school, or from 3:00 p.m. to 11:00 p.m. when school is closed. (T. 961-962). According to the City, the PBA's proposal, for a 4-3 schedule with a 9.5 hour work day, would alter the current schedule, which the City has determined is the best means of staffing the Community Policing Division. Specifically, the City notes that the PBA proposes a day shift from 8:00 a.m. to 5:26 p.m. and a night shift from 2:00 p.m. to 11:26 p.m. According to the City, the effect of this proposal would be to staff the division with fewer officers on Monday, Tuesday, Friday and Saturday, which is contrary to the City's determination of how the division should be staffed. The City prepared the following chart to illustrate the staffing differences between the PBA's proposal and the current work schedule:

COMMUNITY POLICING OFFICERS SCHEDULED FOR DUTY
UNDER 5/2 AND 4/3 SCHEDULES

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

Relying upon Lt. Meffen's testimony, the City explains that having fewer officers scheduled to work on four days a week, provides fewer opportunities to perform directed activities, assist the Patrol Division, and create a larger presence in the five target zones. (T. 966-967). The City asserts that this ability outweighs the additional hour of service each day. The City calculates that in a 28-day cycle, officers in the Community Policing Division will work the same number of hours, but over 19 days under the City's proposal and 16 days under the PBA's proposal.

The City cites problems that would be caused by implementation of the PBA's proposed work schedule. First, staffing the Community Policing Division with fewer than five officers, as is proposed on Mondays, would present safety issues in the schools since at least five officers within the Division are assigned to the schools. The City cites Officer Brancato's testimony regarding the need for five community police officers for school dismissal. (T. 20). The City also asserts that under the PBA's proposed schedule the same officers would work every Saturday, creating a possible morale problem among junior officers who would be more likely work that schedule. According to the City, the negative effects of a switch to a 4-3 schedule outweigh any benefits advanced by the PBA.

The City also urges rejection of the PBA's proposal for a 4-3 work schedule with a 9.5 hour work day in the Traffic Division. Citing the testimony of

Lt. Goldstein, the City notes that the six rank and file officers in the Traffic Division currently works a 5-2 schedule, Monday through Friday, with an eight hour day running from 7:30 a.m. to 5:00 p.m. The City does not seek to modify the current schedule in the Traffic Division.

The City asserts that the effect of the PBA's proposal would be to halve the manpower on Mondays and Fridays, by reducing it to three officers. The City notes that minimum manning in the Traffic Division is three, which would leave no room for illness and vacations. Relying upon the testimony of Lt. Goldstein, the City asserts that the loss of manpower on Mondays and Fridays would have a direct impact on the self-initiated activities that the Traffic Division would be able to perform on those days. (T. 822). Additionally, the City maintains that the inability to grant days off on Mondays and Fridays due to minimum manning requirements also would have a negative impact on the Traffic Division.

Addressing the issue of the Traffic Division covering school traffic posts when crossing guards are unavailable, the City asserts that the man hours spent by the Traffic Division in school crossing assignments have decreased 66% over the past three years from 2383 in 2000, to 1693 in 2001 and 808 in 2002. The City explains that this decrease results from hiring more crossing guards, providing more reserve crossing guards, and eliminating lunch time posts in 2003, which should further decrease the amount of time Traffic Division officers spend filling in for crossing guards.

The City argues that the Traffic Division has the greatest flexibility when staffed with six officers and the PBA's proposal would not allow the City to continue to staff the department in the manner it best sees fit. The City asserts that maintaining the status quo in the Traffic Division would provide a greater benefit to the City than would implementation of the PBA's proposal.

The City argues that the PBA bears a heavy burden to justify its proposal, which would place superior officers and rank and file officers on different work schedules. Citing Township of Teaneck v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289 (App. Div. 2002), the City points out that Appellate Division upheld the Commission's test to be used when a proposal would result in superior officers and rank and file officers working different work schedules, as follows:

An arbitrator may award such proposal only if he or she 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.

Thus, the City emphasizes that the PBA must show either that its proposed work schedule will not impair supervision or that there are compelling reasons to grant the proposal, despite its impact upon supervision. The City reiterates that the PBA has proposed a 4-4 work schedule for the Patrol Division and the Superior Officers currently work a 5-2, 5-3 work schedule. The City maintains that

changing the rank-and-file work schedule to 4-4 would impair supervision in the Patrol Department.

The City explains that under its proposal to "tweak" the current 5-2, 5-2, 5-3 work schedule and create a 5-2, 5-3 work schedule, the current structure of three platoons, each with three squads, would remain in place. Relying upon the testimony of Chief Ferreri, the City explains further, that "the Squad Sergeant in A Platoon Squad 1 would always be scheduled to supervise the patrolmen in A Platoon Squad 1 and would also supervise patrolmen in A Platoon Squads 2 and 3 at times." The City also cites the testimony of Sergeant Joe Dennis, the B Platoon Sergeant, that he always supervised the officers in his squad, as well as the officers of either B Platoon Squad 1 or B Platoon Squad 3. (T. 976). The City emphasizes that the Sergeant within each squad is the immediate supervisor for all patrolmen in that squad. According to the City, this supervisor follows principles of unity of command, where each subordinate is accountable to one immediate supervisor. Additionally, the City points out that under the platoon/squad format, a patrolman would be scheduled to be supervised by only five different superior officers, three sergeants and two lieutenants in his or her squad. The City notes that at present, where the superior officers are working a 5-2, 5-3 work schedule, and the patrolmen are working a 5-2 work schedule, the platoon/squad structure has been kept intact. Looking at supervision on any given day, the City points out that the only instance when a patrolman may not be supervised by his or her squad sergeant is during the 45 minutes before or

after a shift since the whole platoon does not switch at once, but during that period, supervision would remain within the platoon. The City argues that in Clifton, having superior officers work the same schedule as patrol officers would enhance accountability, evaluations, consistency of management styles, discipline and the handling of administrative matters.

In contrast, the City points out that the PBA's proposal would impair supervision within the Patrol Division because patrol officers and superior officers would not be scheduled to work with their squads every day. According to the City, under the PBA's proposal, during a 120 day schedule, a patrol officer would work 60 days, but would work with his or her superior officers for only 41 days during that period. The City notes that if its work schedule proposal is implemented, a patrol officer would work with his or her immediate supervisor 100% of the time.

The City notes that the PBA's proposal would break the platoon/squad structure with the Patrol Division into two halves, with an A, B-1, B-2, C-1 and C-2 platoon. According to the City, under this proposal, it would not be possible to line up superior officers with a particular platoon or squad because superiors are separated into three squads for each platoon. The City maintains that the 5-2, 5-3, schedule does not permit superior officers to be split in halves so they could not be scheduled with a particular squad consistently.

Additionally, the City asserts that supervision would be disrupted on a daily basis under the PBA's proposal. For example, the City explains that a patrolman in A Platoon would be supervised by superior officers in A, B and C Platoons during the course of a day, while patrolmen in C-2 would be supervised by superior officers in A and C Platoons. According to the City, even if start times were adjusted, by virtue of patrolmen working longer days than superior officers, patrolmen would be supervised by at least two different platoon superiors during the course of a shift. Therefore, the City concludes that the patrolmen will be supervised less often by their immediate supervisors, thus impacting on accountability, evaluations, follow-up and the implementation of discipline, as well as adjustment to varied management styles and administrative issues. Citing the testimony of Chief Brunetta and his experience with the Vineland Police Department, the City points to the problems that arose under the 4-4 schedule in Vineland:

I saw problems crop up in the first three months. It was terrible. At the end of six months I wanted to change back but the way the contract was written, there was a window between the 11th and 12th month where I could unilaterally change back due to the contract, and so we preserved to the end of the year and changed back. (T. 763-764).

