

-----X  
In the Matter of the Interest Arbitration

between  
COUNTY OF NASSAU

"County"

-and-

THE POLICE BENEVOLENT ASSOCIATION OF  
THE POLICE DEPARTMENT OF THE COUNTY  
OF NASSAU, INC.

"Association"

-----X

Re: Alternate Salary  
Compensation for  
Board of Governors

APPEARANCES

For the County

BEE, EISMAN & READY  
Peter A. Bee, Esq., of Counsel

For the Association

SOLOMON RICHMAN GREENBERG P.C.  
Harry Greenberg, Esq., of Counsel

BEFORE: Martin F. Scheinman, Esq., Interest Arbitrator

## BACKGROUND

By Stipulation of Agreement dated November 18, 1998, the County of Nassau (hereinafter "County") and the Police Benevolent Association of the Police Department of the County of Nassau, New York, Inc. (hereinafter "Association") selected me to serve as sole arbitrator to adjudicate their collective negotiations dispute in accordance with Section 209 of the New York Civil Service Law (Taylor Law) for a successor contract to the Agreement which expired on December 31, 1996. In accordance with my agreed upon jurisdiction, I issued, on August 29, 1997, an Award for the five (5) year period of January 1, 1996 through January 31, 2000. That Award was confirmed by the New York State Supreme Court and ratified by the Nassau County Legislative.

Pursuant to Section 12 of my Award, I remanded to the parties the appropriate alternate salary rates to be paid, effective January 1, 1996, to the Association's Board of Governors. Specifically I stated:

**12. ASSOCIATION RELEASE TIME AND THE BOARD OF GOVERNORS**  
...Effective January 1, 1996, the Association's Board of Governors shall receive the alternate salary rates agreed to by the Association and the County. I shall retain jurisdiction to resolve any dispute between the parties regarding which alternate salary rate shall be applicable to the Association's Board of Governors.

The parties met in an attempt to agree upon the appropriate alternate salary rates for the Board of Governors. Unfortunately, those meetings did not resolve the matter. Therefore, in

accordance with my prior Award, the parties requested that I invoke jurisdiction over the issue.

Hearings were held on September 9, 1998 and September 17, 1998 at the Office of Labor Relations in Mineola, New York. At those hearings, I requested the Police Department to prepare a document setting forth the average overtime earnings for a twelve (12) month period for precincts within the County. That document was forwarded to me in November 1998.

Thereafter, I directed the parties to set forth their additional arguments in written form. Both sides introduced additional materials in support of their respective positions. The Association's initial material was submitted in December 1998. The County then responded in April 1999. The Association filed its response in July 1999.

Based upon my review of the material submitted, I scheduled another hearing on November 12, 1999. At that hearing, each side introduced additional evidence and argument in support of their respective positions. The parties were then provided a final opportunity to submit further evidence and argument. The record was declared closed on March 31, 2000.

## DISCUSSION AND FINDINGS

### The Issue

The Issues to be determined are:

1. What alternate salary rate, if any, shall be applicable to the Association's Board of Governors?
2. If there shall be an alternate salary rate, how shall it be implemented?

### Positions of the Parties

The Association points out that in accordance with Article 9 of its Constitution and By-Laws the Board of Governors consists of the Executive Board comprised of the President, First Vice President, Second Vice President, Treasurer, Corresponding Secretary, Recording Secretary and Sergeant - at - Arms and a Board of Trustees, comprised of eleven (11) Trustees; one for each of the eight (8) precincts and three (3) headquarters Trustees.

The Association alleges that the current alternate salary schedule pay should be amended to create an appropriate alternate salary schedule which would apply to the Board of Governors. It argues that Executive Board members are not permitted to earn overtime compensation and that their duties and responsibilities effectively preclude them from performing off-duty employment. The Association argues while Trustees may earn overtime, their duties and responsibilities cause them to have reduced opportunities to earn overtime compensation. In turn, the Board of Governors may have their pension calculations negatively impacted.

In this regard, the Association notes that the average County

Police Office in 1998 earned \$8,716.00 in overtime. The Association asserts that many commands had overtime averages far in excess of this amount. It urges that especially the Executive Board, due to their relative seniority, normally would be assigned to commands in which there is a high level of overtime.

The Association maintains that the current contract alternate salary rates, first introduced as a contract term in the 1981 Arbitration Award, set the top pay for contract alternate salary rates at 11.27% above the top pay for police officers. Extrapolating this figure to the average overtime rate equals \$9,698.00, which the Association insists should be the floor from which to establish the proper rate of pay for the Board of Governors.<sup>1</sup>

The Association contends that the off - duty earning capacity of Executive Board members is substantial. It notes that their educational background, experience both as police officers and as officers of the Association make these individuals attractive candidates for private industry. This is especially so, claims the Association, given the academic qualifications required of Nassau County's Police Officers.

