BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between LABOR ASSOCIATION OF WISCONSIN, INC., ON BEHALF OF WINNEBAGO COUNTY PUBLIC SAFETY PROFESSIONAL DISPATCHERS' ASSOCIATION and WINNEBAGO COUNTY	Case 259 No. 53151 MA-9256 Case 261 No. 53153 MA-9258	Case 260 No. 53152 MA-9257 Case 262 No. 53154 MA-9259
	Case 263 No. 53155 MA-9260	

Appearances:

Mr. Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin 54915, on behalf of the Association.

Mr. John A. Bodnar, Corporation Counsel, P. O. Box 2808, 415 Jackson Street, Oshkosh, Wisconsin 54903-2808, on behalf of the County.

CONSOLIDATED ARBITRATION AWARD 1/

According to the terms of the 1995-97 collective bargaining agreement between Winnebago County (County) and Public Safety Professional Dispatchers' Association (Association), the parties jointly requested that the Wisconsin Employment Relations Commission appoint Sharon A. Gallagher as impartial arbitrator to hear and resolve the dispute between them regarding whether the County properly ordered the five Grievants to work on August 12 and 13, 1995, on days that they were regularly scheduled to be off work. A hearing was held on December 6, 1995 at Oshkosh, Wisconsin. No stenographic transcript of the proceeding was taken. The parties agreed to the following briefing schedule: that the Association would submit an initial brief to which the County would reply and that after receipt of the County's reply brief the Association could file a reply brief. All briefs were timely received and the record in this case was closed on March 13, 1996.

1/ At the instant hearing the parties agreed that the five separate grievances filed regarding the issues herein should be consolidated for hearing and decision.

Stipulated Issue:

The parties stipulated that the following issue should be determined in this case:

> Did the County violate the collective bargaining agreement when it ordered the Grievants in to work on August 12th and 13th, 1995, from their regularly scheduled days off? If so, what is the appropriate remedy?

Relevant Contract Provisions:

ARTICLE 3

MANAGEMENT RIGHTS

Except as otherwise specifically provided herein, the management of the Communications Center and the direction of the work force including, but not limited to, the right to hire, to discipline and discharge for proper cause, to decide initial job qualifications, to lay off for lack of work or funds, to abolish positions, to make reasonable rules and regulations governing conduct and safety, to determine schedules of work, to subcontract work, together with the right to determine the methods, equipment, process and manner of performing work, are vested exclusively in the Employer.

Nothing contained herein shall divest the Association of any of its rights under Wisconsin Statute 111.70.

. . .

ARTICLE 6

HOURS OF WORK

The regular workweek shall consist of an average of thirty-eight and six-tenths (38.6) hours.

The normal duty schedule shall consist of four (4) consecutive duty days followed by two (2) consecutive days off.

The normal duty day shall consist of eight and one-fourth (8-1/4) hours including a thirty (30) minute paid lunch period.

. . .

Regular shifts shall be the following:

1st Shift	-	6:00 AM to 2:15 PM
2nd Shift	-	2:00 PM to 10:15 PM
3rd Shift	-	10:00 PM to 6:15 AM

. . .

An employee who has switched shifts or duty days will not be subject to being ordered in to fill a vacancy unless all on-duty personnel have been asked and the voluntary duty call list has been exhausted. Such employee will be ordered to fill a vacancy, however, before another individual on his day off is ordered in.

. . .

ARTICLE 7

OVERTIME AND COMPENSATORY TIME

. . .

No compensatory time off may be accumulated in excess of thirty-three (33) hours at any one time.

Utilization of compensatory time off by any employee shall be subject to the staffing needs of the Employer.

By December 1 of each year, the accumulated but unused and unscheduled compensatory time of each employee shall be converted to pay on the next payroll at the rate at which it was initially earned. There shall be no carry over of unused compensatory time from year to year.

. . .

ARTICLE 9

HOLIDAYS

Each permanent employee shall be entitled to ten (10) paid holidays per year (82.5 hours) to be taken as floating holidays. . . .

