

**IN THE MATTER OF ARBITRATION BETWEEN**

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**NEW ENGLAND POLICE BENEVOLENT ASSOCIATION  
COUNTY CORRECTIONAL OFFICERS ASSOCIATION LOCAL 575**

**AND**

**NORFOLK COUNTY SHERIFF'S DEPARTMENT**

**(Shift Swaps)**

**Grievance No. 21-002**

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**AWARD OF THE ARBITRATOR**

The Undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered by the above named parties and having been duly sworn and having duly heard the proofs and allegations of the parties **AWARDS** as follows:

For the reasons set forth in the attached Decision, the grievance is sustained. The February 4 Guidelines that require that shift swaps must be completed in a calendar year must be rescinded.

March 7, 2022  
Boston, Massachusetts

  
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Gary D. Altman

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**ARBITRATION DECISION AND AWARD**

**Introduction**

The County Correctional Officers Association-NEPBA Local 575 ("Union") and the Norfolk County Sheriff's Office ("Department" or "Sheriff's Office") are parties to a Collective Bargaining Agreement ("Agreement"). Under the Agreement, grievances not resolved during the grievance procedure may be submitted to arbitration under the rules of the American Arbitration Association. The parties presented their case in Arbitration before Gary D. Altman, Esq., on September 21, 2022. The Union was represented by Thomas E. Horgan, Esq., and the Employer was represented by Dan Bair, II, Esq. The parties had the opportunity to examine and cross-examine witnesses and to submit documentary evidence. The parties submitted written briefs after the conclusion of the testimony.

**Issue**

The parties agreed that the issue to be decided is as follows:

Did the Norfolk Sheriff's Office violate the terms of the parties' Collective Bargaining Agreement when they issued their February 4, 2021 Memorandum requiring

that all shift swaps be completed (returned) within the calendar year (January 1<sup>st</sup> to December 31<sup>st</sup>)? If so, what shall be the remedy?

### **Facts**

For the most part the facts of the present case are undisputed. As long as can be remembered bargaining unit members have been allowed to swap their regularly assigned shifts with other similarly ranked officers in order to get time off that they might not otherwise be able to take utilizing their vacation, compensatory time, or personal days. In other words, Officer A would be scheduled to work a shift. Officer A finds another officer, Officer B, to work the shift for him/her on his/her regularly scheduled shift. Officer A promises Officer B to work for him/her on another date. Officer B then works for Officer A at another time, and the swap is complete. There is no change in pay for the two officers; Officer A would be paid his or her regular pay even though he or she did not work, and at the later date Officer B would be paid his or her regular pay when Officer A works Officer B's shift.

Article XI Section 1 sets hours of work for members of the bargaining unit. Specifically, Officers work what is known as a 4-2 work schedule; officers work four days then have two consecutive days off. In addition some officers work a 5-2 work schedule, which is a Monday through Friday work schedule with Saturdays and Sundays off.

Jay DeAngelis has worked at the Department for twenty years. He has been on the Union's Executive Board, and has served as the Union President for the last six years. Officer DeAngelis explained that shift swaps have been in existence for as long as he has worked at the Department, and that there are two types of swaps. The first is those

in which the Officer seeks a shift swap in advance. In these situations the Officer finds another Officer to work his or her shift and agrees to a certain date in which the Officer will then work the shift for that Officer. The request is then submitted to a superior. There are also emergency shift swaps, situations on which the need arises for a swap on short notice. In these situations the Officer requesting the swap does not have to indicate a date on which he or she will work for the Officer that initially agreed to work the shift.

Article XI Section 6 describes the conditions for shift swaps, including the emergency and non-emergency swaps, and reads as follows:

Section 6. Each member of the bargaining unit shall be granted a shift trade for a day or days in which he/she is able to secure another employee to work in his/her place, provided:

- a. such substitution does not impose an additional cost on the County;
- b. such substitution is within rank only;
- c. employees will be required to submit the request for a shift trade one (1) week in advance;
- d. shift trade requests will be submitted to the Facility Shift Commander, who in turn will obtain final approval from the Assistant Deputy Superintendent in the Bureau of Personnel and Professional Standards who is charged with the responsibility of establishing the work schedule;
- e. requests for shift trades will be required to be signed by the employee, the Facility Shift Commander, the substitute and the Assistant Deputy Superintendent;
- f. the employee who has agreed to work will be held responsible in the same manner as if he/she were regularly scheduled to work;
- g. if an employee requests a shift trade because of an emergency, such request will only be considered if the employee has no available personal time, vacation time or any other type of earned time. Then and only

then would such shift trades be authorized, and only authorized by the Assistant Deputy Superintendent of the Bureau of Personnel and Professional Standards charged with the responsibility for the schedule.

h. All requests for swaps for less than a full day, limited to two (2) half (1/2) days per quarter for the first year; and four (4) half (1/2) days per quarter for the second year will be allowed.

