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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201–2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Borough of Chambersburg, Petitioner v.
International Association of Firefighters, Local 1813, Respondent
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Civil Action No. 2013-4003

HEADNOTES

Review of Interest Arbitration Award

1. The Court of Common Pleas has original jurisdiction over appeals from interest arbitration awards issued by an arbitration panel under Act 111.

2. Generally, an arbitration award issued by a board of arbitrators pursuant to Act 111 is final and non-appealable; however, the courts have recognized narrow exceptions whereby the Court may review the arbitration awards.

3. The "narrow certiorari" scope of review permits the Court to inquire into only four areas: (1) whether an Act 111 panel lacked jurisdiction; (2) the regularity of the proceedings; (3) whether the panel exceeded its authority; or (4) constitutional questions.

4. A plenary standard of review should govern the preliminary determination of whether the issue involved implicates one of the four areas of inquiry encompassed by narrow certiorari, thus allowing for non-deferential review.

5. The arbitration panel's determination of staffing and shift schedules invokes the narrow certiorari regarding whether the Panel exceeded authority under Section 217.1 to make such a determination, i.e., whether staffing and shift schedules concerns terms and conditions of the firefighters' employment.

6. In the context of reviewing whether an arbitration panel has exceeded its authority under the narrow certiorari test the court may review whether the award involved relates to terms and conditions of employment or managerial prerogatives, or whether it requires performance of an illegal act.

7. In cases involving challenges to an arbitration panel's authority in issuing an interest arbitration award under Act 111 we must initially determine whether the disputed provision relates to a mandatory subject of collective bargaining under Act 111, i.e., whether the issue is rationally related to the terms and conditions of employment; if the issue is rationally related the Court must then determine whether the provision also implicates the non-bargainable managerial prerogatives of a public employer; if the provision makes such an implication the Court must decide whether the award unduly infringes upon the exercise of those managerial responsibilities; if the award does not make an infringement then the award is within the scope of bargainable issues under Act 111, it falls within the arbitration panel's powers, and is confirmable; however, if the award does infringe upon the exercise of managerial responsibilities then the award concerns a managerial prerogative that lies beyond the scope of collective bargaining, reflects an excess of the board's Act 111 powers, and is voidable.

8. The issue of the minimum amount of firefighters on duty per shift is clearly within the purview of safety considerations for employees of a fire department and is thus rationally related to the terms and conditions of employment.

9. Provision 9 as it relates to staffing implicates the non-bargainable managerial prerogatives of the Borough.

10. Collective bargaining over the minimum amount of firefighters on duty per shift does not unduly infringe upon the the Borough's essential managerial responsibilities, as it is rationally related to the safety of the firefighters and does not directly or indirectly dictate the overall size of a fire department and thus the issuance of Provision 9 as it relates to staffing was within the powers of the arbitration panel.

11. Pursuant to Act 111 firemen indisputably "have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits . . ." 43 P.S. § 217.1.

12. Shift schedule assignments such as those in Provision 9 shift schedule assignments relate closely to hours and are therefore rationally related to terms and conditions of employment.

13. Shift schedule assignments implicate managerial prerogatives, however, they do not unduly infringe upon the exercise of the Borough's managerial responsibilities and therefore the arbitration panel did not exceed its authority in issuing Provision 9 as it relates to shift schedules.

Appearances:

Scott T. Wyland, Esq., *Counsel for Borough of Chambersburg*

Richard G. Poulson, Esq., *Counsel for International Association of Firefighters, Local 1813*

OPINION

Before Herman, PJ.

This case arises out of a petition for review of an interest arbitration award resulting from the inability of the Borough of Chambersburg ("the Borough" or "Petitioner") and the International Association of Firefighters, Local 1813 ("Respondent") to reach an agreement on the terms of a successor collective bargaining agreement. The Borough seeks judicial review of Provision 9 of the Board of Arbitrators' ("the Panel") August 29, 2013[1] Arbitration Opinion and Award which maintains the status quo for the currently existing shift schedules and staffing requirements. Based upon our discussion below the Arbitration Award will be confirmed.