ARTICLE 10

VACATION

Each permanent employee shall be entitled to paid vacation time off in accordance with the following:

Ten (10) days after one (1) year of continuous service.
Fifteen (15) days after five (5) years of continuous service.
Twenty (20) days after ten (10) years of continuous service.

Employees shall earn vacation as of January 1 of each year, and such vacation must be used during that calendar year. Vacation may not be carried over from year to year.

. . .

ARTICLE 23

CALL-IN PAY

Whenever an employee is required to work during scheduled off time, he/she shall be entitled to a minimum of two (2) hours pay at time and one half, or time and one half for all actual time worked, if greater.

. . .

OVERTIME CALL-IN PROCEDURE:

At the hearing, the parties disputed whether an undated procedure, or the procedure dated December 2, 1992 was in effect at the time the instant grievances arose. The undated overtime call-in procedure reads as follows:

PURPOSE: To establish a procedure for filling overtime.

PROCEDURE: When a temporary vacancy occurs on a shift and the vacancy needs to be filled, the

following procedure shall be followed.

1. VACANCY WITH MORE THEN (sic) 24 HOURS NOTICE.

   A. The DIC or designee shall post the vacancy and it will be available to anyone wishing to sign for the time.

2. VACANCY WITH LESS THEN (sic) 24 HOURS NOTICE.

   A. The DIC or designee shall call personnel using the "call-out" list. Prior to calling the DIC shall establish the "order list". The DIC will then start with the next person on the list who did not get called the last time the list was used.

   B. If the entire list of employees has been contacted and no one accepts the offer to fill the vacancy, then the time will be offered to any employee on duty, who is not on the "call-out" list.

3. ORDERING IN PEOPLE.

   A. If the vacancy is not filled using the above procedures, then someone will need to be ordered to fill the vacancy. To be "ordered-in" an employee must be on normal time off. NO ONE shall be ordered in while on paid time off, unless as an absolute last resort, and all of the following procedures have been exhausted.

      1. The DIC will then

consult the schedule and overtime book to determine which employee(s) from the shift(s) adjacent to the vacancy can be ordered.

2. Using the list of people that can be ordered, the DIC will then determine which of the available employees has not been ordered for the longest period of time, utilizing the "ordered-in" list, and that person shall be ordered.

3. The person who was ordered, will then have their name placed at the bottom of the "order-in" list.

B. If the above procedure still fails to fill the vacancy then someone on their days off will need to be ordered in.

1. The DIC shall determine if there is anyone on their day off, who is working already either on a trade or on voluntary OT, that would be available for an order and that person shall be ordered for no more then (sic) four hours.

2. If the time is still not

filled, the DIC, utilizing the "day off order-in" list shall order in the least senior person whose name is at the top of the list. The order shall be for four hours unless the person being ordered agrees to an eight hour order.

3. Any person being ordered in shall have their name placed at the bottom of the "day off order-in" list.

4. In the event that all of the above procedures still fails (sic) to fill a vacancy, the DIC shall fill the vacancy in what ever manner the DIC deems reasonable.

The dated overtime call-in procedure reads as follows:

WINNEBAGO COUNTY SHERIFF'S DEPARTMENT
COMMUNICATIONS CENTER PROCEDURES

SUBJECT: OVERTIME CALL-IN PROCEDURE

ISSUING AGENCY: Communications

. . .

AUTHORIZED BY: Sheriff's Office

EFFECTIVE DATE: December 2, 1992

PURPOSE: Establish a procedure to be used for filling overtime.

PROCEDURES:

1. When a temporary vacancy occurs on a shift and the vacancy needs to be filled, the procedure for filling such a vacancy shall be as follows:

   a) The DIC or designee shall first ask all communication center employees, on duty and off duty, if they desire to fill such a vacancy, which shall be limited to four hour blocks. No employee should normally work more than 12 consecutive hours unless a replacement is unavailable or in an emergency situation. An employee shall not normally be considered available if they have worked 12 consecutive hours and have been off duty for less than eight (8) consecutive hours.

   b) If the entire list of employees is contacted and no employee has accepted an offer to fill the vacancy, then the DIC or designee shall again re-contact those employees who have refused to work, starting with the least senior eligible employee and shall order those who have initially refused the work to work the available time.