Officer DeAngelis stated that prior to 2015 there were no limits on the number of swaps that Officers could take in a given year. In 2015 the Department sought to limit the number of swaps an Officer could take during a year and in July 2015 the parties reached a Memorandum of Understanding, which remains in effect. The Memorandum reads as follows:

1. The NSO and the CCOA agree that the NSO will limit the number of swaps allowed under Article XI, Section 6 of the collective bargaining agreement (CBA) to no more than ten (10) swaps per month and forty-five (45) swaps per calendar year (a calendar year being from January 1 to December 31)

2. The CCOA agrees to withdraw the pending arbitration AAA#11-20-1400-0120 (Swaps) with prejudice. The parties agree to split equally any cancellation fee.

3. All parties agree that they have had the opportunity to review this agreement, that they understand its terms, and that they have entered into it without coercion and of their own free will.

Michael Harris was appointed as the Superintendent/Special Sheriff for the Department two and a half years ago. Superintendent Harris testified that at the end of calendar year 2020 he was reviewing records of shift swaps, and noticed that there were five to ten Officers who had not actually completed their shift swaps; that is,

Officers had swapped shifts with other Officers and the other Officers then worked the shift, but the Officer who had requested the swap and did not work his or her shift, had not yet worked a shift for the Officer who agreed to the swap and already worked. Supervisor Harris explained that Officers not completing the swap were violating the purpose and intent of shift swaps, and he decided to issue a memorandum that would clarify the shift swap process. On February 4, 2021 the Department issued a Memorandum that reads as follows:

The following guidance concerning the approval of swaps shall go into effect immediately. Swaps will be managed by the Time & Attendance Office and Administration to ensure compliance.

- Per union agreement, officers are limited to 10 swaps per month and 45 swaps per calendar year (January 1 to December 31)
- It is your responsibility to ensure all swaps (non-emergency) have a return swap date.
- Officers will be allowed six emergency swaps per calendar year that will not require an immediate return swap date upon request.
- All swaps must be complete (returned) within the calendar year.

Superintendent Harris testified that, if appropriate, he would consider exceptions to the guidelines, such as if Officers who had to pay back the swap were out on injury leave or if Officers had left the Department. Officer DeAngelis testified that up to the present grievance there was no specified time period by which Officer A would have to complete the swap and work one of Officer B's shifts. The Union submitted the present grievance challenging the

February 4 Memorandum requiring that all shift swaps had to be completed by the end of the calendar year.

**Other Relevant Provisions of the Parties Agreement**

Article 23:

The Employer recognizes its obligation to bargain with respect to implementation of mandatory subjects, including, but not limited to, the position described in Article IX Job Posting described aforesaid.

**Position of the Parties**

Summary of the Union's Arguments

The Union maintains that Officers, with certain conditions, have been able to swap their shifts with other Officers, that this has been the existing practice for many years, and that the practice has been codified in Article 11 Section 6 of the parties' Agreement. The Union states that in 2015 the parties agreed to amend the shift swap procedures and entered into a written Memorandum of Agreement. The Union states, however, that nowhere in the Collective Bargaining Agreement, the 2015 Memorandum, or the parties' past practice has there been any requirement that the Officer seeking the shift swap had to complete the swap within a specific time frame.

The Union maintains that imposing a deadline, when swaps have to be completed, is a change that had never before been negotiated with the parties. The Union states that there is no dispute that the Employer unilaterally implemented the requirement that shift swaps had to be completed within a calendar year, without providing notice and the opportunity to bargain over this new requirement. The Union points to Article 23 that provides that the Employer "recognizes its obligation to bargain with respect

to implementation of mandatory subjects" of bargaining. The Union contends that there can be no dispute that the subject and conditions of shift swaps is a mandatory subject of bargaining, that must be negotiated by the parties. The Union states that whenever the parties have sought to amend or change the practice of shift swaps, the parties have negotiated over any such changes.

The Union states that this was the case in 2015, when the Employer sought changes and the parties then agreed to a written Memorandum of Understanding. The Union concludes that the unilateral change in the present case requiring that all shift swaps be completed within the calendar year violated the parties' Agreement and past practice, the grievance must be sustained, and the Department must be directed to rescind the February 4, 2021 Memorandum.

