

ELECTION DAY FOR RECRUITS  
CHART CHANGE  
O.T. DENIED

\* \* \* \* \*

In the Matter of the Arbitration

between

COUNTY OF NASSAU

and

NASSAU COUNTY PATROLMEN'S  
BENEVOLENT ASSOCIATION  
GROUP GRIEVANCE: REASSIGNMENT OF  
RECRUITS ON ELECTION DAY  
NOVEMBER 3, 1987

\* \* \* \* \*

**OPINION AND AWARD**

**HEARINGS HELD**

April 19, 1988  
March 3, 1989

THOMAS F. CAREY  
Arbitrator

**APPEARANCES:**

**ASSOCIATION**

MICHAEL AXELROD  
HARRY GREENBERG  
GARY DELARABA  
JIMMY WARD  
ALLEN UNTERWEISER

Attorney PBA  
Attorney PBA, March 3, 1989  
PBA  
PBA  
PBA, Second Vice-President

**COUNTY**

PETER BEE  
DAVID C. MURRAY  
ROBERT P. YACCARINO

Attorney, County  
N.C.P.D.  
N.C.P.D., Assistant Chief

**BACKGROUND**

This proceeding arose as the result of a claim by the Nassau County Patrolmen's Benevolent Association (the Association) that the Association had certain contractual rights, pertaining to the reassignment of recruits, violated under the 1986-1988 Agreement between the Association and the County of Nassau (the County). The dispute being unresolved was submitted by the Association to arbitration, and the undersigned was selected as Arbitrator in accordance with Local procedures for Voluntary Labor Arbitration. After due notice, two hearings were held before the Arbitrator in Nassau County, New York on April 19, 1988 and March 3, 1989 at which time the Parties were afforded full opportunity to present oral and written evidence, cross-examine witnesses, provide oral argument, and otherwise support their respective positions. Both Parties stipulated before the hearing began that the grievance procedures as set forth in the Agreement were substantially in compliance. By mutual agreement, the hearing was not transcribed and the record consists of three (3) Joint Exhibits. The evidence so submitted and the positions and arguments set forth at the hearing and in post hearing briefs have been fully considered in preparation and issuance of this Opinion and its accompanying Award.

**AWARD**

Did the County violate Article 8.5-9 of the Agreement when recruits' schedules were altered by their assignment to election poll duty?

**REMEDY**

If so, what shall the remedy be?

**THE MERITS OF THE GRIEVANCE**

Contractual Provisions (relied upon by either or both Parties)

**ARTICLE 8.5 - EMPLOYEE BENEFITS**

An employee's work schedule shall not be altered without the payment of overtime compensation which would otherwise be due, except for the following reasons:

1. Mutual Consent
2. Police Emergencies. These determinations are solely within the authority of the Commissioner of Police.
3. Police Necessity. This shall include major civil, social, criminal or other police occurrences involving the alteration of the work schedule of at least 100 additional police personnel for the purpose of maintaining public safety and order during such occurrence. A police necessity shall not be declared merely for the purpose of providing the police services ordinarily required by a given public holiday.
4. Extended Assignment. Assignments may be made for the purpose of training, court appearances and related matters, or schooling, when such assignments actually last for a minimum of five consecutive working days, excluding weekends and holidays. Once per calendar year, assignments for training may be made for a period of less than five (5) days.

### POSITION OF THE ASSOCIATION

The Association contends that the County violated the Agreement when it reassigned recruits from the Police Academy to election poll duty. The Association notes that this was a county-wide violation.

The Association maintains that there is a duty schedule which is set for the recruits, and it is like any other schedule for police officers under the Agreement. The Agreement allows for an extended five days, and the particular assignment was a violation, since it would be the second. The Agreement also states that when a work schedule is altered, then overtime shall be paid.

The Association points out that there is no question that the academy recruits are covered under the Agreement and are entitled to the benefits thereof. The Association holds that this alteration of duty schedule was for the purpose of increasing manpower during the polling hours and not for the purpose of a training session since the recruits were alone, unsupervised and unevaluated. The Association requests the grievance be upheld.

### POSITION OF THE COUNTY

The County points out that historically there has not been the strict enforcement of the Agreement in regards to probationary officers who are attending the Police Academy as opposed to how it is applied to permanently appointed

police officers. The latter notwithstanding, the Agreement in Section 8.5-9 provides that management can not alter work schedules without the payment of overtime except under certain negotiated conditions.

The County contends that the reassignment of the probationary policemen fell under this clause, since it was considered an assignment for training and not a change of tour or schedule. It must be pointed out that the academy recruit does not work a standard tour of duty but rather follows a "curriculum" that states what, when, and where they shall be assigned for training purposes.

The County claims that in the past that the Association accepted the concept that assignment of recruits can be of a varied nature. It argues that were it not for the fact that this reassignment may have interfered with overtime being accorded some other regular police officers, this grievance would not exist.

The County maintains that it is the province of the Commanding Officer of the Police Academy to determine proper training for those under his jurisdiction. The contract was not violated.

