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September 25, 1997

Robert Bishop
Assistant Chief
Police Department
County of Nassau
1490 Franklin Avenue
Mineola, New York 11501

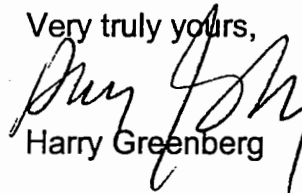
Re: DWI Quota, Highway Patrol Bureau,
Section 215a of the Labor Law.

Dear Chief Bishop:

Advisory Arbitrator Dr. Philip Harris issued an advisory arbitration award, attached, in the above matter. The County has not rejected this award and therefore it is binding. Please inform me of the remedy that will be afforded the effected police officers in the Highway Patrol Bureau, i.e. overtime, meal and travel compensation.

I await your reply.

Very truly yours,



Harry Greenberg

cc: Gary DelaRaba
Ken Long
Allen Unterweiser
dwirem

DECISION OF ADVISORY ARBITRATOR

In re COUNTY OF NASSAU, NEW YORK and POLICE BENEVOLENT ASSOCIATION, Contract administration procedures.

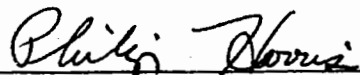
I, PHILIP HARRIS, having been duly appointed to hear and decide the matter in dispute and having duly heard the proofs and allegations of the Parties, hereby render the following decision:

The County should be considered as having violated the State law by its administering of DWI - enforcement overtime.

AFFIRMATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, Philip Harris, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.



Philip Harris, Ph.D.
Hewlett, New York
February 24, 1997

Appearances

For the County Police Department

Peter A. Bee, Law Offices of Bee, Eisman & Ready; Richard Baribault, Inspector; Robert E. Bishop, Deputy Chief; Kenneth McGoff, Inspector; and John Weiner, Lieutenant.

For the Police Benevolent Association

Harry Greenberg, Law Offices of Solomon Richman Greenberg, P.C.; Anthony Famulari, Trustee; John J. Nikiel, Delegate; Silas Ridel, Delegate; and Allen Unterweiser, 2nd Vice President.

Issue

Did the County violate Section 215-a of the New York State Labor Law by specifically offering certain "DWI-enforcement" overtime to Police Officers who made DWI arrests on non-DWI enforcement assignments? If so, what shall the remedy be?

Facts

On March 26, 1993 Police Department Inspector Kenneth McGoff issued the following memorandum:

REPORT OF DWI ARREST ACTIVITY

1. Patrol Supervisors assigned to work the 2300 to 0700 tour of duty shall submit a report upon completion of their tour detailing the Driving While Intoxicated (DWI) arrest activity of each Police Officer assigned to patrol duties on the Long Island Expressway (Route 495) and Seaford Oyster Bay Expressway (Route 135) on their tour of duty.

2. Patrol Supervisors shall include in their report an explanation for the absence of any Driving While Intoxicated arrest activity on their tour or duty, if such be the case.

During the next two months Lieutenant John Weiner,

administrator of grant funds for DWI enforcement, issued five memoranda to Police Officers in which he said:

You made a DWI arrest on (date). You can hold over after one of your next 3 x 11 tours. Contact me A.S.A.P. so we can schedule it.

The PBA submitted a Step 3 Grievance stating that the law was being violated because "the Highway Patrol Bureau has made the awarding of overtime conditional upon an Officer making a DWI arrest." When the matter was not resolved, arbitration ensued.

Relevant Labor Law

Section 215-a. Discrimination against employees for failure to meet certain ticket quotas.

1. No employer or his duly authorized agent shall transfer or in any other manner penalize an employee as to his employment solely because such employee has failed to meet a quota, established by his employer or his duly authorized agent, of tickets or summonses issued within a specified period of time for traffic violations including parking, standing or stopping. Any employee so transferred or otherwise penalized may cause to be instituted a grievance proceeding pursuant to the provisions of a collective bargaining agreement, if any, or pursuant to the provisions of section seventy-five-a of the civil service law if no collective bargaining agreement exists. Any employee so transferred or otherwise penalized shall be restored to his previously assigned position of employment and shall be compensated by his employer for any loss of wages arising out of such transfer or other penalty, and shall have any penalty imposed restored; provided, that if such employee shall cease to be qualified to perform the duties of his employment he shall not be entitled to such restoration; and it shall be contrary to the public policy of this state for such employer to establish or hereafter maintain a quota policy of tickets or summonses issued for traffic violations including parking, standing, or stopping.

2. For the purpose of this section a quota shall mean a specific number of tickets or summonses issued for traffic violations including parking,

standing or stopping which are required to be issued within a specified period of time.

3. Nothing provided in this section shall prohibit an employer or his duly authorized agent from transferring or taking any other job action against such employee for failure to satisfactorily perform his job assignment of issuing tickets or summonses for traffic violations including parking, standing or stopping except that the employment productivity of such employee shall not be measured by such employee's failure to satisfactorily comply with the requirement of any quota, as that term is defined herein, which may be established.

