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In the Matter of the Interest :  
Arbitration :

- Between -

: Additional  
Supplemental Award

COUNTY OF NASSAU

"County"

- and -

POLICE BENEVOLENT ASSOCIATION,  
POLICE DEPARTMENT, COUNTY OF  
NASSAU, NEW YORK, INC.

"PBA"  
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**APPEARANCES**

**For the County**

LAMB & BARNOSKY, L.L.P.  
Richard Zuckerman, Esq., Attorney  
Michael Krauthamer, Esq., Attorney  
Robert McGuigan, 1st Deputy Commissioner of Police  
Karen O'Callahan, Deputy Chief  
Daniel McCray, Director of Labor Relations

**For the PBA**

GREENBERG, BURZICHELLI, GREENBERG, P.C.  
Harry Greenberg, Esq., Attorney  
Seth Greenberg, Esq., Attorney  
Robert Rettinger, 4<sup>th</sup> Precinct Trustee  
Michael Bonsignore, 8<sup>th</sup> Precinct Trustee  
Dean Losquadro, 5<sup>th</sup> Precinct Trustee  
Joseph Smith, Delegate  
Thomas O'Reilly, 7<sup>th</sup> Precinct Trustee  
Kenneth Cortes, 2<sup>nd</sup> Precinct Trustee  
John LaSala, HQ Trustee  
Brian Engelhardt, 3<sup>rd</sup> Precinct Trustee  
Wayne Hartmann, Treasurer  
James McDermott, Sergeant at Arms  
Paul Schaefer, Delegate  
Kevin Tobin, 2<sup>nd</sup> Vice-President  
James Carver, 1<sup>st</sup> Vice-President  
Anthony Famulari, HQ Trustee

**BEFORE:** JOHN M. DONOGHUE, ESQ., CHAIRMAN OF THE PANEL  
MARTIN F. SCHEINMAN, ESQ., NEUTRAL MEMBER OF THE PANEL  
HOWARD C. EDELMAN, ESQ., NEUTRAL MEMBER OF THE PANEL  
TIMOTHY DRISCOLL, ESQ., COUNTY MEMBER OF THE PANEL  
GARY DELARABA, PBA MEMBER OF THE PANEL

These findings follow hearings held on April 24, 2006 and November 2, 2006, at which certain items were addressed which remained unsolved from our prior determinations rendered in 2003, 2004 and 2005. At the hearing the following issues were addressed:

1. Chart 13 - Shift Differential
2. Lag Payroll
3. Reopener
4. Civilianization
5. Mentally Aided/Prisoner Staffing
6. Personal Time Off
7. Deployment Order
8. Holiday Pay for New Hires
9. Union Excusal
10. Vacation Scheduling
11. Executive Board Pay
12. Special Assignment Stipends

The Panel has reviewed the record with respect to these issues. Based upon that review and consistent with the criteria set forth in Section 209 of the Taylor Law, we issue the following

#### FINDINGS

1. **Chart 13 - Shift Differential**

Our initial Award modified the hours during which

shift differential (formerly "night differential") was to be paid. It also changed the percentage to be paid during those hours. However, that Award was intended to apply only to Chart Orange and to no other chart. Also, it was not intended to require the payment of the differential where none had been paid before, other than as pertaining to Chart Orange. Nor was it intended to increase the shift differential provided to any other officers not in Chart Orange in terms of hours paid or percentage received unless otherwise specifically provided for. On the other hand, our Award was also not intended to deprive Police Officers of a shift differential where one had been paid before.

It is into the latter category that Chart 13 falls. In essence, the Chart consists of a two week schedule. For one week Officers work days, generally 7:00 a.m. to 4:00 p.m., though the starting and ending times may vary somewhat. The other week officers work evenings, generally 11:00 p.m. to 8:00 a.m., again with some flexibility. Thus, the chart consists of a day tour and an evening tour and for a number of years Officers were, in essence, paid night differential for the evening tour and not for the day tour.

As noted above, it was never the Panel's intent to

eliminate the shift differential for working Chart 13 by virtue of the changes incorporated in our initial Interest Arbitration Award rendered in September 2003. The reductions in shift differential as implemented by the County following the issuance of our Award effectively eliminate the major portion of the differential. Thus, we shall direct that, retroactive to January 1, 2004, Police Officers working Chart 13 shall be paid shift differential as it existed on December 31, 2003.