   c) Once an employee who has refused to work has been ordered to work a shift, his/her name shall be moved to the bottom of a rotating list of employees. Said employee shall not be contacted in order to work a shift until the DIC or designee has exhausted a list of all other available employees who have refused to work such a shift.

   d) Employees ordered in on a day off -- should the above procedures fail to fill the vacancy, all employees on their regularly scheduled off days shall be contacted, starting with the least senior employee who shall be ordered in.

   e) If the above procedures fail to fill the vacancy, the DIC or designee shall fill the vacancy in whatever manner the DIC or designee deems reasonable if no employee is available to fill such a shift, or until such time as an employee is available to fill such a

shift.

FACTS:

The County operates a Communications Center on a 24-hour, seven days per week basis where it employs approximately twenty-four dispatchers and three Dispatchers-In-Charge to answer 911 telephone calls and to dispatch police officers throughout the County. There must be someone in the Communications Center (CC) to answer telephone calls, and to make dispatch calls at all times. The County also employs one of its dispatchers as a receptionist to answer questions for police officers as well as members of the public.

The County has a minimum manning policy of six dispatchers per shift. During the Summer of 1995, four or five dispatchers resigned from County employment. Beginning on April 1, 1995 and continuing through the end of June, 1995, nine dispatchers were ordered to work overtime on their regular off days due to shift vacancies, according to County records. Of these nine, four dispatchers (Kaiser, Lewis, Holmes and Hazen) had a notation listed next to their names, "working O.T.", which means these dispatchers were already working voluntary overtime when they were ordered to fill a four hour vacancy; five dispatchers had no notations listed next to their names (Lewis, Danula, Herdina and Piper).

In early August, 1995, Sergeant "Dusty" Rhoades 2/ issued a memo to all dispatchers and placed this memo in the overtime book (in which overtime hours and shift trades as well as approved or denied requests for paid time off are traditionally kept). That memo read as follows:

> The week of August 13 to August 17 will be an especially difficult week to fill. The APCO convention is going to be held that week, and, as has been the practice the last few years we will be sending the three DIC's to the convention. I realize that this will create an undue hardship on the rest of you to fill that time.
>
> Compounding the problem, is the fact that some others on a countywide basis are also being sent to study possible new CAD and RMS systems. That group includes at least one other communication officer whose time will also have to be filled.
>
> In an attempt to fill as much of the time voluntarily as possible, all restrictions on "time signed for" will be waived from the 12th to the 18th of August.
>
> In the event that the time is not signed for voluntarily, I will begin the process of "ordering" early in the week of August 7th.

2/ Rhoades was not called as a witness by either the Association or the County in the case.

> Again, I realize that this will be inconvenient for some of you, but the decision has been made to send those people and we must insure that there is adequate staffing.
>
> Thank you for your cooperation and understanding as we try to get through this time. 3/

In 1995, the APCO convention was attended by four dispatchers who were unavailable for work on August 13, 1995. On August 12, 1995 five dispatchers were off work using comp time and two were off work using vacation time (Piotter, Kallin, Bryant, DeClute, Biggar, Klabunde, Holmes and Spencer). An eighth opening was listed on the time off sheet for August 12th as "vacancy" on the second shift. Prior to August 12, 1995, Grievants Schmitz, and Piper who were all off work on their regularly scheduled days off (RSOD) on August 12th were ordered in to work four hours each. On August 12, Grievant Kallin was off on comp time but was also ordered in to work four hours that day. 4/ On August 13, 1995, four dispatchers were off work using comp time (Bryant, Klabunde, Kallin and Danula); one dispatcher (Rener) was using personal holiday time that day; one dispatcher (Hazen) was using vacation time and one dispatcher (Williams) had called in sick. Also on August 13, 1995 four dispatchers were attending the APCO convention. As a result, approximately two days before August 13th dispatchers Hafemeister and Kaiser were ordered in to work on their RSOD, August 13th. Thereafter, Dispatchers Schmitz, Piper, Kallin, Kaiser and Hafemeister each filed a grievance.

