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In the Matter of the Arbitration

between

X Re: Equipment
Allowance

COUNTY OF NASSAU

X

"County"

X

-and-

X

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

X

X

X

"Association"

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APPEARANCES

For the County

COUNTY OF NASSAU OFFICE OF LABOR RELATIONS
Eileen M. Vogel, Esq., Assistant Director

For the Association

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

BEFORE: Martin F. Scheinman, Esq., Arbitrator

BACKGROUND

This grievance protests the County's refusal to pay for the repair and replacement of its Police Officers' on-duty leather holsters. The Association argues that the County's refusal to pay for the repair or replacement of on-duty leather holsters violates the parties' past practice and their Collective Bargaining Agreement. It asks that as a remedy, it be recommended that the County pay for the repair and replacement of its Police Officers' on-duty leather holsters.

Many of the basic facts are undisputed. Pursuant to Section 9.6 (A) of the Agreement, the County's Police Officers are provided with an annual equipment/weapon allowance. (Joint Exhibit No. 1 at pgs. 16-17) The amount of this annual equipment/weapon allowance was increased as part of an August 29, 1997 Interest Arbitration Award for which I served as Interest Arbitrator.

In or about 1992, the County Police Department replaced its Officers' 38 caliber pistols with 9 mm pistols. In doing so, the County provided its Officers with 9 mm weapons as well as leather holsters. Since that time, whenever an Officer's holster has needed to be repaired, the County has had it repaired at no charge to the affected Officer. However, after more than seven (7) years of use, many of these leather holsters require extensive repairs or cannot be repaired and must be replaced with new holsters.

In a letter to the Association dated July 15, 1998, the County took the position "that the cost of replacement or repair [of the holsters] should be borne by the affected [Officer] utilizing

his/her equipment allowance." (Joint Exhibit 2)

The Association promptly grieved the County's refusal to pay for the repair or replacement of its Police Officers' on-duty leather holsters. When the parties were unable to resolve this dispute at the lower stages of their grievance procedure, the Union appealed to arbitration.

A hearing in this matter was held before me on April 7, 1999. At that hearing, the parties were afforded full opportunity to present evidence and argument in support of their positions. They did so. Upon the conclusion of the hearing, the record was declared closed.

DISCUSSION AND FINDINGS

The Issue

The parties agreed to the following issues:

1. Did the County violate the parties' past practice and their Agreement when it required use of equipment/weapon allowance monies to pay for the replacement and purchase of on-duty leather holsters?
2. If so, what shall be the recommended remedy?

Relevant Contractual Language

9.6 (A) Equipment/Weapon Allowance.

1. An employee shall receive an equipment allowance toward the cost of required equipment not furnished by the Police Department according to the following rates:

Effective January 1, 1998 - \$850.00
Effective January 1, 1999 - \$900.00
Effective January 1, 2000 - \$950.00

Such amounts shall be pro-rated according to the employee's period of employment. Such compensation shall be paid on or before the first Thursday in July of each calendar year.

2. Equipment Allowance - 9MM Weapon

(a) New employees hired on or after 1/1/92, shall apply up to one year entitlement of equipment allowance to the purchase of a 9MM weapon from the County. The cost of the 9MM weapon will be the cost of the actual 9MM weapon. The new employee shall own that weapon and will thereafter be responsible for all repairs and replacement of the weapon in the future except as outlined in subsection (c) of this section.

(b) Employees hired prior to 1/1/92 shall be given an opportunity to apply up to one year equipment allowance entitlement to the purchase of a 9MM weapon. Thereafter each employee who desires to exercise this option shall own that weapon and will thereafter be responsible for all repairs and replacements of that weapon in the future except as provided in subsection (c) of this section.

(c) The County will be responsible to repair or replace any 9MM weapon that is damaged or lost while in the performance of official duties. This subsection supersedes the provisions in

section 9.6 (A) 2 (a) & (b).

Positions of the Parties

The Association maintains that the County violated the parties' past practice and their Agreement when it required Police Officers to use their equipment/weapon allowance monies to pay for the replacement and purchase of on-duty leather holsters. It points out that since 1992, the County has had a practice of paying for the repair of on-duty leather holsters without requiring that those repairs be paid for by the affected Officer with his or her equipment/weapon allowance. The Association contends that nothing in the August 29, 1997 Interest Arbitration Award made any change to Section 9.6 of the Agreement which would permit the County to change this longstanding past practice. Therefore, it argues that as a remedy, it should be recommended that the County pay for the repair and replacement of its Police Officers' on-duty leather holsters.

