

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Charging Party,

CASE NO. U-23656

- and -

COUNTY OF NASSAU,

Respondent.

GREENBERG BURZICHELLI GREENBERG P.C. (SETH H. GREENBERG of
counsel), for Charging Party

LAMB & BARNOSKY, LLP (MICHAEL KRAUTHAMER of counsel), for
Respondent

DECISION OF ADMINISTRATIVE LAW JUDGE

On August 19, 2002, the Police Benevolent Association of the Police Department of the County of Nassau, Inc. (PBA) filed an improper practice charge alleging that the County of Nassau (County) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally redeployed police officers out of a specialized unit and refused to bargain over the decision and/or the impact thereof. The County denied that its actions violated the Act and asserted "duty satisfaction" as an affirmative defense. A hearing was held on March 3, May 17, June 15 and November 21, 2005, at

Case No. U-23656

2

which both parties were represented by counsel.¹ Both sides filed briefs on April 10, 2007.²

FACTS

The BSO within the Nassau County Police Department (Department) is a specialized tactical and anti-crime unit.³ It addresses gang violence, street level enforcement in high crime areas for robberies and burglaries, street level narcotics enforcement, assistance to detective units with surveillance, hostage rescues, policing major events within the County, dignitary protection, execution of high-risk warrants and management of emotionally disturbed individuals who are armed.⁴

BSO officers receive specialized training in addition to that provided to the rank and file and are required to use specialized equipment in the course of performing their

¹ In lieu of a fifth hearing date, the parties on June 22, 2006, submitted a partial stipulation of facts referencing injury statistics for Bureau of Special Operations (BSO) officers for the years 1996 through 2004 and year end BSO staffing levels for the same period. It was further stipulated that PBA witnesses, if called to testify, would state that the injury chart reflects only reported injuries and is inaccurate as to the total number of injuries suffered by BSO officers, and the staffing data is inaccurate in that it reflects only year end figures.

² The delay in the processing of this case, from the November 25, 2002 conference to the hearing dates and the filing of briefs, was occasioned by numerous "hold" and/or extension requests from the parties, who were attempting to resolve the matter through negotiations.

³ The unit consists of persons who hold the Civil Service title of "police officer," some of whom perform administrative/clerical duties.

⁴ Detailed testimony from PBA witnesses focused on numerous high profile situations within the County handled by the BSO, including large public gatherings, the Belmont Stakes, and events at Jones Beach, the Nassau Coliseum, and similar large venues. At the time of the charge, in 2002, there were approximately 39 tactical incidents handled by the BSO, exclusive of dignitary details.

Case No. U-23856

3

duties, such as ballistic helmets, goggles with high impact polycarbon lenses, gas masks, high threat level ballistic vests, and ballistic shin guards. Physical training addresses the need of BSO officers to wear a heavy vest and helmet and carry heavy guns and equipment. Police officer John LaSalla, who has worked in the BSO for the past 15 years, said that the training regimen is mandatory and if an officer does not pass the required physical fitness test, he or she is not assigned to the tactical team.⁵ BSO officers also receive special firearms training and rappel training and must score higher than other patrol officers on the tests.⁶ In addition, many attend the FBI's SWAT School and the New York City Emergency Services SWAT School.

The BSO separates police officers into two squads, each with a lieutenant and three sergeants. At the time of the hearing, the BSO operated Tuesday through Saturday, 5 p.m. to 1 a.m., and Tuesday through Friday, 8:30 a.m. until 4:30 p.m. In May 2005, the two squads covered three sectors, each led by a sergeant.⁷ At the time that the charge was filed, in 2002, there were four sectors. Generally, there is no scheduled BSO coverage on Sundays and Mondays, leaving the unit unstaffed for 96 hours per week.

While a varying number of officers are called in to respond to different situations, a 1998 Department order provides that during hours when no BSO officer is working, a

⁵ This same physical training and tests are not required of officers assigned outside of the BSO.

⁶ The minimum score for a BSO officer on the nine millimeter handgun test is 86, compared to 70 for a patrol officer not assigned to the BSO.

⁷ A "sector" covers assigned precincts.