Commander Sleik, the manager in charge in of the 911 center and communications employes, testified as follows at the instant hearing. Sleik stated that the County normally tries to fill vacancies by posting them in advance in the overtime book. The County can place such postings in the overtime book up to 60 days prior to the need for the vacancy to be filled. Employes may then volunteer to work the overtime hours listed. Apparently, the vacancies anticipated due to the APCO convention did not cause the County to post these in the overtime book 60 days before the vacancies occurred. In addition, Sleik stated that it is traditional in the Department, that vacation days are picked beginning in November of the year before the vacation time will be taken. Vacation picks are made by rotation based upon seniority. Also, Sleik stated that paid holidays and comp time can be chosen by employes up to 60 days in advance. Sleik stated that if a vacancy is unexpected, the Dispatcher-In-Charge (DIC) or Sergeant calls personnel using a call-out list in order to attempt to fill the vacancies voluntarily. If the DIC or Sergeant cannot fill the vacancy or vacancies in this fashion using the voluntary call-out list, the

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3/ The APCO convention is a law enforcement convention which is held annually. The County generally has one year's notice of the exact dates of this convention.

4/ According to dispatcher Hafemeister, on August 13th Dispatcher Kallin was off on comp time but was later ordered in to work that day. These facts are not reflected in the documents of record herein. Hafemeister's testimony has been credited.

DIC/Sergeant must use the procedure for ordering in employes. Association President Piotter testified that for the August 12 and 13th vacancies, the County properly followed the above-described procedures. Generally, after these procedures are exhausted and vacancies remain to be filled, ordering in procedures must be used.

Both Sleik and Piotter (an employe for the Department for the past nine and one-half years) agreed that as a general rule, the DIC/Sergeant should first attempt to order employes on the current shift to remain working for an additional four hours beyond their shift time, or to order employes coming to work on the next shift to arrive four hours early for work. This part of the procedure is not based upon seniority, but is based on a separate rotating list which requires the DIC/Sergeant to call everyone on the shifts adjacent to the vacancy and requires that any employe, who has already worked eight hours before being ordered in or who will have worked eight hours following being ordered in, may not work in excess of twelve hours. In addition, the DIC must determine which employes on the adjacent shifts have not been ordered in under this portion of the procedure for the longest period of time and the DIC shall then begin with the employe who has the greatest length of time without an order, progressing down to the employe with the least amount of time since they have been ordered in. Both Sleik and Piotter stated that if the above procedures failed to fill all vacancies, then the DIC/Sergeant can order in employes on their RSOD's, in reverse order of seniority.

Sleik stated that regarding the orders that were given for employes to work on their RSOD's on August 12 and 13, 1995 the employes who were on RSOD's (unpaid days off) were ordered in first, from the least senior person to the most senior person on the rotating list; and that thereafter, employes on compensation time off were ordered in. Association President Piotter stated herein that she agreed that the County properly called employes on their RSOD's pursuant to this portion of the procedure to fill the August 12 and 13th vacancies, but she was unsure whether the County had actually called employes who were on their RSOD's by reverse order of seniority on August 12 and 13, 1995. 5/ The County objected to the Association's raising the issue (for the first time at hearing) whether the DIC had called in employes on their RSOD in reverse order of seniority. Commander Sleik stated that in his years with the Department, he could not recall ordering in anyone who was on paid vacation or paid holiday.

Sleik stated that the undated overtime call-in procedure (quoted above) was a guideline that was drafted and discussed with Piotter just prior to or at approximately the time that the instant grievances were filed. Sleik stated that the overtime call-in procedure dated December 2, 1992, was placed in the Department's Procedure and Policy Book in 1992 and that it had been in effect since 1992.

5/ The Association failed to offer any evidence to contradict Commander Sleik's assertions in this regard.

Dispatcher Hafemeister testified that it was her belief that the past practice of the County was to order in employes who were on their RSOD's, only in emergencies or as a last resort. Hafemeister stated that she could recall the County having ordered in employes on their regularly scheduled days off three times in 1994 due to emergencies. Hafemeister also stated that in 1995, the County denied or canceled compensatory time off due to the need to train employes whose shifts then had to be filled by other employes. Hafemeister stated that the County did this by placing a notice in the overtime book at least 30 days before the two training dates, stating that no time off would be granted. Hafemeister stated she had no personal knowledge whether the Sergeant called all employes according to ordering-in procedures to fill the vacancies on August 12 and 13th. Hafemeister stated that employes on comp time off should have been called in before employes on their RSOD's.