FACTUAL AND PROCEDURAL HISTORY

The Borough is a municipal corporation organized and existing under the laws of the Commonwealth. Respondent is the exclusive bargaining agent for all career firefighters who work in the Borough. The

1 The Arbitration Award is dated August 29, 2013, however it did not become effective until a majority of the Panel executed the agreement and provided the Award to the parties which took place on September 9, 2013.

employer-employee relationship between the Borough, its Emergency Services Department, and Respondent is governed by a collective bargaining agreement ("CBA") pursuant to 43 P.S. §§ 217.1-217.10 ("Act 111"). The parties' previous CBA was set to expire at the end of the first full pay period of January 2012. Despite negotiations between the parties beginning in June 2011 for a successor CBA the parties were unable to reach an agreement. The parties proceeded to an interest arbitration as prescribed in 43 P.S. § 217.4. The Panel consisted of an arbitrator for each party and an impartial chairman. On August 29, 2013 the Panel issued an Arbitration Award. The specific provision which is at issue here is Provision 9 which provides:

> 9. Section 28 Staffing
>
> In accordance with the [Arbitration] Opinion above, the current staffing and shift schedules of the Borough's firefighters shall be maintained and the status quo not disturbed for the duration of this agreement.

(Pet'r Borough of Chambersburg's Br. in Supp. of Pet. for Review Ex. A).[2] The Panel also issued an Arbitration Opinion addressing Provision 9 however it did not shed any light on the reasons for its decision. Petitioner filed its Petition for Review of the Arbitration Award on October 3, 2013 arguing that the Panel exceeded its statutorily granted powers in issuing Provision 9. Respondent filed an Answer on October 23, 2013. Both parties provided the Court with a Reproduced Record. Upon agreement by the parties the Court will make a decision based on written argument submitted by the parties. The Court is in receipt of briefs from the parties and this matter is now ready for a decision.

DISCUSSION

The Borough petitions this Court for review of Provision 9 of the Arbitration Award issued by the Panel in regards to the CBA between the Borough and Respondent. This Court has "jurisdiction of petitions for review of an award of arbitrators appointed in conformity with statute to arbitrate a dispute between a government agency, except a Commonwealth agency, and an employee of such agency." 42 Pa. C.S. § 933(b). The Borough is considered a political subdivision. Pursuant to 42 Pa. C.S. § 102 a political subdivision is a "government agency." Therefore, we have original jurisdiction over the appeal of the Arbitration Award issued by the Panel pursuant to Act 111.

Generally, an arbitration award issued by a board of arbitrators pursuant to Act 111 is final and non-appealable.

2 Hereinafter "Borough's Br."

> The determination of the majority of the board of arbitration thus established shall be final on the issue or issues in dispute and shall be binding upon the public employer and the policemen or firemen involved. Such determination shall be in writing and a copy thereof shall be forwarded to both parties to the dispute. *No appeal therefrom shall be allowed to any court.*

43 P.S. § 217.7(a) (emphasis added). The Supreme Court "has described the limitation upon judicial review as a "linchpin" of [Act 111], which further[s] the legislative intent of preventing Act 111 arbitration awards from bogging down in litigation. " Town of McCandless v. McCandless Police Officers Ass'n, 901 A.2d 991, 998 (Pa. 2006). Although 43 P.S. § 217.7 specifically prohibits appeals of arbitration awards in the context of Act 111, the courts have recognized narrow exceptions whereby the Court may review the arbitration awards. This "narrow certiorari" scope of review permits the Court to inquire into only four areas: (1) whether an Act 111 panel lacked jurisdiction; (2) the regularity of the proceedings; (3) whether the panel exceeded its authority; or (4) constitutional questions. McCandless, 901 A.2d at 999.