The City points to specific problems identified by Chief Brunetta, including a situation where a patrol officer was investigating a burglary and before he could complete his work, the supervising sergeant left and the sergeant who came on duty would provide different orders. According to Chief Brunetta, the quality of reports decreased and the delay in correcting errors in reports increased. (T.

765-766). The City emphasizes Chief Brunetta's testimony that supervisors did not take responsibility for officers who were not in their squad, even though they were supervising the officers. (T. 969).

Citing the testimony of Detective Lieutenant Berdnik, the City asserts further that implementation of the 4-4 work schedule as proposed by the PBA would delay internal affairs investigations as required by the Attorney General's early warning system, which is the responsibility of the immediate supervisor. Emphasizing the importance of the Platoon/Squad system of supervision, the City argues that the superior officer should have as much contact as possible with subordinate officers because, as stated by Sgt. Dennis, "you want to be able to know your officers that you're working with in division to supervise" and the 4-4 schedule is "going to make it more difficult." (T. 980). The City asserts that the PBA's witnesses including Lt. Protz and Det. Smith acknowledged that unity of command is a good idea (T. 80, 211-213).

The City emphasizes that under its proposal both superior officers and patrolmen would both work a 5-2, 5-3 work schedule and would maintain team integrity within the Patrol Division, and unity of command, with every employee under the direct command of only one supervisor. Acknowledging that under its proposal, as now, a patrolman would be supervised by two lieutenants and two sergeants within his Platoon, the City points out that a patrolman is always scheduled with the same squad sergeant. The City explains that the 24-hour,

seven day a week operation of the police department, as well as the chain of command necessary for police work requires additional supervision and multiple squads within each Platoon satisfy staffing requirements of a daily basis. The City points out that within the confines of these requirements, it provides unity of command by scheduling a patrolman with the same sergeant consistently.

Additionally, the City points out that police dispatchers work eight hour shifts that correspond to the current shifts worked by officers, and it is important that the officers and the dispatchers build rapport. According to the City if the police officers and the dispatchers worked different schedules, it would detract from the City's efforts to maintain team integrity.

The City maintains that the need for consistent supervision is also important to the PBA, noting that in its initial proposal the PBA listed "improved unity of command & span of control" as a benefit of the 4-4 work schedule, before the Superior Officers agreed to the 5-2, 5-3 work schedule. Acknowledging that supervisors can make rating errors to gain the friendship of subordinates, the City asserts that this problem is balanced by the benefits to be gained by having evaluations performed by officers who supervise subordinate officers consistently. According to the City, benefits include counseling subordinates. The City points out that to counteract the possibility of the "halo effect" the squad sergeant evaluates the patrolmen under his supervision as well as the patrolmen in one of the other squads every six months to help provide a

balanced rating. (T. 977). Additionally, the City notes that the Department has operated with the same supervision as it would have under the 5-2, 5-3 schedule for several years without problem.

According to the City, the overlap that would result from the PBA's proposed 4-4 work schedule is excessive, while the 20 minute overlap provided by the 5-2, 5-3 schedule allows for sufficient muster time and replacement of the outgoing squad without losing a police presence on the road. Citing the testimony of Sgt. Dennis, the City asserts that the 20 minutes allotted for muster and shift replacement is sufficient and will not provide a period when patrol cars are at the station rather than on the road. The City asserts that its claim that extensive shift overlap will lead to supervision problems is supported by its experience with an overlapping power shift called X Platoon. Relying upon the testimony of Cpt. Giardina, the City asserts that the problems with the power shift arose from having superior officers from different platoons supervising rank and file officers from other platoons, and a resulting lack of responsibility. The City foresees that this problem would be multiplied on an every day basis under the PBA's proposed 4-4 work schedule.

Due to these potential problems with the PBA's proposed 4-4 work schedule, the City contends that the PBA has not sustained its burden of proof that its proposed work schedule would not have a negative impact upon the

Patrol Division. The City reiterates that the PBA's proposed 4-4 work schedule would:

- (a) reduce accountability;
- (b) adversely affect evaluations;
- (c) make it more difficult for superior officers to follow up on matters;
- (d) make it more difficult for superior officers to implement discipline;
- (e) require patrolmen to adjust to several different management styles;
- (f) increase problems with report writing and administrative concerns;
- (g) delay internal affairs investigations; and
- (h) create excessive overlapping shifts.

Turning to the second half of the test created in Township of Teaneck v. Teaneck FMBA, Local No. 42, 353 N. J. Super. 289 (App. Div. 2002), aff'd o.b. ___ N.J. ___ (2003), the City argues that the PBA did not demonstrate "compelling reasons to grant the proposal that outweigh any supervision concerns." Noting the PBA's argument and extensive evidence concerning the negative effects of shift work, the City asserts that the PBA's evidence concerned the negative effects of shift work generally, and it failed to prove that the negative effects of shift work are unique to working the 5-2, 5-3 work schedule. Instead, the City maintains that the 4-4 work schedule would subject more patrolmen to the negative aspects of shift work.

The City acknowledges that shift work is inherent in police work, and asserts that the negative effects of shift work apply to police work generally. The City emphasizes that the PBA did not present evidence connecting the work schedules presented to shift work. According to the City, if one considers the negative effects of shift work on an individual's circadian rhythm, then under the

PBA's proposal, 36 officers would be subject to working after midnight and in the early morning hours when the circadian rhythm is most effected, while under its proposal, 21 officers would work during these periods. Taking issue with the testimony of Officer McDermott that the 36 officers who would work after midnight and during the early morning hours would only touch the hours rather than span the hours, the City asserts that even working a portion of those hours has an impact on an individual's wake/sleep cycle. The City also asserts that many of the negative impacts of shift work are negative aspects of the stresses of police work generally, including police suicide, divorce, pregnancy difficulties, social isolation, alcoholism and cardiovascular problems. Acknowledging that shift work can have negative effects, the City asserts that working a shorter 8 hour and 20 minute day, as it proposes, is less detrimental than working a longer 10.75 hour day. The City cites Cpt. Rowan's testimony that working longer shifts results in greater fatigue and emphasizes that officers working four day ten hour shifts have problems with fatigue.

Acknowledging that on a 4-4 schedule, individuals have more time to recover from the effects of fatigue, the City asserts that officers are unlikely to use that time for recuperation, and are more likely to take advantage of the time to hold outside employment. The City cites the testimony of Cpt. Kondreck that under the 4-4 work schedule, many officers in Belleville have outside employment. In contrast, the City maintains that there is no link between the negative effects of shift work and either the current work schedule or the

proposed 5-2, 5-3 work schedule. Pointing out that shift work is a necessary part of police work, the City argues that the stresses emphasized by the PBA are stresses of police work rather than the sole result of shift work or the number of hours worked. Accordingly, the City argues that the negative effects of shift work do not constitute a compelling reason to grant the PBA's proposal.