Sleik stated that the Department had called in the least senior available employes or the least senior employes on the rotating order-in list who were on their regularly scheduled days off. Sleik noted that it was possible that some of the less senior employes may not have been home when called, or that they might not have been capable of coming to work. Sleik stated the County tries to work around employes' RSOD's. Sleik also explained that the reason the Department decided approximately thirty days or less prior to the APCO convention to send one additional Dispatcher to the convention was so that the Department could have input into the purchase of new computer technology for the Department. Sleik stated that the additional Dispatcher attending the APCO convention as well as several resignations and employes who were scheduled to be off on various types of paid time off, created the difficulty that required the Department to order in the five Grievants.

Briefs:

Association:

The Association argued that the overtime call-in procedures of the County are essentially a part of the collective bargaining agreement between the parties and can be enforced by the Association because Article 8 - Rules and Regulations of the effective labor agreement states in relevant part that the County has the ". . . right to promulgate reasonable rules from time to time". Thus, the Association urged that because the labor agreement contains some language regarding calling in employes for overtime and because the County has in fact established two separate call-in procedures, these have become a part of the labor agreement which the County is bound to follow.

The Association contended that the call-in procedures submitted into the record in this case set forth the proper call-in procedure for overtime and that the Employer has clearly violated these established procedures. The Association observed that an initial determination must be made herein regarding which of the two procedures (the December 2, 1992 procedure or the undated procedure) was in effect at the time of the filing of the grievances. The Association pointed out

that Association President Piotter testified at the hearing that Sergeant Rhoades gave her a copy of the undated overtime call-in procedure after the APCO convention and that Ms. Piotter and Commander Sleik verified that the December 2, 1992 procedure was actually in effect at the time the grievances arose. The Association noted that Sergeant Rhoades had drafted the undated procedure as a guideline for dispatchers to use when they were required to call in employes for overtime.

The Association asserted that the December 2, 1992 overtime call-in procedure, when analyzed in detail, indicates that the following procedure for overtime call-ins must be followed by the County:

> 1. Overtime must first be offered on a voluntary basis in four hour blocks of time to both on duty and off duty employees in such a way that the work hours of any employe may not exceed 12 hours.

The Association contended that the implication of the first paragraph of the dated procedure is that employes already working or about to come on duty are generally offered four hours of overtime work.

> 2. Under the second portion of the dated procedure, the Dispatcher-In-Charge (DIC) has the authority to contact employees who refused to work overtime under the first portion of the procedure starting with the least senior employe and may order in those employees who have initially refused. After an employee has refused to work but has been ordered in under this approach, their name must be placed on the bottom of the call-in list so that they are called last on the next round.
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> 3. The next portion of the dated procedure indicates that if the prior attempts under the procedure have failed to produce enough employes to cover the work available, that the County can then call in employes on their regularly scheduled days off beginning with the least senior employe.
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> 4. If all of the above fail, the DIC may use any means possible to fill the vacancy within his/her discretion.

Thus, the Association urged that pursuant to the 1992 overtime call-in procedure, the parties clearly intended to protect employes on their regularly scheduled days off from being ordered in to work overtime. The Association urged that the 1992 procedure contains clear and unequivocal language which the County failed to follow when it called in the Grievants on August 12 and 13,

1995. The Association asserted that the County in fact called in the five Grievants on their regularly scheduled days off before attempting to call in employes under paragraphs A through C of the 1992 procedure. Even if the undated call-in procedure was in effect at the time of the grievances, the Association observed, this procedure also provides that employes on their regularly scheduled days off shall be among the last employes to be ordered in for overtime. Therefore, the Association urged that the undersigned should find that the County violated its overtime call-in procedures.

The Association also argued that the evidence of past practice regarding overtime call-in procedures supports its arguments in the instant case. The Association noted that the County, in its opening statement argued that a past practice has existed for calling in off-duty employes first for available overtime. The Association contended that this argument is "patently in error" and that the written overtime call-in procedures (both the 1992 procedure and the undated procedure) show that a specific procedure for calling in for overtime purposes not only exists, but is contrary to the County's arguments.