The Court must first make a preliminary determination whether the issue involved in the Act 111 award invokes one of the four areas of inquiry. Id. at 1001. "Generally speaking, a plenary standard of review should govern the preliminary determination of whether the issue involved implicates one of the four areas of inquiry encompassed by narrow certiorari, thus allowing for non-deferential review." Id. "We are bound, however, by all determinations of fact and issues of law not encompassed by the standard of narrow certiorari, even if incorrect." Id. Only if we first determine that narrow certiorari is implicated, may we then examine the viability of the issued sanction." City of Philadelphia v. Fraternal Order of Police Lodge No. 5 (Breary), 985 A.2d 1259, 1266 (Pa. 2009).

Regarding our threshold inquiry of whether the issue involved invokes the narrow certiorari we find that it does indeed fall within the question of whether the panel exceeded its authority. In its Petition for Review the Borough argues that in issuing Provision 9, which pertains to staffing and shift schedules, the Panel exceeded its authority. The Borough argues that Provision 9 unlawfully precludes the Borough from decreasing its staffing levels and shift schedules within its Department until the expiration of the CBA. Section 217.1 guides us in our preliminary determination.

> Police or firemen . . . have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation,

> hours, working conditions, retirement, pensions and other benefits . . .

43 P.S. § 217.1. This section delineates the issues upon which firemen have the right to collectively bargain for. Therefore, the Panel's determination of staffing and shift schedules invokes the narrow certiorari regarding whether the Panel had authority under Section 217.1 to make such a determination, i.e., whether staffing and shift schedules concerns "terms and conditions of [the firefighters'] employment." In making this determination we need not rely on arbitral fact-finding or issues of law not encompassed by the standard of narrow certiorari. We specifically note that the Borough's Petition for Review does not challenge the Panel's jurisdiction to decide the issue. The difference between a challenge to an arbitration board's jurisdiction and excess of authority has not always been clear-cut. However our Supreme Court has recently clearly defined the parameters of the two distinct areas of the narrow certiorari test. City of Philadelphia v. Int'l Ass'n of Firefighters, Local 22, 999 A.2d 555, 564 (Pa. 2010). A challenge to board's jurisdiction relates to an assertion that the board considered a controversy outside the scope of Section 217.4(a) of Act 111 which provides that in cases of a dispute between a public employer and its firemen employees, if the parties reach an impasse and stalemate in their attempt to collectively bargain either either party may request a board of arbitration. Id. The excess of powers prong on the other hand "focuses upon the particular action an arbitration board took in resolving an Act 111 dispute and asks whether the action was authorized." Id. The Borough's challenge to the Panel's arbitration award fall squarely within the latter as it relates to the Panel's Arbitration Award. Accordingly, we find that the issue before the Court invokes the narrow certiorari review on the specific issue of whether the Panel exceeded its authority in issuing Provision 9.

In the context of reviewing whether an arbitration panel has exceeded its authority under the narrow certiorari test the Supreme Court has permitted review for determinations of whether the award involved relates to terms and conditions of employment or managerial prerogatives, or whether it requires performance of an illegal act. Local 22, 999 A.2d at 565, 570-71. "[T]he arbitrator's award 'must encompass only terms and conditions of employment and may not address issues outside of that realm.'" Pennsylvania State Police v. Pennsylvania State Troopers Ass'n, 741 A.2d 1248, 1252 (Pa. 1999) (citing Pennsylvania State Police v. Pennsylvania State Troopers' Ass'n, 656 A.2d 83, 90 (Pa. 1995)). In reviewing whether the arbitration panel exceeded its authority we must be mindful that the third prong of the narrow certiorari "does not provide a portal to unlimited review of an Act 111 arbitration award." City of Pittsburgh v. Fraternal Order of Police, Fort Pitt Lodge No. 1, 938 A.2d

225, 230 (2007). If an arbitration panel's "decision is unwise, manifestly unreasonable, burdens the taxpayer, is against public policy or is an error of law" it is not an excess of the arbitrator's powers under the test. City of Scranton v. E. B. Jermyn Lodge No. 2 of Fraternal Order of Police, 903 A.2d 129, 135 (Pa. Commw. Ct. 2006). Furthermore, issue relating to inherent managerial prerogatives such as standards of service, overall budget, use of technology, organizational structure, and the selection and direction of personnel are not subject to collective bargaining. Local 22, 999 A.2d at 570; Borough of Ellwood City v. Pennsylvania Labor Relations Bd., 998 A.2d 589, 600 (Pa. 2010).

