

HIGHWAY SOCIAL

DECISION OF ADVISORY ARBITRATOR

In re COUNTY OF NASSAU, NEW YORK and POLICE BENEVOLENT ASSOCIATION OF THE NASSAU COUNTY POLICE DEPARTMENT.


I, PHILIP HARRIS, having been duly appointed to hear and decide the matter in dispute and having duly heard the proofs and allegations of the Parties, hereby render the following decision:

The grievance of the Association should be sustained, except that the five subject Police Officers should remain in their present command.

AFFIRMATION

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

I, Philip Harris, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.


Philip Harris, Ph.D.
Hewlett, New York
June 10, 1997

AppearancesFor the County

Howard B. Cohen, Esq., Law Offices of Bee, Eisman & Ready; Captain Wayne Atkins; and Assistant Chief Robert Bishop.

For the Association

Harry Greenberg, Esq., Law Offices of Solomon Richman Greenberg P.C.; Anthony Famulari, Trustee; John J. Nikiel, Delegate; and Allen Unterweiser, 2nd Vice President.

IssuesCounty

Does the Collective Bargaining Agreement permit the Police Department to fill positions in the Highway Patrol Bureau with Officers having less than three years of service?

Association

Did the County violate Section 8.0 et. seq. of the Contract when it temporarily transferred five Police Officers to the Highway Patrol Bureau with less than three years patrol experience for more than ninety days? If so, what shall the remedy be?

Contract Provisions

3.0 The County-Reserved Rights

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; to take disciplinary action; to relieve its employees from duty because of lack of work or for other legitimate reasons; to maintain the efficiency of governmental operations; to determine the methods, means and personnel by which governmental operations are to be

conducted; to determine the content of job classification; to take all necessary actions to carry out its mission in emergencies; and to exercise complete control and discretion over its organization and the technology of performing its work.

8.0 QUALIFICATIONS

Effective September 1, 1992:

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 to 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 filed 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).

Facts

Section 8 was a new clause in the Agreement between the Parties. On October 6, 1995 the Police Department issued a memorandum seeking volunteers for its Highway Patrol Bureau, stating:

Preference will be given to those Police Officers with more than three (3) years of service in the Department though this is not mandatory for requesting this change of assignment.

Five Officers with less than three years of service responded and were ordered to report to the new assignment. Ninety days later the Association grieved a violation of Section 8.

Association's Position

1. The Agreement specifies that Officers must have three years of patrol experience before permanent assignments can be made to specialized

units.

2. Temporary assignments cannot last more than ninety days.

3. The Police Department had been informed that the ninety days were coming up for the five Officers. When the time elapsed and the Officers remained, a grievance was filed to have them reassigned to their former commands, which is what the Association now seeks from this advisory arbitration.

4. During negotiations the issue was raised that Section 8 takes away certain Management Rights, but the County signed the Agreement.

5. In recognition of the above point, subsection (5) allows for certain exceptions.

6. Concerning "specialized units," Officer Unterweiser was a witness at the hearing and a negotiator of the Collective Bargaining Agreement. He testified that the then Police Commissioner as well as Assistant Chief Bishop had agreed that the Highway Patrol Bureau was a specialized unit.

7. Officer Unterweiser did not grieve the October 6, 1995 preference statement because, after bringing it to the attention of Assistant Chief Bishop, it was permanently deleted from future vacancy notifications.

8. Section 3 starts out with "Except as limited by this Agreement...." Section 8 is one such limitation which must be observed.

County's Position

1. It is a Management Right to staff as per Section 3, and it is not given up in Section 8.

2. The subject posting did not produce the required number of applicants, giving rise to the selections that were made.

3. Section 8 was sought and drafted by the Association because of the appearance that promotions or transfers were based on politics rather than merit.

4. No grievance was filed on the preference cited in the October 6,

1995 memorandum.

5. The grievance should be denied because the qualification section was not "operative" in that all the senior Officers who volunteered were accepted. None was passed over, hence there was no favoritism.

6. The term "specialized unit" is not defined in the Agreement.

7. The duties and training are significantly similar for Officers in Highway Patrol and in a Precinct. Likewise with the procedures used by both categories. Hence Highway Patrol is not specialized.

8. Section 8 should be narrowly construed and applied to avoid political patronage in filling sought-after positions in specialized units.

9. The subject Officers all now have three years with the Department, and it would be a business mistake to transfer them out, given the valuable experience they have gained in the past year.

10. No Officer was denied a transfer to the Highway Patrol Bureau because of the selection of the subject five.

11. The Association apparently wants Officers ordered to the Bureau who lack motivation, interest and desire for it.

12. The grievance should be denied.

Opinion

The Association has the preponderance of evidence. A major contribution to this was the uncontested testimony of Officer Unterweiser who helped negotiate the Collective Bargaining Agreement and thereafter partook in its administration. He testified under oath that there was a meeting of minds with, among others, the former Police Commissioner and present Chief Bishop, that the Highway Patrol Bureau was included as a specialized unit. Chief Bishop was in attendance throughout the hearings and did not contradict what he heard, nor did he testify at all. The Arbitrator is therefore obliged if not compelled to accept the uncontested testimony as the truth of the matter. Chief Bishop's silence most

eloquently speaks to his and his team's personal integrity. All too often the arbitrator sees parties glaring at each other as they lie profusely across the table with the arbitrator wishing he had a divining rod in his quest for the truth. Here such problem does not exist: there was agreement that the Highway Patrol Bureau is a specialized unit.

Other factors buttress this award. One is the opening language of Section 3, the County-Reserved Rights: "Except as limited by this Agreement...." Certainly Section 8 is encompassed as one such limitation, and therefore the specifications within it must be honored.

The point was made that the Association did not grieve the preference language in the October 6, 1995 memorandum. The Association's response was persuasive: it brought the matter to the attention of upper management, and the language was deleted permanently thereafter, as evidenced by later memoranda produced at the hearings.

The County claimed the qualification section was not "operative" because all senior Officers who volunteered were accepted. However, the Association understandably wants the Agreement enforced even if it means ordering Officers into the vacancies. This is what would have happened anyway if there were insufficient volunteers.

The County's position on retaining the five Officers who have been on the job a year and have gained valuable experience has the great appeal of logic. The Arbitrator too believes it is in the interest of organizational effectiveness as well as taxpayers and other in the public to maintain their status quo, while strictly enforcing this interpretation of the Agreement in all future applications.

Award

The grievance of the Association should be sustained, except that the five subject Police Officers should remain in their present command.

Philip Harris, Ph.D.

Arbitrator

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(407) 482-9235*

June 10, 1997

County of Nassau
Office of Labor Relations
1550 Franklin Avenue
Mineola, New York 11501

Nassau County Patrolmen's
Benevolent Association ✓
96 Willis Avenue
Mineola, New York 11501

Re: Change of Assignment - Highway Patrol

INVOICE

Hearing days October 29, 1996; February 10; and February 11, 1997:

3 days @ \$500.00	\$1500.00
Study time and report writing : 2 days @ \$500.00	<u>1000.00</u>
	\$2500.00

To be divided equally by the Parties.