Based upon this view, the Association maintains that the value

---

<sup>1</sup>The Association urges that it is undisputed that police officers with the same seniority as those on the Executive Board, in Highway Patrol, the Records Bureau and DWI precinct enforcement have earned overtime in excess of \$26,820. Applying the 11.27% to that figure, equals 29,843.00 per year. This figure, claims the Association, can easily be justified for the Executive Board.

of off - duty "is no less than their current compensation received from the County of Nassau" (Association post hearing memorandum at page 8). The Association argues that the loss of off - duty compensation is, "at a minimum" \$11,456.00. The Association has developed this figure by calculating the straight time rate of \$35.75 per hour multiplied by 288 hours annually (24 hours of off - duty work per month) multiplied by the 11.27% contract alternate salary factor.

Further, the Association urges that all members of the Board of Governors spend substantial time outside of their annual scheduled hours involved in labor management activities that advantage not only the members they serve but also insure a more smoothly run Police Department. The Association inserts that this important task directly advantages the citizens of the County.

The Association also asserts that the Board of Governors tend to serve for long periods of time. This "continuity" helps make the Department run more efficiently. However, individuals are required to forego promotion opportunities in order to remain in these positions. The Association claims that a comparison between a top pay police officer and a detective in 1996 resulted in a police officer receiving \$6,871.00 less pay. For the same period, a top pay police officer was paid \$14,320.00 less than a Sergeant. In the Association's view, "when considering the PBA Board of Governors alternate salary rate proposal, the difference between a

police officer and detective, and police officer and Sergeant must also be considered when determining the applicable Board of Governors alternate salary rates." (See Association Brief at page 12).

In summary, the Association alleges that the following chart demonstrates the monies lost by members of the Board of Governors in 1996 dollars:

1. Overtime Compensation	\$12,896-\$29,800 (Trustee \$7,724)
2. Off - Duty Employment	\$11,456-\$11,456
3. Association Activities	\$16,087-\$24,138 (Trustee \$4,290-\$6,437)
4. Career Opportunities 1996	<u>\$6,871</u> - <u>\$14,320</u>
Annual Total Lost Income	\$47,310-\$79,714

The Association proposes that the President be paid as follows:

Effective January 1, 1996, the President shall receive the Step 3 Contract Alternate Salary rate which is \$69,711. Beginning with the fifth year as a member of the PBA Board of Governors, the President shall receive an additional 2.5% of the Step 3 Contract Alternate Salary Rate for each year he/she is a member of the Board of Governors.

Using this formula, if it is assumed that the President had six (6) years of service in 1996 his or her annual salary overall will be:

Effective January 1, 1996: \$69,711.00 plus 15% (6 years x 2.5%)=\$80,168.00

Effective January 1, 1997: \$69,711.00 plus 17.5% (7 years x 2.5%)=\$81,910.00

Effective April 1, 1997: \$71,803.00 plus 17.5% (7 years x 2.5%)=\$84,369.00

The Union proposes a similar program for the First Vice President, Second Vice President, Treasurer, Corresponding

Secretary, Recording Secretary and Sergeant - at - Arms except that the multiplier, instead of being 2.5%, would be as follows:

First Vice President	2%
Second Vice President	1.5%
Treasurer	1.5%
Corresponding Secretary	1%
Recording Secretary	1%
Sergeant - at - Arms	1%

For the Board of Trustees, The Association proposes that beginning with the fifth (5<sup>th</sup>) year of service as a Trustee, each Trustee shall receive as an annual at salary step 1 of the contract alternate salary plan rate. Effective July 1, 1996, this would be \$65,825.00.

Beginning with the ninth (9<sup>th</sup>) consecutive year of service as a Trustee, that Trustee shall receive as an annual salary Step 2 of the contract alternate salary plan. Effective July 1, 1996, this would be \$67,634.00.

In light of its arguments on continuity, the Association insists that linking compensation to at least five (5) years on the Board of Governors makes good sense. The Association also argues that given the financial sacrifices attendant to service on the Executive Board, any Executive Board member that is no longer a member of the Board of Governors shall continue to receive the alternate salary compensation for at least four (4) years after he or she is no longer an Executive Board member. In this way, argues the Association, the member can be made whole for his or her financial loss.



The Association insists that my prior Award contemplated increases for the Board of Governors. In light of the subsequent judicial and legislative determinations, the Association maintains that there can be no dispute but that funding for such increases exists. This, the Association claims, demonstrates the County's ability to pay for such increases.

The County, on the other hand, does not dispute that my prior Award contemplated that the Board of Governors were to receive compensation in accordance with the alternate salary rates. Nor does it dispute that certain alternate salary is appropriate. Rather, the County argues that the magnitude of the increases, and methods of determining eligibility proposed by the Association explain why the parties were unable to resolve this issue on their own.