In cases involving challenges to an arbitration panel's authority in issuing an interest arbitration award under Act 111 our Supreme Court lends some guidance. Local 22, 999 A.2d at 570-71. Initially, we must determine whether the disputed provision relates to a mandatory subject of collective bargaining under Act 111, i.e., whether the issue is "rationally related to the terms and conditions of employment." Id. If the issue is rationally related the Court must then determine whether the provision also "implicates the non-bargainable managerial prerogatives of a public employer." Id. at 571. If the provision makes such an implication the Court must decide whether the award "unduly infringes upon the exercise of those managerial responsibilities." Id. If the award does not make an infringement then the award is within the scope of bargainable issues under Act 111, it falls within the arbitration panel's powers, and is confirmable. Id. However, if the award does infringe upon the exercise of managerial responsibilities "then the award concerns a managerial prerogative that lies beyond the scope of collective bargaining, reflects an excess of the board's Act 111 powers, and is voidable." Id.

We now turn to Provision 9 to apply these principles and determine whether the Panel exceeded its authority in issuing the provision.

> 9. Section 28 Staffing
>
> In accordance with the [Arbitration] Opinion above, the current staffing and shift schedules of the Borough's firefighters shall be maintained and the status quo not disturbed for the duration of this agreement.

The effect of Provision 9 is that the Borough is required to maintain staffing levels at a minimum of five firefighters per shift, operating under a shift schedule of 24 hours on duty followed by 48 hours off-duty.

I. Staffing

In the Arbitration Award, Provision 9 requires that the Borough

maintain a certain number of firefighters on duty per shift. The Borough argues that such a provision exceeds the Panel's authority because it infringes upon its managerial prerogative regarding determinations of the overall size and organizational structure of its fire department. To begin our analysis under the Local 22 test we find that the issue of the minimum amount of firefighters on duty per shift is rationally related to the conditions of employment. See Local 22, 999 A.2d at 570. (holding that health and safety considerations of firefighter employees falls under the scope of "terms and conditions of employment" pursuant to Act 111); Int'l Ass'n of Fire Fighters, Local 669 v. City of Scranton, 429 A.2d 779, 781 (Pa. Commw. Ct. 1981) (recognizing safety of firefighters as bargainable under Act 111). The number of firefighters on duty is clearly within the purview of safety considerations for employees of a fire department and is thus rationally related to the terms and conditions of employment. By the very nature of the job it is not hard to envision why the number of firefighters on duty at any given time is an important safety consideration. The amount of firefighters on duty directly impacts the number of available firefighters who can respond to distress calls, the number of firefighters that can be deployed to extinguish fires, and the response time to emergencies. This does not end our inquiry however. We must now determine whether the provision also "implicates the non-bargainable managerial prerogatives of [the Borough]." Local 22, 999 A.2d. It is well-settled that the size of a municipality's fire department is a managerial prerogative left to the discretion of a public employer. Id. at 572; Local 669, 429 A.2d at 781. While Provision 9 does not inhibit the Borough from electing the overall size of its fire department, the number of firefighters on duty at any given shift is related and is managerial in nature. However, a topic that merely implicates managerial prerogatives does not necessarily equate to subject matter outside the realm of bargainable matters under Act 111. As noted in Local 22, "[b]ecause management decisions regarding policy or direction almost invariably implicate some aspect of employer-employee relations or the workplace, disputed arbitration awards more often than not concern both the terms and conditions of employment and the public employer's managerial prerogatives." 999 A.2d at 570. Such is the case here. Thus, when the contested topic encompasses terms and conditions of employment *and* implicates managerial prerogatives as it does here, we must decide whether the topic is an *inherent* managerial prerogative, i.e., "whether collective bargaining over the topic would unduly infringe upon the [the Borough's] essential managerial responsibilities."[3] Ellwood City, 998 A.2d at 600. To aid us in answering this question we review case law relevant to the area of staffing requirements.