## 2. **Lag Payroll**

We disagree with the PBA that the determination by the U.S. Court of Appeals in Michael Adams v. Thomas Suozzi (03-CIV-4363 dec'd September 18, 2006) constitutes a final determination which requires us to make Police Officers whole for the effects of the lag payroll previously instituted. Thus, we conclude, the matter has still not been fully resolved through the judicial process. Accordingly, the issue of the lag payroll continues to be remanded to the parties for resolution. Should additional decisions be forthcoming we shall retain jurisdiction to finally resolve the dispute.

However, we are mindful of the inordinately long time the appeals process has taken in the litigation

related to this issue. In order to prevent any party from taking actions which may be viewed as dilatory, we shall direct that either may revisit this issue before us if no final determination is rendered by October 1, 2007.

**3. Reopener**

The PBA has asked that it receive additional benefits based on its claim that other sworn personnel were granted better terms and conditions of employment in their Interest Arbitration Awards than the PBA was. The Panel has reviewed these items in light of the relevant record, the criterion set forth in the Taylor Law and the parties arguments advanced at the hearings held on April 24, 2006 and November 2, 2006. Based upon this review we make the following findings:

**Date Changes Re: Hourly Calculations, Quarter Days, Flag Day, Travel Time and Termination Pay**

The fact that a benefit reduction begins at a later date in the SOA Award as opposed to the PBA's does not mean that the reopener clause has been triggered so as to delay the reduction in the benefit for the PBA. Instead, the difference in date implementation reflects differences in the periods covered by the PBA and SOA Awards. It also reflects the timing as to when the Awards were issued. For example, retirement stipend

recalculation was implemented one year earlier for the PBA than for the DAI because the PBA finding was issued almost one year before the DAI's. Detectives who contemplated retiring had to receive reasonable notice as to what their payouts would be so they could make informed decisions as to the date they chose to retire. The same was true for Police Officers. Affording such notice required that in some instances implementation dates had to be later in the DAI Award than in the PBA Award. In addition, the Panel's findings in all three cases and the cost savings achieved were based in part on the dates they were implemented. Thus, with respect to the claims raised concerning implementation dates, we do not find that the reopener clause has been triggered. Therefore, the PBA's request in this regard is rejected.

#### 4. **Civilianization**

At the hearing of April 24, 2006, this matter was addressed, though not fully analyzed. At issue are nine positions yet to be civilianized. It is understood that these positions would not come from the precincts or the blotter recorder. While representatives of the Police Department and the PBA met to discuss the matter, apparently no agreement was reached.

The record is devoid of sufficient evidence for the

Panel to determine which jobs should be civilianized. Accordingly, we direct the parties to submit a list, within sixty days of their receipt of this Award, of proposed jobs to be civilianized and the rationale therefor. Obviously, the parties are free to engage in further discussions during this period to agree upon a resolution of this issue. However, in the event the parties are unable to agree, we shall decide this matter on an expedited basis.

**5. Mentally Aided/Prisoner Staffing**

We have reviewed the record carefully on this issue. We find no basis to modify our original determination that two Officers must be assigned to guard a prisoner or mentally aided individual. In the case of a mentally aided individual, one officer must be of the same gender as the individual. However, we reiterate our comments made at the hearing that we expect the parties to apply this provision with common sense where unusual circumstances may arise. Where unusual circumstances do arise, prior to the assignment the parties may mutually agree to have fewer than two Officers assigned to guard a prisoner or mentally aided individual.

**6. Personal Time Off**

The PBA's concerns are in the nature of the way in

which the contractual provisions are being implemented. As such, they are not properly before us but must be processed through the parties' grievance procedure.

**7. Deployment Order**

As with the PBA's demand regarding personal leave, this issue is not properly before us. Rather it constitutes a grievance which must be brought in that forum.

**8. Holiday Pay for New Hires**

The PBA's concerns are in the nature of the way in which the contractual provision on this issue is being implemented. Consequently, this item also constitutes a grievance which must be brought in that forum.

**9. Union Excusal**

We have concluded that this item is not properly before us. It must be remanded to the grievance procedure, we conclude.

**10. Vacation Scheduling**

This item does not involve either a "reopener" matter or a clarification of our prior Award. Instead, it involves an issue relating to the scheduling of vacations not previously addressed. Hence, it belongs within the grievance procedure and not before this Panel.



**11. Executive Board Pay**

We agree, like the DAI, effective January 1, 2005, Executive Board Members shall have their time served as Delegate calculated in for eligibility for Executive Board stipends.

After reviewing the record, the Panel finds that, like the SOA, the Trustee stipend shall be paid upon the individual taking elected office as Trustee, effective January 1, 2006.

**12. Special Assignment Stipends**

We agree the assignments which the PBA seeks to incorporate into base pay are analogous to our Award concerning Detective Supervisors' Differential. In that instance, the differential was placed into base pay as it was part of the basic emolument of the position.