PBA's Position

1. Prior to Inspector McGoff's memorandum, no DWI arrest was required for DWI overtime. Since the grievance was initiated, the arrest requirement was withdrawn.

2. In violation of the State law, a quota was created of "one," which thereupon qualified an Officer for overtime compensation.

3. An Officer not meeting the quota therefore was being penalized in his pay, contrary to the above law and the intent of the legislation to end the abusive policy of quotas.

4. The County did not produce any person or record showing DWI overtime without an accompanying DWI arrest during the subject time.

5. The "specified period of time" was met by the one-for-one as well as the grant period.

6. The grievance should be sustained.

County's Position

1. There was no violation of law because there was no quota, no specified number of tickets within a specified time period as enunciated in the law.

2. Nobody was penalized. There were overtime opportunities for those making DWI arrests.

3. The County assigned overtime to the Officers who showed an interest in this grant program by having made a DWI arrest during other tours.

4. The grievance speaks of arrest quotas, whereas the law addresses quotas of "tickets or summonses."

5. The grievance should be denied.

Opinion

Based on the preponderance of evidence, there is too much of a nexus between the facts of this case, the law and the larger collective bargaining world to deny the grievance. Hence the Arbitrator takes the broader rather than the narrower interpretation of the New York State Labor Law.

A quota system was in place with a one-for-one as the goal-reward ratio. Perhaps it would appear more like a conventional quota if the ratio were one-for-three or three-for-one, but it is the existence of the exchange formula that is significant and not the specific quantities.

The law addresses tickets or summonses, not the arrests that are the subject of this hearing. However, the Arbitrator does not see how the purpose of the law, which is to eliminate the abuses of quotas, could possibly contemplate the exclusion of arrests which are so intimately related to tickets or summonses.

There were Police Officers who were adversely affected by the DWI-overtime practice for the two months involved. Prior and since this time period they were eligible for the extra compensation without the arrest requirement. During the two months, by giving the overtime to those showing an interest via an arrest, the quota was established, denying overtime to others who were previously eligible.

The "specified period of time" is the weak part of the PBA case, claiming it is met by the grant time period and the one-for-one. This nexus is a bit of a stretch when compared with the

traditional time periods, such as per hour, day, week, etc. However, because the Arbitrator is convinced that a quota exists, he is not dissuaded by what he considers a deviation insufficient to offset the reality of the quota.

In taking the broader interpretation, the Arbitrator cites from the literature other views of the quota in employer-employee relations:

The amount of production expected from the average employee in order to receive the specified base pay (Dictionary of Business and Management, Jerry Rosenberg, 1993, p. 778).

Quota systems are based on the assumptions that employees will be more motivated to perform if they are compensated in proportion to their diligence (Managing Human Resources, Sayles and Strauss, 1981, p. 427.)

Pay systems can be designed to reward employees directly for their individual performances.... Records are kept of each worker's daily output, and the worker's rate of pay depends on the amount of work done, measured against the established standard (Labor-Management Relations, D.Q. Mills, 1989, p. 483.)

The Arbitrator submits that these conventional understandings of a quota substantially square with the PBA's position in this matter.

Award

The County should be considered as having violated the State Law by its administering of DWI-enforcement overtime.

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March 5, 1997

Robert Bishop, Deputy Chief
Nassau County Police Department
1490 Franklin Avenue
Mineola, New York 11501

Re: DWI Advisory Arbitration Award.

Dear Chief Bishop:

An award in the aforementioned matter, dated February 24, 1997, and received on or about February 25, 1997, holds that:

"The County should be considered as having violated that State law by its administering of DWI -enforcement overtime."

Section 215a of the New York State Labor Law, which is the statute that provided jurisdiction to the arbitrator to determine if there is a quota and which statute the arbitrator found the County violated, in pertinent part provides:

"1. ...Any employee so transferred or otherwise penalized shall be restored to his previously assigned position of employment and shall be compensated by his employer for any loss of wages arising out of such transfer or other penalty, and shall have any penalty imposed restored;..."
(Emphasis added).

Please consider this letter a request, on behalf of the PBA, for a meeting with all relevant and necessary persons, on behalf of the County, to determine if the parties can agree as to the amount of compensation due members of the Highway Patrol Bureau. This meeting must be scheduled as soon as possible. If a meeting is not scheduled within the next two weeks the PBA has instructed me to outline their options to obtain relief provided for in the aforementioned statute. Please give this matter the highest priority

possible.

I await your reply.

Very truly yours,



Harry Greenberg

cc: Gary DelaRaba
Ken Long
Al Unterweiser
Peter A. Bee, Esq.
Assistant Chief Richard Baribault, Esq.
Dwimtg