Local 22 involved an issue of whether an arbitration panel exceeded

3 In fashioning this test the Supreme Court in Ellwood City noted that "[i]n resolving whether a particular topic is an inherent managerial prerogative, no clear test has evolved." Ellwood City, 998 A.2d at 600.

its authority by issuing an award that mandated that the city come to an agreement with the union over the effects of a fire company's closure prior to the actual closure. 999 A.2d at 571. The Supreme Court found that a fire department closure rationally relates to terms and conditions of employment because it impacts the safety of firefighters. Id. at 572. The Court also found that fire company closures consist of managerial prerogatives that a public employer has the discretion to decide on its own. Id. Because the disputed provision which mandated prior agreement with the union before closure of a fire department concerned both the terms and conditions of employment and implicated the city's managerial responsibilities, the Court then decided whether the provision unduly infringed upon the city's managerial prerogatives, and concluded that it did. Id. The Court reasoned that the award took away "from the City the complete control it had over of its own decision-making process as to a subject that indisputably lies within its sole discretion under Act 111" by "impos[ing] a further procedure upon the City that it must undertake, before a fire company can be closed." Id. Furthermore, implementation of the provision would have had a "profound influence" over the city's decisions regarding fire department closures and the city's "policy judgments as to spending, budgeting, levels of fire protection and emergency medical services it should provide, and the prioritization and allocation of competing essential services."

In Local 669, the Commonwealth Court held that the total number of firefighters employed by the city's fire department fell within the scope of managerial decision-making and was not subject to collective bargaining because the level of fire protection afforded to the citizens of the city was a matter of discretion left to the city. 429 A.2d at 781-82. In that case an arbitration award mandated that the city increase its firefighter employees on the force to a minimum of 225 persons. Id. at 780. In rationalizing its decision the Commonwealth Court took note of the distinction in cases of other states' courts between (1) an award which deals with the total number of firefighters on the force which was found to be non-arbitrable and (2) awards relating to the number of firefighters on duty at a station, or assigned to a piece of equipment, or to be deployed to a fire which were found to be arbitrable. The Court found merit in the distinction because

> the result still leaves in the municipality the ultimate decision concerning what level of fire protection it wishes, or can afford, to provide to the citizens. If it finds that the arbitrable situations cause an imbalance in certain areas of the force, it retains the authority to decide whether to hire more employees, close stations, revamp the force, or take some other managerial action.

Local 669, 429 A.2d at 781.

In another case with similar facts the Commonwealth Court found that the number of firefighters per rig was a "work condition" rather than a "managerial prerogative" and thus an arbitration award relating to that topic was proper. City of Erie v. Int'l Ass'n of Firefighters, Local 293, 459 A.2d 1320, 1321 (Pa. Commw. Ct. 1983). The Court based its decision on the union's expert witness who testified that the manning of an engine or ladder with less than four men could result in an impairment of the health and safety of the firefighters and therefore the manning of the rigs affected "working conditions" and was arbitrable. Further, the Court distinguished the case from Local 669 noting that City of Erie dealt with firefighters per rig as opposed to total number of firefighters on the force. Id.

Finally, in City of Scranton v. Fire Fighters Local Union No. 60 the union filed a grievance when the city unilaterally reduced the standard deployment for automated alarms from two engine companies to one. 20 A.3d 525, 528 (Pa. Commw. Ct. 2011). The Commonwealth Court upheld a trial court's reversal of an arbitrator's sustainment of the union's grievance involving the city's response to automated alarms, i.e., the amount of engine companies to send in response. As an alternative basis for its decision the Court cited the arbitrator's findings which noted that the city's response to the automated alarm was a "basic prerogative of management."