Based upon the evidence in this case, the Association requested that the undersigned find the County has violated the collective bargaining agreement and that it award each of the five Grievants four hours of compensatory time off with pay at a time mutually selected by the Grievants and the County, and order the County to cease and desist all further violations of the labor agreement and the established overtime call-in procedure dated December 2, 1992.

County's Reply Brief:

The County urged that the collective bargaining agreement between the parties is silent regarding the procedure to be utilized when it becomes necessary to call in employes to work overtime. The County noted that Article 6 of the labor agreement discusses hours of work and that Article 23 of the agreement provides that employes who work during scheduled time off shall be entitled to a minimum of two hour's pay, at time and one-half, for actual time worked. These sections of the agreement, however, do not address the procedure to be used by the County when calling in for overtime.

The County noted that Article 3 - Management Rights, states in pertinent part, "accept as otherwise specifically provided herein the management of the communication center and the direction of the work force including, but not limited to . . . to determine schedules of work, are vested exclusively in the employer. Nothing contained herein shall divest the Association of any of its rights under Wisconsin Statute 111.70". Furthermore, the County urged, the labor agreement defines in a different manner the term "regularly scheduled days off" (also known as "normal time off") and paid time off. In Article 6 of the collective bargaining agreement the normal duty schedule is to consist of four consecutive duty days followed by two consecutive days off. Article 7 (regarding overtime and compensatory time) speaks of non-regularly scheduled off days or "paid time off" and makes a clear distinction between normal time off and paid time off. In addition, Articles 9 and 10 of the collective bargaining agreement, in the County's view, carry

on these distinctions between regularly scheduled days off or normal time off and paid time off.

If the Association was asserting in this case that the Grievants should not have been ordered into work on the dates in question ahead of employes who were off work as a result of being on paid time off, the County contended that both the 1992 overtime call-in procedure and the undated procedure support a ruling in favor of the County. In this regard, the County noted that the procedures require that vacancies first be filled on a voluntary basis; that if there are insufficient volunteers, that Dispatchers from adjacent shifts will be asked to fill the vacancies so long as none of them works more than twelve consecutive hours; and that if vacancies cannot be filled after following the above procedures, the County can then proceed to order people in off a list. The County urged that the undated procedure clearly states that "no one shall be ordered in on paid time off, unless as an absolute last resort, . . ." and that the 1992 procedure fails to contradict this statement. The County therefore contended that it had followed the call-in procedures and guidelines and that the testimony given by Commander Sleik stood uncontradicted on this point. In addition, the County noted that Dispatcher Hafemeister corroborated much of Commander Sleik's testimony regarding the existence and use of the 1992 policy. Thus, the County contended that in the instant case, it complied not only with any past practice but also with any written procedures regarding overtime call-in, and that the Association had failed to prove any violation of either the collective bargaining agreement, past practice, or the County's procedures.

The County argued that in the circumstances of this case, the Association has the alternative of attempting to negotiate a new procedure or to clarify the procedure which is presently in place. Therefore, the County respectfully requested that the consolidated grievances be denied.

In the alternative, the County stated in its brief,

> . . . (S)hould the Arbitrator grant the grievance of the Association's employes in this matter, the County respectfully requests that the remedy in this situation be that the Employer be ordered to call in compensatory employes prior to employes who are on unpaid time off in the future. The County argues that this would be the proper remedy in this situation in that there was no evidence which tended to indicate that the County, in this situation, intentionally attempted to violate the Collective Bargaining Agreement or any side bar agreements and past practices in relationship to the Collective Bargaining Agreement.

In any event, the County urged that there was no evidence produced to show that the Grievants had not been properly compensated under the labor agreement for the time they worked on August 12th and 13th. Thus, in the County's view, as the labor agreement provides the undersigned with no authority "to fine" the County for violating the labor agreement, an award of four hours of compensatory time to the five Grievants would exceed the undersigned's authority.