Addressing the training component of the PBA's proposal, the City asserts that the 29 hours training time included in the PBA's proposal are included simply to account for the 29 hours fewer that officers would work each year under the proposed 4-4 work schedule. Citing the testimony of Lt. Link, the City points out that under the Attorney General's guidelines, police officers have two days of mandatory training each year, and the PBA's proposal would simply add one day. (T. 843). Lt. Link also testified that last year, the average City police officer received 53 hours of training, with the City sending officers to 70 schools totaling 541 man days and 4300 hours. (T. 845). Based upon these statistics, the City maintains that its officers are well trained. Again relying upon the testimony of Lt. Link, the City asserts that the loss of the "everybody day" that will result from the 5-2, 5-2, 5-3 work schedule, will not affect its ability to provide adequate training. (T. 845). The City asserts that the 4-4 work schedule will not enhance training and claims that the PBA did not present evidence demonstrating a need for increased training or showing that current training is inadequate. Accordingly, the City contends that the PBA's arguments regarding training do not constitute a compelling reason to grant the PBA's proposal.

The City asserts that current response times are good and the PBA has not demonstrated that response times will improve simply because more officers will be working at certain times of the day. (T. 1083-1084). The City notes that under the PBA's proposal, at times of the day when fewer officers are working, response times could suffer under the PBA's proposal. Since response times are currently at good levels, the City argues that its proposal, which would maintain current staffing levels, is supported, and that the PBA's argument regarding response times is not a compelling reasons to grant its work schedule proposal.

Turning to recruitment, the City maintains that there is no problem with recruitment, and the record does not support the PBA's position that a 4-4 work schedule would lead to improved recruitment. The City asserts that the PBA's use of advertisements from California listing a compressed work schedule, combined with its arguments that Clifton has a poor starting salary and new hires must pay for their uniforms, is not sufficient evidence that the City has recruiting problems or that a 4-4 work schedule would enhance recruitment. Accordingly, the City contends that the PBA's argument regarding recruitment does not constitute a compelling reason to grant the PBA's proposal.

Addressing the PBA's argument that the 4-4 work schedule will improve morale, the City asserts that the low turnover rate among its police officers demonstrates that the Department does not suffer from low morale. The City

notes that during the term of the last contract, from 1998 through 2000, only two officers left the Department for other jobs, one taking a position with the FBI, and another going to a different police department. Although the 4-4 work schedule might improve morale, the City asserts that morale is not a compelling reason to grant the PBA's work schedule proposal.

The City acknowledges that the 4-4 work schedule could result in cost savings to the City, and such cost savings could be beneficial. However, the City emphasizes that its main concern is providing effective police services and protecting its residents. Turning first to the argument that the PBA's proposed work schedule would result in more officers working during municipal court sessions, thus reducing overtime costs, the City points out that under this schedule, officers will work 66 fewer days per year, most of those days being days when court is in session. Given the difficulties of scheduling municipal court proceedings, including the availability of counsel and witnesses, and the 60 day time frame in which matters must be heard, the City asserts that matters may be scheduled whether or not the officer is on duty. For these reasons, the City asserts that the PBA has not demonstrated that the 4-4 work schedule will result in decreased overtime costs. Additionally, the City points to testimony that overtime costs increased in Vineland and Parsippany as a result of the switch to the 4-4 work schedule. The City points out that in Parsippany, the switch to proportional staffing resulted in an increase in holdover overtime during the overnight hours. The City challenges the PBA's argument that officers in A

Platoon would gladly exchange the overtime for additional stability in their lives, noting that A Platoon includes many senior officers who could bid to B or C Platoon if increased stability was of such great importance. For these reasons, the City asserts that the overtime savings suggested by the PBA is speculative and is not a compelling reason to grant the PBA's work schedule proposal.

The City challenges the PBA's assertion that the 4-4 work schedule will result in cost savings resulting from a decrease in the use of sick time. According to the City any such savings is speculative. The City cites the experience in Parsippany where sick time increased from 5.9 days per year to 9.3 days per year under the compressed work schedule, and in Vineland where sick leave usage increased by approximately 40%. Accordingly, the City concludes that sick leave usage will vary from department to department and changes in sick leave usage are probably not based upon work schedule. Additionally, the City notes that it and the PBA agree that it does not have a sick leave usage problem. For these reasons, the City contends that sick leave usage is not a compelling reason to award the PBA's work schedule proposal.

Addressing the issue of the effect of proportional staffing on equipment usage, the City asserts that it does not have a sufficient number of police cars to provide for additional manpower, and a change from a one-man car to two-man cars is a managerial decision. The City calculates that at a cost of \$32,496.05 per vehicle, it would be required to spend \$162,480.25 to provide a sufficient

number of patrol cars for the 4-4 work schedule with proportional staffing. In the alternative, the City would be required to implement a two-man car procedure. However, the City maintains that the one-man car procedure puts more cars on the road, and most calls require only one man, thus allowing the patrol division to run more efficiently.

Accordingly, the City argues that the PBA did not show that its work schedule proposal would result in cost savings to the City. Rather, according to the City, the cost savings is speculative and is not a compelling reason to award the PBA's proposed work schedule. The City argues further that the PBA has failed to meet its burden to show compelling reasons to award its work schedule proposal that would outweigh the City's supervisory concerns.

The City asserts that the PBA has failed to show that comparison to other jurisdictions constitutes a basis for an award of the 4-4 work schedule. Although the PBA submitted a list of over 100 police departments within New Jersey that use a compressed work schedule, the list did not indicate whether the compressed work schedule was a 4-4 work schedule and what percentage of police departments is represented on that list. The City notes that within Passaic County, only five of 16 municipalities have compressed work schedules, West Milford, Hawthorne, Paterson, North Haledon and Bloomingdale. The City calculates that 11 of 16, or 68.75% of Passaic County municipalities do not use a compressed work schedule.

The City contends that the Rutgers Study of the Piscataway Police Department does not apply to Clifton because the circumstances are very different. The City notes that in Piscataway, the prior schedule was a 5-2 schedule with rotating shifts, as compared to Clifton where shifts do not rotate under the current schedule or under its proposed work schedule. Also, the City points out that in Piscataway, the proposed 5-2, 5-3 work schedule was rejected because it would have disrupted squad unity and provided no overlap in coverage. The City emphasizes that under its proposed 5-2, 5-2, 5-3 work schedule there would be a 20 minute overlap for muster time and squad unity would be preserved. In contrast, the City asserts that the 4-4 work schedule would disrupt squad unity. The City also points out that the 5-2, 5-3 work schedule in Piscataway would have provided inconsistent staffing on a daily basis, while the 5-2, 5-3 in Clifton would provide consistent staffing levels. According to the City, the 4-4 work schedule in Piscataway did not require additional supervisors, while the 5-2, 5-3 would have required that supervisors be demoted, and no supervisors would be demoted if the 5-2, 5-3 is implemented in Clifton. The City also notes that in Piscataway, the 4-4 work schedule would increase work hours, which is not the case in Clifton and the Piscataway study endorsed unity of command where one sergeant has officers for whom he is primarily responsible and this is how the command structure works in Clifton.

Addressing the impact of PERC's Scope of Negotiations determination, the City points out that PERC held non-negotiable the proposals that the starting times for each shift as well as the number of officers assigned to each shift would be determined by a Calls for Service Study. The City argues that review of the remainder of PERC's determination leads to the conclusion that the PBA's proposal must be rejected in its entirety. The City emphasizes PERC's finding that "the choice between equal or proportional staffing is an essential management concern" and that the City's determination that equal staffing is preferable to proportional staffing can't be second guessed because it would preclude the City from deploying "the number of police officers it deems necessary to carry out its public safety mission." [PERC Decision at 18, 21]. The City maintains that the PBA's proposal is premised upon the concept of proportional staffing and proportional staffing is inherent in the 4-4 work schedule. Accordingly, the City contends that once the "keystone" of proportional staffing is removed from the PBA's proposal, the 4-4 work schedule proposal does not exist.