The County alleges that members of the Board of Governors should be placed in the current alternate salary plan and progress through the steps of that plan as do officers assigned to the Detective Division, officers designated as Police officer Pilots and Police Officer Mechanics.

Also, the County rejects the argument originally proffered by the Association, but which has been modified in this proceeding, that the members of the Board of Trustees receive the same alternate salary as members of the Executive Board. It urges that all of the Board of Governors be placed no higher than Step 3, the

highest step of the contract alternate salary plan.

The County also contends that there are other bona fide reasons to reject the Association's proposal. First, it notes that nothing in the Agreement specifically requires that overtime be distributed equally or in any manner. While the County agrees that there is a practice to equally distribute certain overtime, such as short roll call overtime, there is no contractual provision guaranteeing any member of the Board of Governors such overtime compensation. Further, the County argues that members of the Board of Trustees are available to earn overtime and actually do so.

The County also urges that being a member of the Board of Governors is voluntary. When running for such office, such individuals knowingly choose such a path. The County claims that it should not be required to pay additional compensation "when an individual makes a decision that is not within the County's discretion to grant an order" (County's post hearing memorandum at page 6).

As to Association's argument about the Executive Board members being prohibited from working in off-duty employment, the County notes that this preclusion was in effect long before any current Board of Governor assumed his or her position on the Executive Board. In the County's view, no additional compensation should be directed in order to provide credit for the exclusion of a right that did not previously exist. The County also states that members

of the Board of Trustees are permitted to perform off-duty employment in accordance with current rules.<sup>2</sup>

Specifically, the County makes the following proposal for the Board of Governors alternate salary rate.

Executive Board Compensation.

After completion of four consecutive years in as a member of the Executive Board that member shall begin receiving Step 1 of the contract alternate salary rates, \$65,285 effective 1/1/96. That person thereafter shall progress through the steps in accordance with the process and procedures that is currently in effect.

Board of Trustees

After completion of four consecutive years as a member of the Board of Trustees that member shall begin to receive Step 1 of the contract alternate salary rate.

In the event either a member of the Board of Trustees or Executive Board ceases to hold the position for which he/she is receiving payment under the alternate salary schedule, for any reason, upon again assuming a Board of Governor position another four year period must be accrued before there is any compensation under this alternate salary plan.

In no event shall any alternate salary rates be paid to any individual in the event they do not hold a position as a member of the Board of Governors.

Opinion

Despite how hotly litigated, fundamentally, this is a very

---

<sup>2</sup>The County specifically rejects the Association's argument that the improvement in labor - management relations or the "impact upon career opportunity" should be relevant criteria in determining this dispute.

narrow dispute. It is uncontested that my Award of August 29, 1997, contemplated that the Association's Board of Governors shall receive alternate salary rates. It is also undisputed that the County acknowledges that the Board of Governors are to receive alternate salary rates. It is agreed that such payments exist in other jurisdictions such as Suffolk County. Finally, it is stipulated that these payments are to be effective January 1, 1996.

What remains in dispute is the amount of the alternate salary rates. Also contested is which individuals are to receive such rates, how the plan would apply and what is the appropriate eligibility for such rates.

Preliminarily, I agree with the County that the circumstances faced by the Board of Trustees is far different than that faced by members of the Executive Board. Trustees are eligible and do work overtime assignments. They also are not precluded from working off-duty employment.

This is not to diminish the significance of the contribution to the County and its citizens provided by the Board of Trustees. Rather, these factors compel the conclusion that while these individuals are deserving of additional compensation in order to offset some of the adverse impact upon their remuneration and their pension calculations, there is no compelling evidence to create a new alternate salary rate for members of the Board of Trustees. Instead, the appropriate compensation for the services they provide

and their lost opportunities to earn additional compensation is properly addressed by incorporating the Board of Trustees into the current alternate salary rates.

Further, I agree with both parties that the County and its citizens receive greater advantages in terms of the efficiencies occasioned by Board of Governors with a minimum number of years of service. For this reason, I have determined that a Trustee must serve for at least four (4) years before he or she begins receiving alternate salary.

Thus, I have adopted almost entirely the County's proposal regarding alternate salary rate for the eleven (11) members of the Board of Trustees. Therefore, effective January 1, 1996, after completion of four (4) consecutive years as a member of the Board of Trustees, that Trustee shall begin to receive Step 1 of the contract alternate salary rate. Beginning with the ninth (9<sup>th</sup>) consecutive year of service as a Trustee, that Trustee shall receive salary step 2 of the contract alternate salary plan.<sup>3</sup> However, should a Trustee cease to hold the position he or she is receiving payment under the alternate salary schedule, for any reason, upon assuming a Board of Trustee position another four (4) year period must be accrued before there is compensation under the alternate salary plan.

