

NIGHT DIFFERENTIAL

NASSAU COUNTY PUBLIC EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR

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In the Matter of the Arbitration :

- between - :

COUNTY OF NASSAU, NEW YORK :

- and - :

OPINION AND AWARD

PATROLMEN'S BENEVOLENT ASSOCIATION :  
OF THE POLICE DEPARTMENT OF THE :  
COUNTY OF NASSAU, INC. :

MARILYN M. LEVINE  
Arbitrator

Re: Grievance of Police Officer :  
Stuart Metz :

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HEARING HELD: September 20, 1983

APPEARANCES:

For the County of Nassau

Peter A. Bee, Esq., Labor Counsel  
Peter J. Hart, Assistant Director, Office of  
Employee Relations  
Robert P. Yaccarino, Assistant Chief Inspector

For the PBA

Michael Axelrod, Esq.  
Gary Dela Raba, Second Vice-President  
James Cameron, Trustee  
Stuart Metz, Grievant

This matter was heard by the Arbitrator in the Conference Room of the PBA offices, Mineola, New York. The parties were given full opportunity to present evidence and argument and to examine and cross-examine witnesses. The witnesses were duly sworn. At the conclusion of the hearing, both parties stated that they had presented their respective cases in full.

The Arbitrator was requested to render an advisory Award. The issue as stipulated by the parties in the signed submission agreement dated September 20, 1983 is as follows:

Was the loss of the night shift differential as a result of a change of assignment violative of the contract rights of the Grievant under 8.14-2(A) and (B)? If so, what shall the suggested remedy be?

#### BACKGROUND

Sections 8.14-2(A) and (B) of the Collective Bargaining Agreement (County Exhibit 1) read as follows:

8.14-2(A) Except as otherwise required by law, employees who are on authorized leave due to illness or injury or bereavement only, shall likewise receive the additional differential compensation provided for herein, if such employee, by reason of his work schedule, would otherwise have worked during such hours for which the said additional differential compensation would be paid in pursuance of this subdivision.

8.14-2(B) An employee who is placed on restricted or light duty and assigned to a day tour because of a line of duty injury or an extended illness,

shall continue to receive the same night differential which he would otherwise receive by reason of his regular work schedule, but the Commissioner of Police shall have the power, in his discretion, to direct such employee to submit to medical re-evaluation at such intervals as he may determine and to discontinue payment of night differential whenever, in his judgment, such action is warranted.

In addition, the County directs the Arbitrator's attention to Section 3.0 of the Agreement, which reads in pertinent part, as follows:

3.0 The County. Except as limited by this Agreement, the County reserves the right to determine the standards of service to be offered by its various agencies; to set the standards of selection for employment; to direct its employees; to regulate work schedules;... (emphasis added).

Grievant Stuart Metz was injured in the line of duty on February 8, 1981, while attempting to subdue an alcoholic driver. (PBA Exhibits 2 through 14). His application for disability retirement is pending. The Grievant suffered prior on duty injuries beginning in January, 1975 when he was assaulted in CTU. Another on duty injury occurred in February, 1980 when he slipped in the parking lot. Police Officer Metz has been on extended R.A. (restricted assignment) since February 12, 1980.

In his letter to the Commanding Officer, Highway Patrol Bureau (HPB) dated May.2, 1983, Police Officer Metz

stated that he was arbitrarily transferred to day tour duty (on March 22, 1983) and did not continue to receive the night differential that he had been receiving by reason of his regular work schedule. (PBA Exhibit 15).

It is the position of the PBA that the Grievant's contractual rights were violated when he lost the night shift differential as a result of a change of assignment to the day shift. The PBA relies upon Sections 8.14-2(A) and (B) of the Collective Bargaining Agreement, as well as testimony by Police Officer James Cameron, PBA Trustee which indicated that approximately ten of the 167 police officers in the Highway Patrol Command are on restricted assignment; and that all ten police officers continued to receive the night differential unless they asked for a change themselves.

Police Officer Cameron testified over objection by the County which noted that there are 2400 police officers covered by the Collective Bargaining Agreement.

It is the position of the County that pursuant to Section 8,14-2(B) of the Agreement, there has been no violation, since the Grievant was not assigned to a day tour because of a line of duty injury. The County relies further on the testimony of Assistant Chief Inspector Robert P. Yaccarino which indicated that day tours are

assigned in cases of psychological line of duty injury, which was not the case with regard to Police Officer Metz.

In a letter dated May 20, 1983 addressed to the Grievant, Commissioner of Police Samuel J. Rozzi wrote as follows:

"SUBJECT: GRIEVANCE \_ ALLEGED LOSS OF CONTRACTUAL BENEFIT

Be advised that I have reviewed your grievance in which you allege that this Department violated the current Patrolmen's Benevolent Association contractual agreement wherein an inter-Command transfer caused the discontinuance of night differential payments to you.

Your change of assignment within the Highway Patrol Bureau to a steady day tour was not made because of your light-duty status, nor was it made to eliminate the payment of night differential to you. Your present assignment is not of a temporary nature; it is a permanent post change within your Command, and not an arbitrary move to eliminate any contractual benefit you may have had.

Accordingly, pursuant to Step 3 of the Grievance Procedure contained in the present contract between the Patrolmen's Benevolent Association and the County of Nassau, your grievance is denied."

The County moved to dismiss the grievance based upon the Grievant's failure to meet the condition required pursuant to Section 8.14-2(B) that he be assigned to day tour because of line of duty injury. The Arbitrator reserved decision in regard to the motion by the County; the Award in this matter will be dispositive of the motion by the County.

#### DISCUSSION

Section 3.0 The County of the Collective Bargaining Agreement reserves the right of the County to regulate work schedules. The County had the right to transfer Police

Officer Metz to his present position in the Highway Patrol Bureau for the legitimate reasons cited in Commissioner of Police Rozzi's letter, and testified to by Assistant Chief Inspector Yaccarino, in accordance with Section 3.0 of the Agreement.

It is unreasonable to expect that a police officer who suffered a line of duty injury could never be transferred to a steady day tour for legitimate reasons unrelated to light-duty status.

In the case at bar, the Grievant suffered a line of duty injury, and was paid the night differential pursuant to Section 8.14-2(A) of the Agreement for the period from February 12, 1980 to March 22, 1983 when he was transferred to steady day tour. When the Grievant was transferred to steady day tour for reasons unrelated to his line of duty injury, Section 8.14-2(B) of the Agreement became operative. In order for the Grievant to continue receiving the night differential, he would have had to have demonstrated that the reason for the transfer was line of duty injury. Such was not the case.

I find therefore that the County did not violate the contract rights of the Grievant when it changed his assignment to steady day tour, which resulted in his loss of the night shift differential.

Accordingly, I award as follows:

AWARD

Based upon the substantial evidence of the case as a whole, the loss of the night shift differential as a result of a change of assignment did not violate the contract rights of Grievant P.O. Stuart Metz under Sections 8.14-2(A) and (B) of the Collective Bargaining Agreement.

Dated: October 6, 1983

Marilyn M. Levine  
MARILYN M. LEVINE, Arbitrator

STATE OF NEW YORK) ss:  
COUNTY OF NASSAU)

I, Marilyn M. Levine, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.