The City explains that an award of the a 5-2, 5-3 work schedule with equal staffing of between 14 and 16 officers at all hours in the Patrol Division is possible, but it is not clear that a 4-4 work schedule with equal staffing is a viable work schedule. To that end, the City cites the testimony of Woodbridge Lt. Protz that it is "impossible" to have the same number of officers scheduled to work during all hours of the day under the 4-4 work schedule. The City also notes that

Piscataway Police Officer Zavitoski testified that when Piscataway adopted the 4-4 work schedule, it increased staffing by four officers.

The City also argues that the PBA's work schedule proposal for the Community Policing Division can not be awarded because it would reduce staffing levels below minimum staffing in contravention of PERC's determination. [PERC Decision at 22]. The City reiterates that under the PBA's proposal, staffing in the Community Policing Division would be staffed by fewer officers on Monday, Tuesday, Friday and Saturday, and in particular, only four officers would be scheduled to work at the schools for dismissal on Mondays, where minimum staffing is five officers.

In conclusion, the City asserts that its work schedule proposal is more reasonable than the work schedule proposed by the PBA, and urges that it be awarded.

DISCUSSION

I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria that I judge relevant. In this instance the City and the PBA are in agreement that the criteria set forth in g(1), interest and welfare of the public, g(2) comparisons and g(8) continuity and stability of employment, are the relevant factors in this dispute over the work schedule. Additionally g(4), stipulations of the parties, is relevant

to the extent that the parties have stipulated that wages shall increase by 4.0% in each year of a four year agreement, that those increases have been paid prospectively effective August 1, 2003 and will be paid retroactively upon issuance of this award.

The City and the PBA have expertly articulated their positions on the sole disputed issue of work schedule and have submitted comprehensive evidence and argument on each of the statutory criteria listed above in support of their respective positions. All of the evidence and arguments have been carefully reviewed, considered and weighed.

The factual background concerning the development of the dispute in this proceeding is set forth in the October 30, 2003 PERC decision.

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 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.

(Id. at pp. 2-3).

I first detail the sequence of events concerning the PERC scope of negotiations decision. When the City filed a scope of negotiations petition on September 17, 2002 two arbitration hearings had been held on August 28 and 29, 2002. Arbitration hearings proceeded on October 21, 2002, January 17, February 3 and 24, 2003. On February 28, 2003, PERC determined that it would decide the pending scope of negotiations petition after completion of the interest arbitration hearings, and with the benefit of the record in this proceeding. A final day of arbitration hearing was held on March 20, 2003. The PERC decision issued on October 30, 2003. The decision restrained certain significant elements of the PBA's proposal as well as provided guidelines and standards for evaluating evidence going to the merits of the issue. Because the PBA

presentation in support of the 4-4 work schedule relied extensively on the proportional staffing policy which was restrained by the PERC decision, the PBA's reliance on the staffing and deployment aspects of its proposal cannot serve as a basis for meeting its burden of proof in this proceeding.

The PERC decision held that the PBA's work schedule proposal is mandatorily negotiable "except to the extent it requires that shift times and the number of persons allocated to each shift be determined by Calls For Service Needs Assessment Analysis and to the extent, if any, it would reduce staffing levels for the Community Policing Division below any articulated minimum levels". City of Clifton and PBA Local No. 36, P.E.R.C. No. 2004-20, p. 24-25. In doing so, PERC set the following backdrop regarding the negotiability of work schedules generally, and more specifically police work schedules:

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." (citations omitted) (Ibid. at 16-17).

PERC determined specifically that to the extent that the PBA's proposal requires that shift starting times and staffing levels be set by a calls for service study, the proposal compromises the City's prerogative not to adopt a proportional staffing. Accordingly, to the extent that the PBA's proposal is supported by evidence concerning shift starting times and staffing as set in accordance with the results of a calls for service study, this evidence is beyond the scope of negotiations. (Ibid. at 18-19).

PERC also addressed the remaining components of the PBA's work schedule proposal, providing guidance and establishing a framework for many issues. Noting that additional costs could result from the need to acquire new police vehicles if a 4-4 work schedule were to be implemented, PERC found that the arbitrator could consider the issue of additional costs that could be associated with changing to a 4-4 work schedule. (Ibid. at 19).

The Commission also found that the City's allegation that the 4-4 work schedule would result in overstaffing on any particular shift did not warrant restraining arbitration because overstaffing, unlike understaffing, would not cause a diminution in police services. Distinguishing between gaps in coverage and overstaffing, PERC held that "over staffing does not implicate the same concerns since it arguably provides too much rather than too little police protection." It left that issue for evaluation in this proceeding. While PERC evaluated the City's contention that the PBA's 4-4 work schedule would, at other times, result in understaffing, the Commission found that the PBA's proposal exceeded the City's minimum staffing levels and therefore would not interfere with non-negotiable manning levels. After evaluating the respective arguments of the PBA and the City regarding staffing levels, the Commission found that "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." (*Ibid.* at 21). PERC went on to state that "in evaluating the parties' arguments, the arbitrator cannot second guess the City's governmental policy determination that a relatively equal staffing policy is preferable to a proportional staffing police 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."

Addressing the PBA's 4-3 work schedule proposal for the Community Policing Division, the Commission found it negotiable, notwithstanding the City's

argument that additional staffing would be required, so long as the proposal would not reduce "normal staffing levels for the division below any articulated minimum levels". PERC also found that the impact on the City's finances that could arise from this proposal is subject to consideration in this arbitration proceeding. PERC found the City's argument that this proposal would cause understaffing on certain days would not impact on minimum staffing levels.

PERC addressed the City's arguments that the proposed 4-4 work schedule would impair supervision. PERC acknowledged it had restrained arbitration in the past over "the type of continuity of supervision concerns the City asserts" are present here but found that the City's arguments were based upon supervisory problems it anticipated would occur rather than concrete evidence of problems. Accordingly, PERC directed that the test used in Teaneck be applied in this instance "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 of the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns."

This analysis must proceed within the framework of the PERC decision on negotiability. The PBA proposes a 4 and 4 work schedule with five (5) steady, non-rotational, overlapping shifts. The vast majority of the evidence in support of this proposal requires a Calls for Service Needs Assessment Analysis (CFSNAA)

to determine, among other things, the number of police officers allocated to each shift based upon a percentage of all available working officers equating to the percentage of all calls for police services which occur during a specific ten hour period daily. In addition, the starting times of each shift would be determined by the CFSNAA. Floaters and the number of police officers on each shift would also be dictated by the CFSNAA. The PERC decision restrained the PBA proposal to the extent that shift times and the number of persons allocated to each shift be determined by the CFSNAA. The PERC decision also restrained the PBA's proposal to the extent that staffing levels for the Community Policing Division would fall below any articulated minimum levels. Because the PERC decision limiting the negotiability of the PBA's proposal was rendered after the PBA presented its case-in-chief in support of that proposal and the hearings were closed, the PERC decision substantially eliminates the PBA evidence attempting to show that its proposal would improve the management of the police department and the services it provides as a result of the department's deployment of its work force.