---

<sup>3</sup>Subsequent years shall be paid in accordance with the then applicable alternate salary rate for Step 2.

As regards the Executive Board, I agree with the Association that the current alternate salary plan cannot merely be extrapolated to these individuals. After all, Executive Board members - in large measure because of their relatively high years of seniority - have lost substantial amounts of overtime money they would have earned. This has a dramatic impact upon their renumeration and their pension calculation. The record evidence demonstrates that lost overtime alone often would exceed \$20,000.00 annually for those individuals. Just the average overtime earned by police officers for 1998, the period for which records were available during the evidentiary portion of this proceeding, was over \$8700.00. When the contract alternate salary rate percentage, (which is 11.27% above top pay for police officers) is multiplied by this average, precinct overtime approximates \$9700.00 per individual.

I believe that these figures compel the creation of a new alternate salary guide for the Executive Board. Instead of tying this figure to a current alternate salary rate, it is fairer and clearer to establish rates for each of the Executive Board positions. The figures selected, as of July 1, 1996, are intended to reflect primarily the lost overtime opportunity coupled with the amount of hours spent outside of the officer's annual scheduled hours in doing these functions. These amounts, however, will not make the Executive Board members whole in comparison to what they

would have earned if they were permitted to work overtime.

The new Executive Board schedule shall be as follows:

President	\$11,000.00
First Vice President	8500.00
Second Vice President	7500.00
Treasurer	7500.00
Corresponding Secretary	6000.00
Recording Secretary	6000.00
Sergeant - at - Arms	6000.00

These rates shall be adjusted annually as do other alternate salary rates.

While these figures are final, and shall be paid, forthwith, I have not yet determined the other arguments that remain on how to measure the value of "continuity" and how to assess the amounts lost due to the preclusion on off - duty work for Executive Board Members. However, at a minimum, the Executive Board member shall not be eligible for alternate salary until he or she has completed four (4) years as a member of the Board of Governors. I also have decided that the County is correct that no Executive Board member (and no member of the Board of Trustees) shall receive the alternate salary rate after he or she leaves office, no matter the reason. However, no individual Executive Board member's pay shall be adversely affected by having to actually utilize vacation days prior to retirement in order to avoid forfeiting vacation.

Lost off - duty employment opportunity is particularly troublesome to measure given the recent amendments more liberally permitting officers to work off - duty. As such, this requires

further analysis.

To facilitate this analysis, I direct the parties to submit all available information on off - duty employment worked by police officers. I also want produced all empirical evidence possessed by the Police Department and Association of how the deletion of the restriction on officers engaging in off - duty security work has impacted upon officer's earnings from off - duty employment. Said information shall be submitted within ninety (90) calendar days of this Opinion and Award.



AWARD

1. Effective January 1, 1996, after the completion of four (4) consecutive years as a member of the Board of Trustees, that Trustee shall begin to receive Step 1 of the contract alternate salary plan. Beginning with the ninth (9<sup>th</sup>) consecutive year of service as a Trustee, that Trustee shall begin to receive Step 2 of the contract alternate salary plan. Subsequent years shall be paid in accordance with the then applicable alternate salary rate for Step 2.

However, should a Trustee cease to hold the position he or she is receiving payment under the alternate salary schedule, for any reason, upon assuming a Board of Trustee position another four (4) year period must be accrued before there is compensation under the alternate salary plan.

2. Effective January 1, 1996, there shall be a new contract alternate salary rate for members of the Executive Board as follows:

President	\$11,000.00
First Vice President	8500.00
Second Vice President	7500.00
Treasurer	7500.00
Corresponding Secretary	6000.00
Recording Secretary	6000.00
Sergeant - at - Arms	6000.00


These rates shall be adjusted annually as do other alternate salary rates.

However, no Executive Board member shall be eligible for these alternate salary rates until he or she has completed four (4) years as a member of the Board of Governors.

3. The final implementation of these Executive Board alternate salary rates established, herein, shall be determined subsequent to my receipt of the evidence set forth in my Opinion above.

4. No member of the Board of Governors may receive any alternate salary rates for any period after he or she leaves office, no matter the reason.

July 27, 2000.



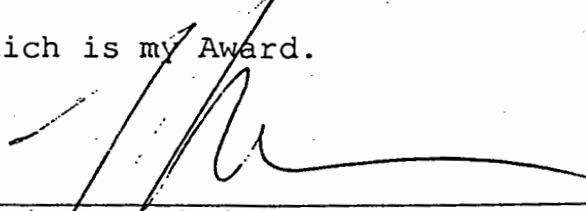
---

Martin F. Scheinman, Esq.  
Impartial Arbitrator

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

I, MARTIN F. SCHEINMAN, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

July 27, 2000.



---

Martin F. Scheinman, Esq.  
Impartial Arbitrator