Association's Responsive Brief:

The Association asserted that the record evidence clearly demonstrated that the undated call-in procedure had never been approved or used by the County and that the December 2, 1992 call-in procedure was in effect at the time of the grievances. The Association asserted that although Rhoades knew months in advance about the APCO convention, it was Sergeant Rhoades' error in not posting for voluntary overtime, the shift vacancies he knew would occur due to the APCO convention, which then exacerbated the personnel shortages on August 12 and 13, 1995.

The Association objected to the County's alternative requested remedy (should the grievance be sustained) that the County be ordered, in future, to call in employes on compensatory time before ordering in employes on their RSOD's. In addition, the Association observed that such an order would not only abrogate the contract but also exceed the Arbitrator's authority. Therefore, the Association sought an order sustaining the grievance.

Discussion:

The initial question that must be determined here is whether the December 2, 1992 Overtime Call-In Procedure or the undated procedure was effective at the time the instant grievances arose. The testimony herein indicated, without contradiction, that the undated procedure had not been agreed upon by the parties and had not been implemented by the County at the time these grievances came about. Therefore the December 2, 1992 Overtime Call-In Procedure is the only procedure that can be and has been considered in deciding this case.

In regard to the substantive issue in this case, I note that Article 23, Call-In Pay, of the parties' labor agreement specifically states that employes ". . . required to work during scheduled off time . . . shall be entitled to a minimum of two (2) hours pay at time and one-half . . .". Article 23 does not define "scheduled time off", although the definitions and concepts used in the remainder of the labor agreement would tend to indicate that RSOD's certainly should be included in any such definition. Article 6 states that ". . . (a)n employe who has switched shifts or duty days will not be subject to being ordered in to fill a vacancy unless all on-duty personnel have been asked and the voluntary duty call list has been exhausted." An employe who has switched shifts or duty days "will be ordered to fill a vacancy, however, before another individual on his off day is ordered in." Again, Article 6 does not address in what order those on paid time off must be ordered in. As the labor agreement is silent regarding the specific issue raised in this case -- at what point employes on their regularly scheduled off day should be ordered in to fill vacancies -- the December 2, 1992 Procedure becomes relevant to fill in the blanks in the contract.

However, the December 2, 1992 Call-In Procedure is of no help in deciding when those on compensation time off should be called in vis-a-vis those on their RSOD's. On this point, I note that Association President Piotter admitted that she believed the County had properly followed parts 1(a) through (c) of the December 2nd Procedure. 6/ However, Piotter also stated that she

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6/ In its initial brief, the Association argued that the record facts clearly showed that the

was not sure whether the County had called employes on their RSOD's by reverse order of seniority, pursuant to Part 1(d) of the Procedure. As this assertion was first raised at the hearing in this case and because it was unsupported by any documentary or testimonial evidence proving that the County had not, in fact, called employes in from their RSOD's by reverse order of seniority, I must credit Commander Sleik's statement, that the County followed proper seniority principles in ordering in employes on their RSOD's to work on August 12th and 13th.

Given the admissions of the Association President, it appears that the real dispute that the Grievants have in this case revolves around Sergeant "Dusty" Rhoades' conduct. First, Hafemeister and Piotter stated that Rhoades should have placed an overtime sign-up sheet in the overtime book at least sixty days prior to August 12th, so that employes could volunteer in advance for the overtime that would be available on August 12 and 13. Second, Hafemeister stated that she believed Rhoades should have posted a notice in the overtime book (at least thirty days in advance of August 12) stating that time off requests would be denied for August 12 and 13. Finally, Hafemeister also stated that she believed that Rhoades should have ordered in employes on scheduled comp time before he ordered in employes on their RSOD's, because the Department had always previously ordered in employes on their RSOD's only in emergency situations. On these points, however, I note that nothing in the contract or the December 2, 1992 Procedure would require Rhoades to take these steps.