In the abstract, the PBA has made an attractive presentation reflecting that a 4/4 work schedule is an operationally sound schedule providing flexibilities, efficiencies and responsiveness to public safety needs while substantially reducing the annual number of work days for police officers through the creation of a 10.75 hour day. An extension of the work day by almost 3 hours would result in over 60 additional days off beyond negotiated paid time off and regular

days off now received. Testimony from several police officers in many communities attest to the benefits this mutually agreed upon schedule has provided in their towns as well as to the work and welfare of police officers. This includes Officer Seabasty (Township of Woodbridge), Lieutenant Protz (Township of Woodbridge), Officer Zavitoski (Piscataway Township), Detective Lieutenant Bivona (City of Linden), Officer Smith (City of Paterson) and Captain Kondreck (Belleville). Testimony from Clifton Police Officers Brancato, McDermott and Bienkowski all reflect that Clifton's law enforcement operations could also benefit from adopting the 4-4 work schedule because of its ability to match staffing levels with calls for police services. Dozens of charts, graphs, and other documentary evidence support this testimony. But the preponderance of this evidence points to factors that are subject to PERC's restraint because they clearly invoke governmental policy determinations made by the City which this arbitrator has been directed not to "second guess". On this point, the restraint does not contain any conclusion that the staffing proposal is unwise or would not improve the delivery of police services but instead that it intrudes on the City's ability to deploy the number of police officers it deems necessary to carry out its public safety mission.

This dispute does not call for an abstract determination of which schedule best furthers the public safety mission or would improve the management of the police department. Instead, the PBA's proposal must be considered in the context of whether there is sufficient credible negotiable evidence sustaining the

burden to change a long-standing work schedule which in this instance the City proposes to modify in limited fashion to correspond with the terms of the Memorandum of Agreement and the terms of the SOA agreement. The burden for a major work schedule change falls on the party proposing the major work schedule change. In this instance this burden falls mainly on the PBA because its proposal is a major change while the City's is more limited representing minimal change to the existing schedule. As stated by PERC:

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. (Id. at 17).

With this principle in mind, I consider the remaining components of the PBA's and the City's proposals.

The PBA's proposal is to modify the existing 5-2, 5-2, 5-3 work schedule to a 4-4 work schedule for the Patrol Division with an eight day work week comprised of four 10.75 hour workdays followed by four days off. The PBA also proposes that the Patrol Division be staffed in five overlapping steady shifts with no rotation. The PBA also proposes 4-3 work schedule with a 9.5 hour workday for officers working in the Community Policing Division and the Traffic Division. These proposals for major changes to the current 5-2, 5-2, 5-3 work schedule (and the proposed 5-2, 5-3 schedule) raise issues involving continuity of supervision, the impact on the City's current platoon/squad system, additional costs or cost savings to be realized from a 4-4 work schedule and the impact on

police officers' circadian clocks, additional time off and employee morale. This evidence was produced against the backdrop of the extensive evidence supporting staffing the department by proportional staffing which was restrained by the PERC decision. PERC concluded that issues of managerial prerogative in support of a PBA work schedule proposal cannot be relied upon by an interest arbitrator but Union evidence rebutting an employer's assertion may be considered. The record contains assertions, but no persuasive evidence, reflecting how the City's equal staffing policy could be accommodated by adoption of the 4-4 schedule.

The PBA asserts that its proposed 4-4 work schedule can accommodate continuity of supervision and lines of authority. The PBA offers the following example of how supervision and lines of authority could be coordinated under a 4-4 work schedule compared to the current work schedule:

Supervision / Lines of Authority Easily Coordinated			
	4-4		Current
B-1	0400-1445	B	0700-1500
B-2	0700-1745	B	0745-1545
C-1	1730-0415	C	1500-2300
C-2	1730-0415	C	1545-2345
A	2030-0715	A	2300-0700
		A	2345-0745
	10.75 hour day		8 hour work day

Addressing the issue of unity of command, the PBA argues that, while a police officer may work for as many as three different sergeants during the

course of a week, when two patrol lieutenants are factored into the supervision equation, there are many combinations of people who are working together or supervising others. The PBA argues further that the schedule it proposes will not add to or decrease the unity of command, and the City will be free to schedule as it sees fit.

The City asserts that the best means of effectively supervising its rank and file police officers is through the present platoon/squad structure which would effectively be eliminated if the PBA proposal were to be adopted. According to the City, its proposed 5-2, 5-3 work schedule, police officers would continue to be supervised by the same sergeants and lieutenants consistent with its policy determination not to fragment supervision of its rank and file. In comparison, the City asserts that the PBA's proposal would serve to eliminate the platoon/squad structure and interfere with its management prerogative to determine the best means of providing effective supervision. On this point, the City refers to the testimony of Lt. Protz that, under a 4-4 work schedule, it is "impossible" to maintain equal staffing, which the City has determined to be the best means for staffing the department and supervising its officers.

The City cites Chief Ferreri's testimony as to the current functioning of the platoon/squad structure:

The A Platoon shift 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 shift 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 shift 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 patrol cars are not changing at the same time. Currently there are 21 patrolmen in A Platoon, 22 in B Platoon and 23 in C Platoon. Under the 5/2, 5/2, 5/3 schedule, each day there are 14 patrolmen scheduled to work for the A Platoon, 14 or 15 scheduled to work for the B Platoon and 15 or 16 scheduled to work for the C Platoon. The exception to this staffing is the "everybody day" which is a function of the 5/2, 5/2, 5/3 schedule. On an "everybody day" all officers in the Patrol Division are scheduled to work....

The City contends that the PBA's proposal would completely restructure daily staffing levels in the Patrol Department, create a fundamental shift in the way the department is staffed, and overhaul the existing platoon/squad structure. In contrast, the City asserts that its proposal to change the work schedule to 5-2, 5-3 with an 8 hour and 20 minute work day would not change staffing levels in the Patrol Division and would keep the current platoon/squad structure intact. The additional 20 minutes per day would be used at the beginning of the shift for muster time while creating an additional six days off annually for each police officer representing an improvement in their work and welfare while preserving the City's policy determinations.

The City and the PBA disagree on the impact of the proposed 4-4 schedule on supervisory/rank and file relationships and unity of command issues. The City argues strenuously that the best means of providing effective supervision to its rank and file officers is the platoon/squad structure where the police officers are continually supervised by the three sergeants and two lieutenants in their platoon. The City contends that any effort to modify this

platoon/squad structure would interfere with its managerial prerogative to determine the best means of providing effective police supervision. The City asserts that since its superior officers now work a 5-2, 5-3 work schedule, under the PBA's proposed 4-4 work schedule, supervision would be impaired by having rank and file police officers working a schedule that is significantly different from their supervisors. Citing the testimony of Chief Ferreri, the City explains that "the Squad Sergeant in A Platoon Squad 1 would always be scheduled to supervise the patrolmen in A Platoon Squad 1 and would also supervise patrolmen in A Platoon Squads 2 and 3 at times." The City also cites the testimony of Sgt. Dennis that he always supervised the officers in his squad as well as the officers of either B Platoon Squad 1 or B Platoon Squad 2. The City emphasizes that under the present platoon/squad structure, the sergeant within each squad is the immediate supervisor for all patrol officers in that squad, and under unity of command principles, each subordinate officer is accountable to one immediate supervisor.