#### Summary of the Department's Arguments

The Department contends that it did not violate the parties' Agreement when Superintendent Harris implemented the February 4 Memorandum adopting guidelines relating to shift swaps. The Department states that the Collective Bargaining Agreement provides for Officers to swap their shifts with other Officers. The Department states that by its definition a swap consists of two components, an Officer agrees to work for another Officer, that Officer, in turn, will then complete the swap by later working the shift of the Officer with whom he or she initially swapped the shift. The Department states that the Agreement is silent and makes no mention of a time period by when the swap must be completed. Thus, the Department states that it cannot be said that establishing a time period by when the swaps must be completed conflicts or violates any provision of the parties' Agreement.



The Department states that no time period by which the swap must be completed means that Officers could go for unlimited periods of time without repaying the swap, defeating the intent and purpose of allowing two officers to swap their shifts; one officer working a shift and the other officer then working for the Officer at another point in time. The Employer contends that simply putting a time period by which the swaps must be completed does not deny employees any contractual benefits, as employees are still permitted to swap shifts as many times as provided in the parties' Agreement.

Moreover, the Department states that the Agreement provides that Officers work either a 4-2 or a 5-2 work schedule. If Officers do not complete the swap officers would end up working less days than called for in their regular work schedule. The Department states that shift swaps set forth in Article XI, Section 6 and the 2015 Memorandum of Agreement were never intended to change the basic work week set forth in the parties' Agreement; rather, they were instituted to permit officers to periodically adjust their schedule and swap shifts to accommodate their personal needs.

### **Discussion**

There is essentially no dispute of facts in the present case. Bargaining Unit members are allowed to swap or trade their work shifts with other bargaining unit members. Shift swaps or shift trades have been a long standing practice and have been codified in Article XI Section 6 of the Agreement, and also a July 2015 Memorandum of Agreement. There is also no dispute that in the past there has been no requirement that the completion of the shift swap, where the Officer works the shift of the

officer who initially worked for the Officer, must be done by a specific date or within a specific time period. On February 4, 2021 the practice changed when Superintendent Harris issued a Memorandum stating that all shifts swaps, the initial swap and the return of the swap, had to be completed within the calendar year.

The Employer argues that there is nothing in the parties' Agreement that discusses a time period for when the initial swaps must be repaid by the Officer who sought the initial swap. The Employer further argues that not having a time period by which to complete both of the swaps, contradicts the contractual work schedules of Officers, since they could end up not fulfilling either the 4 -2 or 5-2 work schedule. The Employer's argument that unlimited shift swaps contravene the contract language on existing work schedules is without merit. Officers not changing their work schedules, when they swap shifts with another officer, they continue to work their regularly assigned shifts.

In addition, the fact that there is no language in the parties' Agreement that sets forth when shift changes must be completed, does not give the Department the *carte blanche* right to impose a mandatory time period in which swaps must be completed. At times Employers are permitted to make changes in operating procedures based on the rationale that a change in a procedure does not actually impact working conditions or benefits of employees. For example, implementing an electronic record keeping system versus a prior practice of making paper entries, would be a change that does not have any demonstrable impact on employees' working conditions that would require prior negotiations.

The change implemented by the Department in the present case is most definitely a change in procedure that affects the existing benefits of Officers, and is not just a change in process. For example, the Employer's new requirement would limit the opportunity to make shift swaps if they were sought later in the year, since there would not be not adequate time to effectuate the initial swap and then repay the swap. For example, if the swap was sought for December, an Officer would have a very limited time period in which to repay the swap and work the shift for the Officer if it had to be done in thirty days or less. Thus, the benefit of shift swaps has been altered and diminished by the Employer's February 4, 2021 guidelines.

Moreover, a review of the parties' contract language demonstrates that the subject of shift swaps has in the past been negotiated between the parties. The parties codified the practice on shift swaps, and added this benefit to the Agreement. When the Department sought to change or modify the practice on shift swaps in 2015, the parties negotiated and entered into a written agreement on the matter. This practice supports the Union's position that the parties have negotiated over the subject of shift swaps and that if there are to be any changes that have an impact upon this benefit the parties must negotiate to make any such changes. This requirement of prior negotiations is certainly consistent with Article 23 that establishes the Department's obligation to bargain over the implementation of mandatory subjects of bargaining, and as stated above, imposing this time period to complete both ends of the swaps, is a change that has a direct impact on a long standing benefit of bargaining unit employees.

**Conclusion**

Based on all the factors, the grievance is sustained. The February 4 Guidelines that require that shift swaps must be completed in a calendar year must be rescinded.

March 7, 2022  
Boston, Massachusetts

  
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Gary D. Altman