Accordingly, the Association requests that its grievance be sustained.

The County, on the other hand, maintains that it did not violate the parties' past practice or their Agreement when it required Police Officers to use their equipment/weapon allowance monies to pay for the replacement and purchase of on-duty leather holsters. To the contrary, it points out that Section 9.6(A) of the Agreement provides Police Officers with a substantial equipment/weapon allowance "toward the cost of the required

equipment not furnished by the Police Department." (Joint Exhibit No. 1 at pg. 16) The County argues that on-duty leather holsters are "required equipment not furnished by the Police Department." (Joint Exhibit No. 1 at pg. 16) Therefore, it insists that Police Officers should be required to use their equipment/weapon allowance monies to pay for the replacement and purchase of on-duty leather holsters.

The County acknowledges that in 1992, it replaced all of its Officers' 38 caliber pistols with 9 mm pistols and provided all of its Officers with 9 mm weapons as well as leather holsters. However, it insists that this one (1) time event cannot constitute a binding past practice. Thus, the County argues that it has not violated a binding past practice by requiring its Police Officers to use their equipment/weapon allowance monies to pay for the replacement and purchase of on-duty leather holsters.

Accordingly, the County requests that the Association's grievance be denied.

Opinion

After carefully considering the evidence and arguments presented, I find that the County violated the parties' past practice and their Agreement when it required Police Officers to use their equipment/weapon allowance monies to pay for the replacement and purchase of on-duty leather holsters. This is so for several reasons.

The record demonstrates that in or about 1992, the County

replaced all of its Officers' 38 caliber pistols with 9 mm pistols and provided all of its Officers with 9 mm weapons and leather holsters, at no cost to the Officers. It further demonstrates that since that time, whenever an Officer's 9 mm on-duty leather holster has needed to be repaired, the County has had it repaired at no charge to the affected Officer. Thus, the record clearly establishes that the parties' have a longstanding practice of the County providing its Police Officers with functioning 9 mm on-duty leather holsters, at no cost to the Officers. This was done notwithstanding the equipment/weapon allowance which was paid to the County's Officers on an annual basis.

Nothing in the August 29, 1997 Interest Arbitration Award altered this past practice. Thus, the County should continue to provide for the repair and replacement of its Officers' 9 mm on-duty leather holsters at no charge to the affected Officers.

In so holding, I have made no finding regarding the existence of any practice which would require the County to pay for new weapons and holsters, if it decided to change the type of weapons carried by all of its Officers. As the County points out, the evidence before me only shows that the County did so on one (1) occasion. However, it also shows that on numerous occasions the County had on-duty 9 mm leather holsters repaired at no charge to the affected Officer. Thus, by finding that the County should continue to repair or replace worn out on-duty 9 mm leather holsters at no charge to the affected Officer, I have made no finding regarding the wholesale replacement of the weapons and

holsters carried by all of the County's Officers.

Thus, as a remedy I shall recommend that the County pay for the repair and replacement of its Police Officers' on-duty 9 mm leather holsters, at no charge to the affected Officers.

Accordingly, the Union's grievance is sustained.

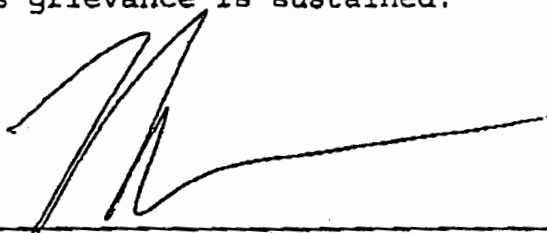
AWARD

1. The County violated the parties' past practice and their Agreement when it required Police Officers to use their equipment/weapon allowance monies to pay for the replacement and purchase of on-duty leather holsters.

2. It is recommend that the County pay for the repair and replacement of its Police Officers' on-duty 9 mm leather holsters, at no charge to the affected Offciers.

3. The Association's grievance is sustained.

June 4, 1999.




Martin F. Scheinman, Esq., 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.

June 4, 1999.



Martin F. Scheinman, Esq., Arbitrator