The City argues that the PBA's proposed work schedule would impair supervision and the unity of command because patrol officers and superior officers would not be scheduled to work with their squads every day. The City calculates that under the PBA's proposal, during a 120 day schedule, a patrol officer would work 60 days, but would work with his superior officers on only 41 days during that period. In contrast, the City calculates that under its work schedule proposal, a patrol officer would work with his immediate supervisor

100% of the time. The City asserts that a superior officer should have as much contact as possible with subordinate officers because, as stated by Sgt. Dennis, "you want to be able to know your officers that you're working with in division to supervise" and the 4-4 schedule is "going to make it more difficult."

The City asserts further that under the PBA's proposal supervision would be disrupted on a daily basis. The City gave an example where a patrolman in A Platoon would be supervised by superior officers in A, B and C Platoons during the course of a day, while patrolmen in C-2 would be supervised by superior officers in A and C Platoons. According to the City, even if start times were adjusted, by virtue of patrolmen working longer days than superior officers, patrolmen would be supervised by at least two different platoon superiors during the course of a shift. The City maintains that patrolmen will be supervised less often by their immediate supervisors, thereby impacting on accountability, evaluations, follow-up, implementation of discipline, administrative issues, and would require adjustment to varied management styles. Citing the testimony of Vineland Police Chief Brunetta, the City points to specific problems with supervision that occurred under the 4-4 work schedule in Vineland. In one situation, a patrol officer was investigating a burglary and before he could complete his work, the supervising sergeant left and the sergeant who came on duty provided different orders. The City emphasizes Chief Brunetta's testimony that the quality of reports decreased, the delay in correcting errors in reports increased and supervisors did not take responsibility for officers who were not in

their squad, even though they were supervising the officers. Citing the testimony of Detective Lieutenant Berdnik, the City asserts further that implementation of the 4-4 work schedule as proposed by the PBA would delay internal affairs investigations as required by the Attorney General's early warning system, which is the responsibility of the immediate supervisor.

The City emphasizes that under its proposal both superior officers and patrolmen would both work a 5-2, 5-3 work schedule and would maintain team integrity and unity of command within the Patrol Division with every employee under the direct command of only one supervisor. Acknowledging that under its proposal, as now, a patrolman would be supervised by two lieutenants and two sergeants within his Platoon, the City points out that a patrolman is always scheduled with the same squad sergeant. The City explains that the 24-hour, seven day a week operation of the police department, as well as the chain of command necessary for police work requires additional supervision and multiple squads within each Platoon satisfy staffing requirements of a daily basis. The City points out that within the confines of these requirements, it provides unity of command by scheduling a patrolman with the same sergeant consistently.

The PBA disputes the City's arguments on the issues of supervision and unity of command. The PBA cites submitted testimony on the contact between superior officers and rank and file officers in other departments who now work a 4-4 work schedule. Officer Seabasty testified that in Woodbridge, he sees his

superior officers at the beginning and end of each shift and most dispatch is done by computer. Lt. Protz, a Woodbridge superior officer, testified that he views officers working with different superior officers as an asset rather than a liability.

He explained that with overlapping supervision, a Woodbridge officer can work with six different sergeants who provide supervision at various times during the day. Citing the experience in Woodbridge, the PBA argues that a 4-4 work schedule can accommodate coordination of supervision and lines of authority and allow the department to assign manpower to meet specific needs. Officer Zavitoski testified that under the 4-4 work schedule in Piscataway, he works with cross supervision. Lt. Bivona testified that in Linden, efforts are underway to change shift start times and supervisory shifts to break the unity of command to allow for cross-supervision. Additionally, the PBA points to the testimony of Clifton Sergeant Dennis that under the 5-2, 5-2, 5-3 schedule, cross supervision and a cross rating system has been an asset. According to Sgt. Davis, each year he evaluates three different squads of subordinate officers with a goal to increase objectivity and uniformity.

In assessing the issue of supervision, I observe the PERC directive to apply Teaneck. The directive to not award the proposal absent a finding that the different work schedules will not impair supervision weighs in this instance against adopting the PBA's proposal. The record reflects that there is a potential for the impairment of supervision by having rank and file work a radically different work schedule than their supervisors. Under the PBA proposal, a police officer

might directly report to several supervisors rather than one as has been the practice. PERC points out that it has restrained arbitration in similar instances but only where concrete rather than anticipated problems appeared. The evidence submitted by the PBA that the 4-4 schedule has worked in other communities without an impairment of supervision has been considered, especially in light of the problems the City points to which are anticipated rather than concrete. To submit concrete evidence of problems is a burden which the City cannot meet without adopting the 4-4 schedule and, similarly, the PBA cannot meet a burden of proving that a restructuring of supervisory reporting requirements will not impair supervision. On balance, the evidence pointing to potential interference with existing supervisor/rank and file relationships outweighs the potential that such relationships will not be impaired.

I am not persuaded by the PBA's argument that the City may not contend that an award adopting the PBA's proposal compels a conflict in work schedules because the superior officers are currently working a work schedule which conflicts with the rank and file work schedule now worked by the PBA. Given the long history of identical work schedules, the ratification of the Memorandum of Agreement by the SOA accompanied by the rejection of the Memorandum of Agreement by the PBA compels this conflict stemming from the inevitable consequences of the City's requirement to implement the SOA agreement. Thus, the conflict does not arise from a unilateral decision by the City to create a

conflict in work schedules but rather from a legal obligation to reduce a negotiated agreement with the SOA to writing and to execute its terms.

I next turn to the PBA's proposal to change the work schedule of the Community Policing Division. The division currently works a 5-2 work schedule of two shifts from 8:00 a.m. to 4:00 p.m. and 2:00 p.m. to 10:00 p.m. when school is in session or 3:00 p.m. to 11:00 p.m. when school is not in session. The City asserts that the PBA's proposal for a 4-3 work schedule of 9.5 hour shifts would undermine its ability to best provide police coverage at high school dismissal. According to the City, on Monday, Tuesday, Friday and Saturday, the Division would be staffed with fewer officers than the City views as optimal. In particular, on Mondays, the number of officers on duty would drop from seven under a 5/2 work schedule to four under a 4/3 work schedule, below the five officers that Officer Brancato acknowledged were necessary for school dismissal. The PBA's proposal would alter the staffing levels from what currently exists. The City's chart showing the impact of the change on staffing is uncontradicted:

COMMUNITY POLICING OFFICERS SCHEDULED FOR DUTY
UNDER 5/2 AND 4/3 SCHEDULES

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

The PBA clearly results in fewer days of work, thus furthering the work and welfare of the officers assigned to community policing. But the positive aspect of the proposal must also be measured against the impacts the proposal has on current operations which the City seeks to maintain. These impacts include the reduction in personnel assigned to schools on Mondays to a level below that now required to cover school demands as well as understaffing on Tuesday, Friday and Saturday. Theoretically, these staffing concerns could be remedied by the reassignment or adding of personnel but there is no evidence reflecting how this could be accomplished.

The PBA also seeks a 4-3 work schedule with a 9.5 hour work day in the Traffic Division while the City seeks to maintain the existing work schedule. The Traffic Division enforces motor vehicle laws, provides education on traffic matters, writes motor vehicle summonses, assists with school traffic and assists the Patrol Division. The Traffic Division works a 5-2 schedule with an 8 hour work day from 7:30 a.m. to 3:30 p.m., Monday through Friday. There are six rank and file officers within the Traffic Division. The PBA proposes to change the current work schedule in the Traffic Division to a 4-3 work schedule, with a 9.5 hour shift that runs from 7:30 a.m. to 5:00 p.m.