#### **DISCUSSION AND OPINION**

The record indicates that Order 221-1987, "Re: Election Day Assignment" was issued on October 23, 1987. In terms of police recruits, that order contained the following assignment:

9. a. On Election Day, twenty-two (22) members of the Police Academy Recruit Classes will report, in either recruit uniforms or appropriate civilian attire with shields affixed in accordance with Rules and Regulations (Article 8, Rule 8, Subdivision 2), to the Election Day Supervisor of each Precinct at 1900 hours.

b. Prior to their arrival at the Precinct, each Recruit will have been given a copy of Commissioner's Order Number 73, dated October 27, 1980 by the Police Academy and will be familiar with its contents. Election Day Supervisors at the Precinct will provide specific instructions to the reporting Recruits concerning paragraph 8 of Commissioner's Order Number 73 and a general discussion of the contents of Teletype Order Number 228, dated October 7, 1987, particularly contents of page 7: "Collection of Statements of Votes Cast".

c. In addition, each Recruit will be provided by the Precinct Election Day Supervisor with a copy of detailed directions to his assigned polling place, as well as where the completed Statements of Votes Cast are to be delivered with directions, if necessary, and the telephone number of the Election Day Supervisor. They will be directed to report to their designated polling places by 2000 hours in their private vehicles. Upon their arrival at such polling place, they will immediately telephone the Precinct Election Day Supervisor who will record such time.

The Union charges that the Order violated Section 8.5-9 of the Agreement, since said Order "changed the 7:30 a.m. to 3:30 p.m. tour to a 3:30 p.m. to 11:30 p.m. to cover election polls". The Union's group grievance "was submitted on behalf of recruit police officers from the Police Academy" who were so assigned. The County maintains the Order was consistent with its goal of providing "the best training possible to new police recruits" in

that it was "first-hand, on-the-job training which can not be provided in an Academy setting". It denied the grievance, claiming that "it was necessary to prepare recruit officers in all phases of police work", and the Election Day assignments enabled the recruits "to gain this practical, first-hand experience".

An ancillary issue is inferred in the Union's claim, particularly in reference to whether or not this deployment of the recruits was done to reduce the overtime that may have been assigned to regular police officers. There are several preliminary questions, however, that need to be addressed, and which, for purposes of this arbitration, supersede any ancillary issue. There are also several factual disputes in contention.

Testimony by Assistant Chief Yaccarino, who was the Commanding Officer of the Academy during the period 1981-1988, indicates that the posted Academy "training schedule" for recruits contains a wide range of varied activities at diverse times. He disputes that the recruit's schedule is the same as the Tour of Duty for regular police officers. He noted that even the basic work weeks for the two groups are different.

The essence of the Union's claim flows from the dual contention that the Election Day Poll assignment was the second such schedule alteration, and that the recruits were not supervised by a Field Training Officer. The County's response that the Election Day assignment was the only deviation from the

posted training schedule for recruits during that calendar year, and that the EMT training cited by the Union was done during the regular supervised schedule, stands largely unrefuted in the record. So too, does the County's assertion that the Election Day assignment was basically part of the "field experience" given to recruits and was not part of the more formal "field training" which does require the presence and direct supervision of a Field Training Officer on a one-to-one basis.

It is evident that the use of recruits in such an Election Day assignment was apparently done for the first time in 1987. However, there are no contractual requirements that the Academy training curriculum is controlled by the Collective Bargaining Agreement, or that such field experiences for recruits are prohibited or constrained.

There is no showing that this particular field experience was other than an appropriate "training module" which involved some pre-training for the assignment poll duty, with the order being distributed and discussed, with the recruits being instructed as to the limits of their role, and advised to call 911 if a problem arose.

Without some dispositive proof that this field experience was the second such schedule alteration that calendar year, or that it normally was part of field training in the past rather than a field experience, or that the Agreement constrains the right of the County to determine the curriculum and training of



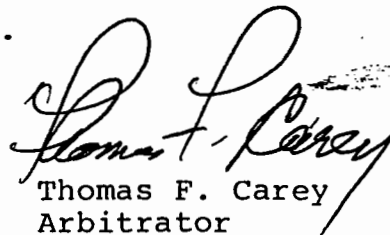
its recruits, the grievance can not be sustained. One need not reach the inferential claim of overtime denied. However, even that contention appears to be without persuasive proof in the record given the fact that the Department was at full complement at the time, and there is no showing that any officer lost an overtime opportunity because of the assignment of the recruits.

NOW, THEREFORE, as the duly selected Arbitrator, after having reviewed all of the data, testimony, and materials presented, I make the following:

AWARD

The claim that the County violated Article 8.5-9 on November 3, 1987 when Police Academy recruits' schedules were altered by their assignment to Election Day poll duty is not sustained for the reasons set forth in the Award.

Jericho, New York  
April 5, 1989

  
Thomas F. Carey  
Arbitrator

STATE OF NEW YORK )  
                              SS:  
COUNTY OF NASSAU )

On the 5th day of April, 1989, I, THOMAS F. CAREY, attest on my oath as arbitrator to be the person who executed the foregoing Arbitration Award.

  
Thomas F. Carey