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In the Matter of the Arbitration

Between the

NASSAU COUNTY PBA

vs.

COUNTY OF NASSAU
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**OPINION
AND
AWARD**

Grievants:
PO Joseph Lynch
PO Michael Lambert

BEFORE:

GAYLE A. GAVIN - Arbitrator

Appearances:

For the Union:

Seth H. Greenberg, Esq., Greenberg Burzichelli Greenberg P.C., Kevin Tobin,
PBA 2nd Vice President

For the County:

Michael Krauthamer, Esq., Donna A. Canfield, Esq., Lamb & Barnosky, LLP ;
Captain George Hollman, Nassau County Police Department

PRELIMINARY STATEMENT

The undersigned was duly designated by the parties to serve as the impartial under the contractual grievance procedure between the County and the Nassau County Police Benevolent Association (the "PBA" or "Union"). A hearing was held on June 13, 2006. The PBA and the County were given a full and fair opportunity to present evidence, to examine and cross-examine witnesses, to present arguments and otherwise support their respective positions. The parties

submitted post-hearing briefs and the record closed on July 14, 2006. The evidence adduced and the positions and arguments were carefully considered in issuance of this Opinion and Award.

ISSUE

The parties were unable to agree upon an issue and agreed to have the undersigned frame the issue in this matter. I have done so as follows:

Did the County violate Section 8.0 of the parties' collective bargaining agreement by temporarily assigning Police Officers Joseph Lynch to the 1st Precinct and Police Officer Michael Lambert to the 2nd Precinct for more than 90 days? If so, what shall be the remedy?

APPLICABLE PROVISIONS

1992-1995 Collective Bargaining Agreement

8.0 - Qualifications

- (1) All members must have three (3) full years of patrol experience before they can be assigned permanently to any specialized units within the police department.
- (2) Temporary assignments cannot be of such in nature as to last more than ninety (90) days and that time will be credited to the three (3) year requirement for assignment to specialized units.
- (3) Temporary assignments must be separated by no less than 6 months so as to not frustrate the intention of this agreement.
- (4) Members who are assigned to non-patrol functions because of a line-of-duty injury shall have that time credited to the three (3) year requirement.

- (5) Members who possess special qualifications such as a college degree in chemistry, law, accounting, or a helicopter pilot license that are deemed to be needed in the best interest of the police department's operation shall be exempt from the three (3) year provision indicated above.
- (6) The department shall at least, three (3) times per year or more frequently, whenever the need arises, cause a list to be established listing vacant positions. The department shall be required to give proper notice, of at least 30 days, to all employees of the vacant positions to be filled from within the ranks. This notification will include, but not be limited to, assignments to the detective division, headquarters commands or any specialized division within the police department. In order to comply with this provision the department shall:
1. List the job description; and
 2. List the qualification for the position and established application procedure; and
 3. Designate time periods for applications to be filled with thirty (30) days being the minimum time set; and
 4. Conduct oral interviews of all applicants and notify each applicant of the status and results of his/her application; and
 5. List all members who apply and who receive or are appointed said position(s).

1996 – 2000 Arbitration Award

35. Temporary Assignments

The definition of temporary assignments in applying the provision of Section 8.0 in the Agreement shall be amended to include assignments to the Police Academy and the Marine Bureau.

Memorandum of Agreement – November 30, 2004

- (1) Temporary assignments to the Police Academy for Recruit Training can exceed the 90 day limit outlined by Section 8.0 *et. seq.* of the 1992-1995

contract, and the Interest Arbitration Awards that followed on August 29, 1997 and September 14, 2003, for the duration of an Academy class not to exceed 7 months.

- (2) If Academy classes run consecutive temporary assignments, at the Police Officer's option, may continue until completion of that graduating class not to exceed 7 months.
- (3) For temporary assignments to the Police Academy for recruit Training only, the 6 month separation as outlined in Section 8.0 *et. seq.* of the 1992-1995 contract will be not apply (sic).
- (4) All Police Officers assigned to the Police Academy on the mentioned temporary assignment shall continue to receive all benefits as though they were assigned to their original command assignment.
- (5) All other agreements and Memorandums (sic) of Understandings pertaining to Section 8.0 *et. seq.* of the 1992-1995 Contract and Section 33 of the 1997 Arbitration Award shall remain in full force and effect.

BACKGROUND

Police Officers Joseph Lynch and Michael Lambert were temporarily assigned to the First Precinct and Second Precinct, respectively, from the Highway Patrol Bureau, effective October 25, 2005.¹ On March 1, 2006, the PBA submitted a grievance at Step 3, claiming the temporary assignments of Officers Lynch and Lambert exceeded the 90 day limitation. The matter was not resolved and proceeded to Step IV for binding arbitration. Both officers were still assigned to the above precincts at the time of the hearing.

STIPULATED FACTS

The following facts were stipulated by the parties:

¹ That the officers were under investigation by the Department's Bureau of Internal Affairs had no relevance to the issue before me.

