

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

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In the Matter of the Application of the

COUNTY OF NASSAU,

Petitioner,

For a Judgment Pursuant to CPLR Article 75 Vacating  
and Setting Aside a Certain Arbitration Award,

-against-

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

Respondent.  
-----x

**MICHELE M. WOODARD  
J.S.C.  
TRIAL/IAS Part 21  
Motion Seq. No.: 01 & 02  
Index No.: 0008188/06  
DECISION & ORDER**

**Papers Read on this Motion:**

Petitioner's Notice of Petition	01
Respondent's Answer	xx
Respondents' Cross-Petition and Respondents' Respondents' Affirmation in Opposition and in Support of its Cross-Motion	02
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Respondents' Affidavit	xx

The COUNTY OF NASSAU, hereinafter referred to as "THE COUNTY", moves for a Judgment pursuant to CPLR §7511(b)(1) vacating and setting aside the February 21, 2006 Opinion and Award of Arbitrator Philip Harris.

The POLICE BENEVOLENT ASSOCIATION OF THE POLICE DEPARTMENT OF THE COUNTY OF NASSAU, INC., hereinafter referred to as "PBA", Cross-Moves for an Order pursuant to CPLR §7510 and §7511 denying THE COUNTY's Petition to vacate the Award and an Order to confirm the Award.

THE COUNTY is moving to set aside and vacate a certain Taylor Law-based grievance Arbitration Award in an Arbitration proceeding between THE COUNTY and PBA. The subject

matter of the Arbitration was the PBA's disagreement with the manner in which THE COUNTY Police Department staffed Driving While Intoxicated ("DWI") checkpoints on January 1, 2005 at which the Department utilized police officers not then assigned to the geographic area where the DWI checkpoints were being conducted.

On February 21, 2006, Arbitrator Philip Harris, Ph.D., issued an opinion and Award which held that THE COUNTY violated the minimum staffing provisions of <sup>a prior</sup> Interest Arbitration Award between the parties because it had assigned officers to areas outside of their normal geographic locations.

THE COUNTY argues that DWI checkpoints are one of the many crime suppression initiatives that are utilized by Nassau County to prevent crime. THE COUNTY argues that it is essential that they have the discretion to utilize its police force and assign police officers to crime suppression initiatives and that the opinion and award grossly infringes on <sup>its</sup> their ability to accomplish this objective.

Based on the foregoing, THE COUNTY contends that the Award should be vacated because it violates public policy, lacks evidentiary support and the Arbitrator exceeded his power.

The parties have between them a single issue, namely the Compulsory Interest Arbitration Award regarding minimum manning (also known as minimum staffing) from March 8, 2004 which was subsequently supplemented by a later Award dated August 9, 2004. In order to suppress crime, THE COUNTY's Police Department decided to initiate two different DWI checkpoints within its 4th Precinct on January 1, 2005. THE COUNTY implemented the program pursuant to Chapter VIII of the Nassau County Administrative Code which establishes and defines the powers and duties of the Department of Police of the County of Nassau. THE

COUNTY relies on the following provisions:

- §8-3.0 Commissioner; powers and duties, provides in relevant part that the Police Commissioner shall have jurisdiction and control of the government, administration disposition and discipline of the Police Department.
- §8-12.0 Detail to duty; provides in relevant part that the Police Commissioner may detail without regard to residence, members of the police force to such parts of the County as he may deem advisable.
- §8-20.0 Precincts; provides in relevant part that the Police Commissioner, with the approval of the Board of Supervisors (now the County Legislature), shall divide the district into as many precincts as he deems necessary.

THE COUNTY's application is **DENIED** and the application of the PBA is **GRANTED**.

THE COUNTY has not sufficiently proven that the award violated public policy. The Arbitrator did not issue an irrational decision or exceed his powers. The record of the Arbitration proceedings and conduct thereof adequately demonstrate that the Award should be confirmed and not vacated.

Pursuant to CPLR §7511(e) application to vacate is **DENIED** and the Award is hereby **CONFIRMED**.

Although the argument set forth by THE COUNTY that preventing occurrences where individuals are driving while intoxicated as a matter of public safety, the argument does not support a deviation from the public policy of providing safety of the public and police officers. The minimum staffing requirements as set forth by the respondents provides protection to the public by ensuring that there are a certain minimum number of police officers and patrol cars on call within a certain geographical area. The policy also ensures that there are a sufficient number

of officers on duty and available in the event an officer needs immediate assistance.

"An Arbitration Award may be vacated on public policy grounds only where it is clear on its face that public policy precludes its enforcement", see *Jaidan Industries, Inc., v V.M.A. Angeliades, Inc.*, 97 NY2d 659 (2001).

The Arbitrator did not exceed his authority. There were two questions set forth by the parties. The PBA's issue was: "Did THE COUNTY and the Police Department violate minimum staffing on or about January 1, 2005 in the Fourth Precinct when it removed Police Officers from their posts to conduct DWI checkpoints?"

THE COUNTY's question was: "Did THE COUNTY and the Police Department violate minimum staffing on or about January 1, 2005 in the Fourth Precinct when it assigned Police Officers to conduct DWI checkpoints which were not on their designated posts?"

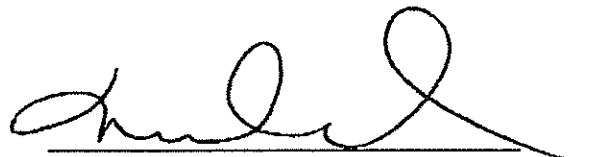
The Arbitrator's Award is: "THE COUNTY and the Police Department violated minimum staffing. However, for reasoning cited herein, no penalty derived from the March 8, 2004 Interest Arbitration Award shall be assessed. The Arbitrator retains jurisdiction."

The Arbitrator went through the history of the relevant provisions; the contract between the parties, past awards and testimony before rendering his award which was rational based on the evidence.

This constitutes the **DECISION** and **ORDER** of this Court.

**DATED:** January 4, 2007  
Mineola, N. Y.

**ENTER:**

  
**HON. MICHELE M. WOODARD**  
**J.S.C.**