Under the facts of this case, it is clear that Sergeant Rhoades did not anticipate the overtime problems that would occur on August 12th and 13th because he did not place a voluntary overtime sign up sheet in the overtime book sixty days prior to August 12th. Rather, Rhoades issued a memo in early August, 1995, which he place in the overtime book at that time, indicating that overtime problems would arise during the week of August 13 to August 17 due to the APCO convention. Although Rhoades' inaction, in waiting to notify employes of the expected overtime problems and in waiting to place such notice in the overtime book, may have been injudicious, I cannot find that Rhoades thereby violated either the labor agreement or the December 2, 1992 Overtime Call-In Procedure.

Regarding the fact that Rhoades did not cancel time off requests by placing a notice in the

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County failed to follow parts 1(a) through (c) of the December 2nd Procedure. This argument is belied by the testimony of Association President Piotter, which was corroborated by Commander Sleik. In addition, I note that the Association offered no evidence to show which employes were assigned to the shifts adjacent to the vacancies which occurred on August 12 and 13, and whether or not those employes had already worked twelve hours by the end of their regular shifts. It is significant that neither Sergeant Rhoades nor any of these employes on adjacent shifts were called to testify whether these employes had been asked to remain at work on overtime or to come in early to work overtime on August 12 and 13.

overtime book thirty days prior to August 12th, the facts of this case showed that this approach has been used in two instances in which employes were scheduled to receive simultaneous training. As the instant case did not involve training and no other evidence was offered to show under what other circumstances, if any, such notices have been placed in the overtime book, the evidence failed to show that Rhoades was under an obligation to notify employes in this fashion that requests for time off on August 12 and 13, 1995 would be either denied or cancelled. In my opinion, Sergeant Rhoades' actions in this area showed a lack of judgment as well as a lack of concern for employes. However, absent any specific language in the collective bargaining agreement or properly established and implemented rules of the County requiring Rhoades to notify employes that their requests for time off will be denied or had been cancelled, the undersigned lacks the basis and authority upon which to sustain the grievance.

In trying to determine whether employes on comp time should have been ordered in for overtime work before employes on their RSOD's were ordered in on August 12 and 13, 1995, I note that neither the labor agreement nor the December 2, 1992 Procedure addresses this issue. 7/ Nor do these documents address whether the existence of an emergency is the only basis on which employes on RSOD's will be ordered in before employes on comp time. Hafemeister and Piotter's statements that in the past, employes on their RSOD's have only been ordered in in

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7/ Although Part 1(a) does not specifically state that the phrase "on duty and off duty" means only those employes on the shifts adjacent to the vacancies, the remainder of that paragraph makes this clear by references to employes being offered only four hours of overtime to a maximum of twelve hours of work to be performed. Under Part 1(b), a reference is made to "the entire list of employes." It is unclear from the context, what

(Footnote continued on page 18)

(Continued)

this phrase means in this section. However, both Sleik and Piotter's testimony indicate that the County uses a rotating list under Section 1(b) of the Procedure which is not controlled by seniority but is based upon who was the last employe to be ordered in and whether the employes being ordered have already worked eight hours. As Piotter stated, under Part 1(c), if all employes identified under Parts 1(a) and 1(b) of the Procedure have worked twelve hours or have not been off duty for less than eight consecutive hours, then the County can order in employes on "a day off" in reverse order of seniority. Finally, Section 1(e) would allow the Dispatcher-In-Charge or designee to fill any remaining vacancies in "whatever manner" the DIC deems "reasonable". This Section conceivably allows the DIC to order in employes on their RSOD's before employes on paid leave (including comp time) are ordered in.

emergencies, were not supported by documentary or testimonial evidence demonstrating that the circumstances in these prior instances were the same as those proven herein. As noted above, it is undisputed that the County properly followed Parts 1(a) through 1(c) of the December 2nd Procedure. As neither the labor agreement nor the December 2, 1992 Procedure prohibits the County from ordering in employes on their days off after attempts to order in employes on adjacent shifts have failed and because the evidence herein is insufficient to support a finding that a past practice would otherwise require a different conclusion, I issue the following

AWARD

The County did not violate the collective bargaining agreement when it ordered the Grievants in to work on August 12 and 13, 1995, from their regularly scheduled days off. Therefore, the consolidated grievances are hereby denied and dismissed in their entirety.

Dated at Madison, Wisconsin this ____ day of May, 1996.

By _____
Sharon A. Gallagher, Arbitrator