The City relies on the testimony of Lt. Goldstein to support its position that the PBA's proposal would adversely affect the current work schedule which it

believes is the best means of staffing the department. According to Lt. Goldstein, the application of the 4-3 work schedule to the Traffic Division would reduce manpower by 50% to three officers, the minimum staffing level on Mondays and Fridays. Lt. Goldstein testified that by having only three regularly scheduled officers would leave no scheduling flexibility to accommodate illness and vacation and that there would be a negative impact on traffic officers by not being able to schedule time off on Mondays and Fridays under the proposed schedule. Lt. Goldstein also testified that the reduction in staffing would interfere with self-initiated activities of the officers.

The PBA counters Lt. Goldstein's testimony with that of Police Officer McDermott that the 4-3 schedule would create time allowing the traffic officers to cover school traffic posts normally worked by school crossing guards except when they are absent. The schedule would also minimize the need for traffic officers from being relieved by community policing officers.

The benefits of maintaining the current schedule or changing to the 4-3 schedule appear to be in balance. There is no reason to accept the testimony of Lt. Goldstein over Officer McDermott in that each testimony is credible and logical. But, in this instance, there is a burden to meet to award change and this burden has not been met. It has not been established that the decrease in flexibility caused by not having the division fully staffed in accordance with the

City's desire is outweighed by the work and welfare improvements caused by the longer workday coupled with more days off.

An additional issue in the merits of the proposal concerns financial impact. The PBA asserts that a 4-4 work schedule would save the City money by decreasing overtime costs and reducing the use of sick time. In support, the PBA cited the testimony of Officer Seabasty, Officer Zavitoski, Cpt. Kondrek, and Det. Smith that overtime costs have decreased as a result of implementing the 4-4 work schedule in Woodbridge, Piscataway, Belleville, and Paterson respectively.

The City acknowledges that a 4-4 work schedule could save money, but asserts that any such savings are speculative. First, the City points out that the additional number of officers working during municipal court hours would be offset by the fact that officers would work 66 fewer days per year, most of those days being when court is in session, resulting in a potential to increase scheduling difficulties and overtime costs thus affecting savings. The City asserts that if proportional scheduling is used, holdover scheduling will be increased during the overnight hours. The City also points out that since its police cannot work more than 12 hours, the number of officers called in on an off day would increase. Additionally, the City asserts that the claimed possibility that the 4-4 work schedule will lead to a decrease in the use of sick time is purely

speculative and that sick leave usage increased under the 4-4 schedule in Parsippany and Vineland.

Although the concept of proportional staffing versus equivalent staffing has been restrained, the City calculates that it would be required to spend \$162,480.25 to purchase five additional patrol cars in order to have enough cars with proportional staffing. The PBA responds that the department could implement a two-man car procedure but the City has indicated this would result in inefficiencies and interfere with how it wishes to deploy its police officers.

The parties' arguments regarding the cost aspects of the PBA's proposal are speculative and not determinative. Relying upon experience in other police departments, the PBA asserts that the 4-4 schedule would provide greater flexibility leading to decreased overtime costs and reduced use of sick leave. The City cites increased costs in other police departments and disputes the extent of savings, if any, to be realized from a potential reduced use of overtime and sick leave. Although some costs may increase and others may decrease, the relative costs associated with the 4-4 work schedule, though relevant, deserves less weight than the impact of the work schedule on employees' work and welfare and the impact on the employer's discretion on how to deploy its police force.

The PBA proffered considerable testimony from officers working in parallel law enforcement agencies who work or have worked with a 4-4 work schedule. Woodbridge Police Officer Seabasty, Woodbridge Police Lieutenant Protz, and Piscataway Police Officer Zavitoski all testified to the improved flexibility in shift scheduling, including the ability to schedule non-rotational shifts, under the 4-4 work schedule. Their testimony concludes that a harmony exists between scheduling under the 4-4 with dramatic improvements in morale caused by fewer work days. Officer Zavitoski testified that the increased flexibility afforded by the 4-4 work schedule has allowed Piscataway to absorb significant increases in calls for service without a similar increase in manpower. Additionally, Officer Zavitoski testified as to the morale benefits of a 4-4 steady shift versus a 5-2 rotational shift:

...[E]ven though you work a steady shift you have a longer time off, the four days off. If you work a steady five/two midnights very few people, I know even my own experience, when you work that shift you can't in two days, you can revert back to working days and your personal life with your wife, children and family and then go right back to midnights again. Almost in a constant state of jetlag.

This way with four days off there's a longer adjustment period and you can adjust more and be more productive. (T. 91-92).

The PBA emphasized the desirability of non-rotational shifts, pointing out the deleterious effects of shift work. Specifically, the PBA points out that alertness and speed decrease while errors and accidents increase, especially between 2:00 a.m. and 5:00 a.m. The PBA points out that the circadian clock, which regulates body rhythms and temperature, sleeping patterns results in shift

workers sleeping approximately two hours less per day. The PBA also cites a 1997 study by the U. S. Center for Disease Control, which stated that:

Researchers suggest that only 2 to 4 nights in a row should be worked before a couple of days off. This keeps circadian rhythms from being overly disturbed and limits sleep loss.

Other direct effects of shift work cited by the PBA include a reduced quality of life, chronic sleep deprivation, cumulative fatigue, "microsleeps", and higher death rates. Health effects include being sick for longer periods of time, impact on the effectiveness of medication, increased depression, increased use of alcohol and drugs, and increased risk of heart disease. Additionally, the evidence it cites shows that night and weekend work has a negative impact on interpersonal relationships and domestic and social life.

The City emphasizes that much of the evidence supplied by the PBA is irrelevant because Clifton Police do not currently work rotating shifts and would continue to work steady shifts if the City's proposed work schedule is awarded. Additionally, the City points out that the negative effects of shift work apply to police work generally and can not be eliminated by adopting a 4-4 work schedule. To the contrary, the City calculates that under the PBA's proposal, 36 officers would be subject to working in the early morning hours after midnight, while under its proposal, only 21 officers would work during those hours. Acknowledging Officer McDermott's testimony that many of the 36 officers working in the early morning hours would only touch the hours rather than span

those hours, the City asserts that working any portion of those hours can be disruptive of sleep patterns. Citing Cpt. Rowan's testimony, the City also asserts that working a shorter 8 hour, and 20 minute shift will generate less fatigue than working four consecutive shifts of 10 hours and 45 minutes each.

The extensive evidence of the harmful effects of shift work submitted by the PBA effectively emphasizes the difficulties inherent in police work. Since, at present Clifton police work steady shifts and neither the PBA nor the City propose rotating shifts, the positive impact that could be realized from a 4-4 work schedule in terms of minimizing the effects of shift work is limited. A 4-4 work schedule would provide more recovery time off between shifts, but the positive impact on the health of police officers to be realized from that additional time off is speculative and not directly related to non-rotation inasmuch as that would not change. The City also points out that there is uncertainty in how much of the additional time would be used by police officers for rest versus other activities.

The PBA asserts that the 4-4 work schedule would improve the morale of police officers. This is directly related to the additional 60 plus regular days off per year resulting from an almost three hour increase in the work day. In support of this contention, the PBA cites several studies finding that a 4-4 shift, which increases the number of hours per shift, but decreases the number of days worked per years, has a significant positive effect on employees' personal lives and morale. Specifically, the PBA cites Dr. Edward Higgins from Comprehensive

Psychological Services who wrote about the psychological implications of implementing a 4-4 work schedule as follows:

Although an officer's primary commitment is to law enforcement, one cannot dismiss the other aspects of an officers life including outside interest and activities which will be affected by a new scheduling procedure. He can now plan with a greater sense of consistency whether it is to attend school, coordinate plans with his wife and/or children, or take on a part time job. The new work schedule is likely to have a definite and positive impact not only on the officer, but also on his family and on the agency for which he works.