The case at bar involves Provision 9 which maintains the staffing levels from the previous CBA. The Borough argues that this amounts to an unlawful no-layoff clause and eliminates the Borough's managerial prerogative to determine the size and level of its firefighting services because it requires a minimum level of staffing. We disagree. As the Borough concedes, the effect of Provision 9 is that the Borough is required to maintain a minimum of five firefighters per shift. (Borough's Br. at 2). Therefore, we are not within the realm of an arbitration award that dictates the overall size of a fire department like in Local 669. Rather, the Arbitration Award here mandates only that shifts consist of at least five firefighters. As the Court Local 669 specifically recognized, awards related to the number of firefighters on duty at a station is arbitrable. Provision 9 is akin to City of Erie where the Court found that minimum manning on rigs was related to safety and was arbitrable and distinguishable from Local 669 because such a provision did not take the discretion of the overall size out of the hands of the city. As we discussed above minimum staff requirements relate to the safety of firefighters because it directly impacts the number of available firefighters who can respond to distress calls, the number of firefighters that can be deployed to extinguish fires, and the response time to emergencies. "The safety of a firefighter is far more rationally related to the number of

individuals fighting a fire with him, or operating an important piece of equipment at a fire, than it is to the number of members of the entire force." Local 669, 429 A.2d at 781.

While it is undisputed that the overall size of a fire department is left to the sole discretion of the Borough, Provision 9 neither directly limits the Borough's complete control in determining the size of its fire department or deciding the level of protection to its citizens, nor does it have the effect of imposing such limitations. Provision 9 simply sets a minimum for the number of firefighters on duty per shift and does not specify the minimum number of total firefighters on the force. The Borough's argument that this amounts to a no-layoff clause is meritless. When looking at that argument from a logical standpoint the Borough is essentially arguing that Provision 9 precludes the Borough from downsizing its fire department to under 5 firefighters. Such a scenario is the only situation in which the staffing provision would be implicated in the context of laying off firefighters as at least five firefighters are required per shift. Theoretically speaking, the Borough can choose to downsize its entire department to a minimum of five firefighters and still comply with Provision 9. Even so, downsizing the fire department to five firefighters would be an absurd and illogical decision and we can envision no reasonable scenario where the Borough would choose to downsize its entire fire department to fewer than 5 firefighters. Therefore, even though Provision 9 has the technical effect of limiting the Borough's complete control of the overall size of its fire department by requiring an overall size of at least five employees we find that the minimum staff requirement does not have a "profound influence" on the Borough's decisions regarding the size of its fire department. Nor does the staffing provision have a profound effect on the Borough's discretion on the level of safety to afford to its citizens. The Borough argues that Local 60 compels us to find that Provision 9 infringes upon the Borough's managerial prerogative. However, Local 60 is distinguishable. Unlike that case, Provision 9 does not impose any deployment requirements or limit the Borough's decision-making in response to emergencies with regards to who to send, how many firefighters to send, what vehicles to send, etc. While Provision 9 mandates at least five firefighters on duty per shift it does not constrain the Borough's unfettered discretion of how to utilize the firefighters. Accordingly, Provision 9 as it relates to staffing does not unduly infringe upon the city's managerial prerogatives and thus the issue was arbitrable and the issuance of Provision 9 was within the powers of the Panel.

II. Shift Schedules

The Borough argues that the Panel exceeded its authority by issuing Provision 9 in the Arbitration Award because it unlawfully precludes the Borough from changing its shift schedules until the expiration of the CBA. We disagree.

