



the two other matrons, Ann Krueger and Terri Sukow, exceeded the hours that she worked or was offered as a matron by more than the 20 hours differential permitted under the contract. Specifically, during June 1992, Krueger worked 102 hours, Sukow 144 hours and Trantow 26 1/2 hours; in July 1992, Krueger worked 74 hours, Sukow 93 1/2 hours, and Trantow 27 1/2 hours; August 1992, Krueger 77 hours, Sukow 163 1/2 hours, and Trantow 46 hours; September 1992, Krueger 24 hours, Sukow 35 hours, and Trantow 0 hours; October 1992, Krueger 136 hours, Sukow 130 hours, and Trantow 7 hours; November 1992, Krueger 140 hours, Sukow 131 hours, and Trantow 45 hours. The grievant stated that during this period she did not refuse to work any hours as a matron and worked whenever she was asked.

The contract at Article 15, Section 15.02, permits a 20 hour differential under the equalization provisions. When taking that into account in this case the total differential which exceeds that permitted by the contract i.e., 20 hours per month, amounts to an aggregate 440 hours during the disputed period.

The weekly variance in the amount of hours worked and times worked by matrons is due to the fact that they are only required when there are female prisoners present in the jail. There are occasions when there are no female prisoners present in the jail, and thus there is no need to have a matron working. On many of the days in question when the matrons were working because of the presence of female prisoners in the jail, the matron who did work, worked more than an eight hour shift. For example, on June 1, Krueger worked from 8:00 p.m. to 7:00 a.m., and on June 2, she worked from 6:30 p.m. to 7:00 a.m. On June 3, Sukow worked from 9:30 p.m. to 7:00 a.m. and on June 4, she worked from 5:00 p.m. to 6:30 a.m. This pattern where the employe who was working worked anywhere from eight to fourteen hour shifts as opposed to splitting the time between two matrons continued through July, August, September, October and November, 1992.

The Union argues that the Sheriff's conduct with respect to the scheduling of matrons violated Article 15.02 of the parties' 1992-94 collective bargaining agreement. It states that it is clear that the disparity in hours, which exceeds the 20 hours permitted under the collective bargaining agreement, was caused by scheduling Krueger and Sukow for long shifts to the exclusion of using Trantow. Had the Sheriff split the shifts or taken other measures to more equitably distribute the available work, which was clearly possible when one looks at the manner in which matrons were scheduled, the obvious violation would have been avoided. The Union, to remedy this violation, requests that the Sheriff be ordered to make the grievant whole for the 440 hours of lost work by paying her a sum of \$3,665.21 which is obtained by multiplying the 440 hours by her \$8.33 hourly rate in effect at the time of the violation.

The County, on the other hand, while not disputing that the number of hours worked by Krueger and Sukow in excess of the hours worked by Trantow during the same period exceeded the permissible variance under Article 15.02, disagrees with the Union with respect to the appropriate remedy. The County believes that the grievant should be afforded an opportunity to make up the 440 hours, but is not automatically entitled to a cash payment for not being afforded the opportunity to work the hours that exceeded the permissible variance under the equalization language of Article 15.02.

ISSUE:

Did the Sheriff violate the provisions of Article 15.02 of the 1992-94 collective bargaining agreement by scheduling matrons Krueger and Sukow to work more than the permissible 20 hours per month more than the hours worked by the grievant, Peggy Trantow? If so, what is the appropriate remedy?

DISCUSSION

It is clear from the record evidence in this case that the hours worked by Krueger and Sukow vis-a-vis Trantow during the period June 1992 through November 1992, exceeded the 20 hour differential amongst matrons permitted under Article 15.02 of the parties' collective bargaining agreement. The only dispute between the parties pertains to the manner in which the violation should be remedied. The County believes that it would be more appropriate to offer the grievant an opportunity to make up the work hours lost than to pay her for that time and not require her to work. The Union, on the other hand, believes that the County should be penalized for permitting the Sheriff to schedule Krueger and Sukow to work an excessive number of hours to the exclusion of Trantow; and the most appropriate way to remedy the violation and penalize the County is to award the grievant backpay for the 440 hour impermissible differential. The undersigned believes that there are two schools of thought regarding the remedy of overtime equalization contract violations. One school of thought is that the grievant should be awarded damages equivalent to the monetary value of the lost opportunity i.e., backpay for the 440 hour differential that was in excess of that permitted under the contract.

Another school of thought is that the grievant's loss is merely the opportunity to work those hours and that the grievant should not receive damages for the time lost, but should rather be afforded the opportunity to work those hours and earn the monies that she would have earned had the contractual equalization requirements been followed.

In this case, the remedy is somewhat complicated by the fact that matrons are not scheduled to work except when there are female prisoners present in the jail and there are no female correctional officers on duty. Because there are not always female prisoners present the number of hours available to work varies from month to month. Furthermore, in this case, if the grievant is merely afforded the opportunity to make up the hours it will further complicate the scheduling of matrons because the contractual provisions of Article 15.02 will still be in effect and 440 hours is a lot of time to make up. Thus, the undersigned believes that the most appropriate remedy in this instance is to give the Sheriff the option of granting the grievant backpay for the 440 hours, allowing her to make up the 440 hours over a specified period of time in the future, or a combination of both backpay and/or make up. Under any of those options the employee's grievance will be remedied and she will be made whole for the Sheriff's contractual violation. However, it also affords the Sheriff flexibility in terms of managing his operation while at the same time remedying an obvious contractual violation. Furthermore, a new Sheriff will be taking office in January and he will be inheriting a problem created by his predecessor, and he should be allowed some latitude to remedy the contract violation, while at the same time seeing to it that the grievant is made whole.

The make up of the hours is complicated by virtue of the Sheriff's continuing obligation to keep the differential in hours worked or refused between matrons at less than 20 hours. For example, if one assumes that there are 98 hours per month of available matron worktime, and there are three matrons to divide those hours amongst, while at the same time affording the grievant an opportunity to make up the 440 hours lost during the aforesaid six month period, it would require that Trantow work 50 hours while Krueger and Sukow are scheduled to work 24 hours each. If the permissible differential is 20 hours, then Trantow's 50 hours of work would be treated as four hours of regular scheduled matron time and 46 hours of make up time with a resulting differential of 20 hours of nonmakeup hours. This, obviously, is an extreme example, inasmuch as Article 15.02 obligates the Employer to make every effort to equalize the hours among part-time matrons; and maximizing the differential would not seem to be in the spirit of the obvious intent of the drafters of that language. Nonetheless, the example is not a recommendation by the undersigned, but is only offered to highlight the complications involved with having the grievant make up the time vis-a-via granting her a cash payment for hours lost. In the end, the Sheriff may conclude the most efficient and cost effective remedy is a cash payment to the grievant of \$3,665.21.

Based on the record as a whole the undersigned enters the following

AWARD

The County did violate Article 15.02 of the 1992-94 collective bargaining agreement when the Sheriff scheduled Krueger and Sukow to work more than 20 hours per week more than Trantow worked. Therefore, between now and December 31, 1993, the County shall either pay the grievant \$3,665.21 or allow the grievant to make up the 440 hours lost during the period June through November 1992, by virtue of the Sheriff's scheduling practices or any combination of make up hours or cash payment that equals \$3,665.21. Furthermore, the undersigned will retain jurisdiction of this matter until either March 1, 1994, or until he has been advised by the Union that the County has complied with this Award by fulfilling its obligations thereunder.

Dated at Madison, Wisconsin this 18th day of December, 1992.

Thomas L. Yaeger, Arbitrator

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