Similarly, the PBA cites W. L. Booth's statements regarding the impact of a modified work schedule on employee morale:

One of the more obvious benefits of changing work schedules can be that of improving employee morale. Improved employee morale means greater employee satisfaction and organizational interest, which in turn can lead to greater quantity and quality of work, less employee sick time taken, lower turnover rates and more.

* * * * *

At first glance, this schedule (4-4) appears to favor the employees at the expense of the town, despite the increased coverage and more effective deployment because the number of days worked is reduced. However, the 4-4 represents the most economical of the various schedules in terms of the hours worked each year. Employees gain an extra 65 days off each year; in return for this, each working day they put in almost eleven hours instead of eight. The town gains additional patrol coverage when it is most needed, without additional hires.

The PBA maintains that the 5-2, 5-3 work schedule and the 5-2, 5-2, 5-3 work schedule do not present a gain for the department and that both are more costly to the City. Based upon the Rutgers School of Criminal Justice Study of

the Piscataway Police Department Work Schedules, the PBA cites the following problems with the existing work schedule as well as the 5-2, 5-3 work schedule:

-
- ~~– Retains all the harmful effects of the 5-day, 8-hour shift~~
 - Patrol coverage would remain at present levels
 - No shift overlaps
 - Continues poor timing of shift changes
 - Fails to address Municipal Court of End of Shift Overtime
 - Fails to address Calls for Service or School Traffic concerns
 - No improvement in Training
 - No improvement to Morale

In contrast, the City cites the long experience it has with the current work schedule. It points to record evidence that the City has a low turnover rate among its police officers and asserts that there is no morale problem in need of correction. The City notes that over the term of the last contract, from 1998 through 2000, only two officers left the Department for other jobs, with one taking a position with the FBI and another going to work for a different police department. Indeed, given the current low turnover rate, it is unlikely that modification of the work schedule to either a 4-4 or a 5-2, 5-3 work schedule would have significant impact on the continuity and stability of employment.

Despite the low turnover rate among the City's police officers, a 4-4 work schedule that would provide over 60 additional days off is likely, on its face, to improve morale among police officers. The PBA has met its burden in this respect. Zavitoski's testimony is most vivid and credible on this subject. However, in the absence of evidence that the longstanding work schedule has

created morale problems or has harmed the continuity and stability of employment of police officers, the positive impact on the work and welfare of police officers is not sufficient justification for the proposed major work schedule change, especially in light of the inability of the PBA to match its proposal with the operational needs desired by the City.

Addressing the g(2) comparisons, the PBA points to 120 municipalities in New Jersey where police work under a compressed work schedule. However, the City points out that it was unclear how many of those municipalities used a 4-4 work schedule. According to the City's presentation, only five of 16 municipalities in Passaic County have compressed work schedules, and that 11 of 16, or 68.75% do not. I give more weight to work schedules within the County as a more relevant comparison. Assuming that the comparison criterion is entitled to substantial weight, the evidence does not support the proposed change based upon the evidence on comparisons.

The PBA proposes that bureau and administrative personnel work a 5-2, 5-3 work schedule with an 8 hour and 20 minute day. The City proposes that bureau and administrative employees shall have work equivalent to a 5-2, 5-3 work schedule with "adjustments to equalize the annual work obligation." In accordance with the parties' agreement on the work schedule for these employees, I award the City's proposal.

In the absence of an award adopting the PBA's work schedule proposal, I do not award its proposals that vacation time be pro-rated based upon the new work schedule, and that 3 training days, instead of the two currently required by law, be forfeited in order to make up the difference in hours between the current work schedule and the new work schedule.

Another component of the PBA's work schedule proposal is that "shift assignments are to be individually chosen according to seniority." Article XXXV, Section C of the parties' current agreement provides that "[p]reference for shifts shall be on a seniority basis subject to the needs of the Department and approval of the Chief of Police." The record does not reflect specific justification for the modification of this provision and no change is awarded.

Based upon the credible evidence in the in the record which I can consider when awarding a major work schedule change, I conclude that the burden has not been met to award the PBA's proposed change. In doing so, I do not necessarily reject the PBA's main thesis, namely that the 4-4 schedule could result in more effective deployment of its police force and/or improve the delivery of police services. The PBA has shown both in the abstract and in certain other departments, that the schedule works well in certain jurisdictions and has improved employee morale. However, in this instance, the record evidence supporting the change in this specific instance is not of sufficient weight or justification to award the change. As previously stated, the PBA's presentation

relied extensively on evidence which was subsequently restrained by PERC. A record developed within the parameters of that decision would allow for further consideration of this proposal.

The department has had continuity and stability of employment, the proposed work schedule is in the minority within the County and perceived improvements in how the City manages its police force is a factor which PERC precludes as a justification for the award of a union-proposed work schedule. Each party has also advanced the public interest criterion in support of each proposal. Given the revised work schedule worked by the SOA, the public interest would be served by the adoption of the work schedule proposed by the City and, for future purposes, that the parties review the experience under that schedule after application of that schedule to all officers.

The position of the City to adopt the work schedule contained in the Memorandum of Agreement and now worked by the SOA is adopted as a reasonable determination of this issue. The PBA has asserted that the City provided no evidentiary support for its proposal and merely challenged the PBA's proposal under all of the relevant circumstances, this argument is not persuasive. The City's proposed work schedule change is a limited modification to the longstanding work schedule presently being worked by the PBA. The 5-2, 5-3 work schedule will provide an additional six days off annually while requiring an additional twenty minutes per work day. It will remain non-rotational. It will

conform the PBA's work schedule to that worked by the SOA and will retain the existing platoon/squad structure of the department.

Accordingly, and based upon all of the above, I respectfully enter the following award.

AWARD

1. All proposals by the City and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been voluntarily agreed to and/or modified by the terms of this Award.

2. **Duration**

The term of the existing agreement shall be modified to extend through December 31, 2004.

3. **Salary**

The existing salary schedule shall be adjusted by the following percentages effective and retroactive to the effective dates set forth below:

4.0% effective January 1, 2001
4.0% effective January 1, 2002
4.0% effective January 1, 2003
4.0% effective January 1, 2004

All retroactive pay increases awarded herein and not yet paid shall be paid to police officers.

4. Work Schedule


As soon as is possible, after the Award of the arbitrator herein is entered, a new work schedule for all employees in the bargaining unit shall be implemented. ~~The work schedule shall be five (5) days of work, followed by 2 days off, followed by five (5) days of work, followed by 3 days off, and so on.~~ This is commonly referred to as the "5-2/5-3" work schedule. Each work day shall be 8 hours and 20 minutes in duration which shall include appropriate meal and rest periods per prior practice. The "5-2/5-3" work schedule shall be applicable to all patrol personnel. All other personnel, including but not limited to Traffic, Detective Bureau, Administrative Services and Community Policing, shall have an equivalent amount of work provided annually, accomplished with individual unit adjustments to equalize the annual work obligation. This change shall be accomplished by adding appropriate language to the collective negotiations agreement in Article XXXV thereof.

Dated: July 19, 2004
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 19th day of July, 2004, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/13/2008