Pursuant to Act 111 firemen indisputably "have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, *hours*, working conditions, retirement, pensions and other benefits . . ." 43 P.S. § 217.1 (emphasis added). As recognized by the appellate courts, the link between "hours" and shift scheduling is plain and therefore subject to mandatory bargaining under Act 111. Indiana Borough v. Pennsylvania Labor Relations Bd., 695 A.2d 470, 474 (Pa. Commw. Ct. 1997); Twp. of Upper Saucon v. Pennsylvania Labor Relations Bd., 620 A.2d 71, 74-75 (Pa. Commw. Ct. 1993).

> In this case, it requires no stretching of definitions to see that shift schedule assignments relate closely to hours. In fact, shift assignments would seem to fall within the meaning of 'minimum distribution of . . . hours throughout the days of the week.' Therefore, we reject the Township's contention that the shift system change at issue here is not a mandatory subject of bargaining because it does not concern "hours" as that term is used in Act 111.

Upper Saucon, 620 A.2d at 74-75. In reaching its conclusion in Upper Saucon the Commonwealth Court held that the shift system change which affected the scheduling of days off was rationally related to terms and conditions of employment, and specifically hours, and was thus mandatorily negotiable under Act 111. Id.

Here, in Provision 9 of the Arbitration Award the Panel determined that the current shift schedules of the Borough's firefighters would be maintained. Citing our previous discussion on staffing levels we find that the issue of shift schedules is both rationally related to terms and conditions of employment and implicates managerial prerogatives. We must now determine whether the award unduly infringes upon the exercise of the Borough's managerial responsibilities. We find that it does not. In light of the preceding case law it is clear to this Court that the issue of shift schedules falls squarely within the powers of the Panel and is undoubtedly a subject of collective bargaining. As the Upper Saucon Court aptly stated, "it requires no stretching of definitions to see that shift schedule assignments relate closely to hours." Thus, the subject of hours is not an inherent managerial prerogative as it is plainly enumerated as a subject of collective bargaining under 43 P.S. § 217.1. Furthermore, the shift schedule provision does not in any way limit the Borough's discretion to decide the size of its fire

department or the level of protection to provide to its citizens. Accordingly, we find that the Panel has not exceeded its authority as it relates to the shift schedules of the Borough's firefighters pursuant to Provision 9.

III. Review of the Record

There is contention by the parties as to whether the Court is entitled to review the Reproduced Record that was filed by Respondent which includes the same information in the Borough's Reproduced Record in addition to further exhibits and presentations relating to the nexus between safety of the firefighters and staffing and shift schedules. The Borough argues that the proceedings were not of record and no evidence was admitted and therefore the Court should not consider Respondent's supplementary documents. Respondent argues that the Borough had an opportunity to contest the evidence at the hearing and to transcribe the proceedings as required under Act 111 and the Uniform Arbitration Act but chose not to. Despite the disagreement by the parties we need not make a decision on the issue as the Court did not base its decision on the supplementary documents. As discussed above, the safety issues from the firefighters' perspective and the managerial interests from the Borough's point of view that are involved with staffing and shift scheduling are readily apparent in light of both common knowledge and the relevant case law that interprets Act 111. Furthermore, both parties elaborate on these points in their briefs. Therefore, we find this issue moot.

CONCLUSION

For the foregoing reasons we will confirm the August 29, 2013 Arbitration Award. Provision 9 of the Arbitration Award will remain in effect. An Order consistent with this Opinion is attached.

ORDER OF COURT

AND NOW, this 25th day of September 2014, in consideration of Petitioner's Petition for Review of September 9, 2013 Interest Arbitration Award, Respondent's answer thereto, the parties' briefs in support of their positions, and the record in this matter, and upon the parties' agreement that the Court shall decide this matter on written argument,

IT IS HEREBY ORDERED that the Arbitration Award dated August 29, 2013 is **CONFIRMED** pursuant to the attached Opinion. The

Borough of Chambersburg is **ORDERED** to comply with Provision 9 of the Arbitration Award.

IT IS FURTHER ORDERED that each party shall pay its own attorney's fees.

P*ursuant to the requirements of Pa. R. Civ. P. 236 (a)(2),(b) and (d), the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Opinion and Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.*