The same justification applies here. In central testing, dive team, B.S.O., E.S.U. and applicant investigation units, the stipends are granted in recognition of the basic functions Police Officers perform when assigned to those units. Thus, as with the Detective Supervisors' differential, these emoluments should be part of a Police Officer's base pay. Accordingly, the PBA's request is awarded effective December 31, 2006.

13. **Other Proposals**

All other proposals of the parties, whether or not specifically addressed herein, are rejected.

AWARD

1. **Chart 13 - Shift Differential**

Police Officers working Chart 13 are to be made whole for lost shift differential retroactive to January 1, 2004, as it existed on December 31, 2003.

2. **Lag Payroll**

The PBA's demand that Officers be reimbursed for the County's implementation of a lag payroll is rejected. This issue remains in abeyance until the merits of the dispute are finally resolved in other, parallel proceedings or October 1, 2007, whichever comes first.

3. **Reopener**

The PBA's proposals are rejected.

4. **Civilianization**

Within sixty days of their receipt of this Award, the parties shall submit a list of proposed positions to be civilianized, outside of the precincts or the blotter recorder. Unless the parties agree, the Panel shall decide this matter on an expedited basis.

5. **Mentally Aided/Prisoner Staffing**

The Panel reaffirms its prior holding subject to the comments set forth in this Opinion.

6. **Personal Time Off**

This issue is not properly before this Panel.

7. **Deployment Orders**

This issue is not properly before this Panel.

8. **Holiday Pay for New Hires**

This issue is not properly before this Panel.

9. **Union Excusal**

This issue is not properly before this Panel.

10. **Vacation Scheduling**

This issue is not properly before this Panel.

11. **Executive Board Pay**

Effective January 1, 2005, Executive Board Members shall have their time served as Delegate calculated in for eligibility for Executive Board stipends.

Effective January 1, 2006, the Trustee stipend shall be paid upon the individual taking elected office as Trustee.

12. **Special Assignment Stipends**

Effective December 31, 2006, the stipends for central testing, dive team, B.S.O., E.S.U. and applicant investigation shall be incorporated into base pay.

13. **Other Proposals**

All other proposals of the parties, whether or not specifically addressed herein, are rejected.

Nassau County/PBA  
Additional Supplemental Award

DATED: 4/13/07



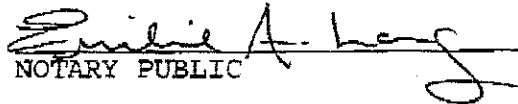
John M. Donoghue, Esq.,  
Chairman  
Interest Arbitration Panel

STATE OF NEW YORK )

) ss.:

COUNTY OF NASSAU )

On this 13<sup>th</sup> day of April 2007, before me personally came and appeared JOHN M. DONOGHUE, ESQ., Chairman, 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 the same.




NOTARY PUBLIC

**EMILIE A. LONG**  
Notary Public, State of New York  
No. 01LO8135760  
Qualified in Orange County  
Commission Expires 10/24/09

Apr. 17. 2007 9:56AM

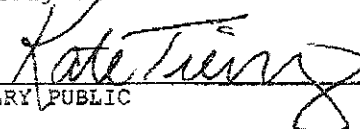
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Nassau County/PBA  
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DATED: April 15, 2007   
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Martin F. Scheinman, Esq.,  
Neutral Member  
Interest Arbitration Panel

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

On this 15<sup>th</sup> day of April 2007, before me personally came and appeared MARTIN F. SCHEINMAN, ESQ., Neutral Member, 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 the same.

  
\_\_\_\_\_  
NOTARY PUBLIC

KATE TIERNEY  
Notary Public, State of New York  
No. 01719196058  
Qualified in Queens County  
Commission Expires November 7, 20 09



Nassau County/PBA  
Additional Supplemental Award

Concur   X   As to sections 1-10 and 13.

Dissent   X   As to sections 11 and 12 (pp 7 and 8)  
for reasons expressed by (pp 10 and 11)  
the County's advocate at the hearings on this  
matter.

DATED:   Timothy Driscoll    
Timothy Driscoll, County Member  
Interest Arbitration Panel

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

On this   16   day of   April   2007, before me personally came and appeared TIMOTHY DRISCOLL, County Member, 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 the same.

NOTARY PUBLIC  
  Deborah Austin  

**DEBORAH AUSTIN**  
Notary Public, State of New York  
No. 30-4729801  
Qualified in Nassau County  
Commission Expires Feb. 28,   2011



