

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
JACKSON COUNTY PROFESSIONAL POLICE ASSOCIATION
and
JACKSON COUNTY

Case 123
No. 57162
MA-10535

(Cummings/Nichols Reassignment Grievance)

Appearances:

Attorney Richard Thal, General Counsel, Wisconsin Professional Police Association/LEER Division, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Association.

Attorney Alan Moeller, Corporation Counsel/Personnel Director, Jackson County, 307 Main Street, Black River Falls, Wisconsin 54615, appearing on behalf of the County.

ARBITRATION AWARD

Jackson County Professional Police Association and Jackson County are parties to a collective bargaining agreement that provides for final and binding arbitration of disputes arising thereunder. The Association made a request, in which the County concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide a grievance involving the interpretation and application of the terms of the agreement relating to shift assignment and pay. The Commission designated Stuart Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Black River Falls Wisconsin on March 25, 1999; it was not transcribed. The Association filed written argument on May 21, 1999; the County filed a brief on July 20 1999; the Association filed a reply brief on August 13, 1999, at which time the record closed.

ISSUE

The Association states the issue as follows:

Did the County violate Article VII, Section 5 of the parties collective bargaining agreement when it denied Officers Nichols and Cummings premium pay for time spent working reassigned shifts in 1998 after the County reassigned these officers to fill 18 vacant shifts in 1998? If so, what is the appropriate remedy?

The County states the issue as follows:

Did the employees Cummings and Nichols work more than 18 shifts which were “reassignments” to shifts which were “temporarily vacant”? May the employer assign “newly hired” probationary employees to varying shifts in excess of 18 without payment of overtime for any purpose or for evaluation and training?

I adopt the following statement of the issue:

Did the County violate Article VII, Section 5 of the parties collective bargaining agreement by denying Officers Nichols and Cummings premium pay for time spent working reassigned shifts in 1998? If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE I – RECOGNITION

Section 1: The Employer hereby recognizes the Association as the exclusive bargaining agent for the purpose of conferring and negotiating on questions of wages, hours, conditions of employment and adjustment of employee complaints and employee grievances for all regular law enforcement employees employed in the Sheriff’s and Traffic Departments of Jackson County, excluding the Sheriff, the Undersheriff, supervisory employees above the rank of sergeant, clerical employees, temporary and all other employees.

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ARTICLE II – MANAGEMENT RIGHTS

Section 1: Except to the extent expressly abided by a specific provision of this Agreement, the County reserves and retains, solely and exclusively, all of its Common Law, Statutory, and inherent rights to manage its own affairs. Such rights include, but are not limited to the following:

- A. To direct all operations of the County;
- B. To establish work rules and schedules of work;
- C. To hire, promote, transfer, schedule and assign employees in positions within the County;
- D. To suspend, demote, discharge and take other disciplinary action against employees;
- E. To relieve employees from their duties;
- F. To maintain efficiency of County operations;
- G. To take whatever action is necessary to comply with State or Federal law;
- H. To introduce new or improved methods or facilities;
- I. To change existing methods or facilities;
- J. To determine the kinds and amounts of services to be performed as pertains to County operations; and the number of positions and kind of classifications to perform such services;;
- K. To contract out for goods or services;
- L. To determine the methods, means and personnel by which County operations are to be conducted;
- M. To take whatever action is necessary to carry out the functions of the County in situations of emergency.

Nothing herein contained shall divest the Association from any of its rights under Wisconsin Statutes, Section 111.70 as amended.

ARTICLE III – GRIEVANCE PROCEDURE

Section 1: A grievance is defined as any difference or dispute regarding the interpretation, application or enforcement of the terms of this Agreement. The grievance procedure shall not be used to change existing wage schedules, hours of work, conditions and fringe benefits.

Section 2: The failure of the party to file or appeal a grievance in timely fashion as provided herein shall be deemed a settlement and waiver of the grievance. The party who fails to receive a reply in a timely fashion shall have the right to automatically proceed to the next step of the grievance procedure. However, if it is impossible to comply with the time limit specified in the procedure because of lack of work schedules, illness, vacation, etc. these limits may be extended by mutual consent in writing.

Section 3: Any grievance shall be considered settled at the completion of any step in the procedure if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.

Section 4 – Steps in the Procedure:

STEP 1: Any employee who has a grievance shall first discuss the matter with the Association Steward. The employee, individually or with an Association representative, shall present and discuss the written grievance with the employee's immediate non-union supervisor within ten (10) days of the date the employee knew or should have known of the matter giving rise to the grievance. The supervisor shall discuss the grievance with the Chief Deputy or Sheriff and shall inform the grievant and Association Steward of the decision in writing within ten (10) days after the receipt of the written grievance. In the event of a grievance, the grievant shall continue to perform his/her assigned task and grieve his/her complaint later.

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ARTICLE V – SENIORITY

Section 1 – Department Seniority Defined: Seniority is the continuous service of an employee with the Employer compiled by time actually spent on the payroll, plus properly approved absences. Seniority shall accrue from the first day of employment within the bargaining unit. Employment, for the purposes of determining seniority, shall include time for vacations, leaves of absence properly applied for and granted, layoffs up to one (1) year, compulsory military service prescribed by law, illness or accident under the sick leave provisions hereinafter set forth, or by mutual agreement between the Employer and the Association.

Seniority shall also be determined within classification, rank, and by date of promotion within such rank for purposes of selecting vacations. (NOTE: Seniority is not applicable to ARTICLE VI "Job Posting" except as expressly provided herein.)

Section 2 – Seniority Classifications: For the purpose of seniority rights there shall exist separate classifications as follows:

- A. Communications/Correctional Officers (male)
- B. Communications/Correctional Officers (female)
- C. Patrol Officers, Process Servers
- D. Detective

Seniority rights shall be exercised within the respective classifications.

Section 3 – Loss of Seniority: Seniority in the employment relationship shall be broken and terminated if an employee: (1) quits; (2) is discharged for just cause; (3) is absent from work without justification for three (3) consecutive working days without notification to the County; (4) is laid off and fails to report to work within ten (10) working days after having been recalled by registered mail; (5) is absent from work for any reasons for twenty-four (24) months; (6) fails to report for work at the termination of a leave of absence or after expiration of a vacation period or period for which Worker's Compensation was paid; (7) if an employee on a leave of absence for personal or health reasons accepts other employment without permission or (8) if he is retired.

Section 4 – Probationary Status: All new employees shall serve a probationary period of one (1) year, during which time they may be discharged by the Employer without recourse to this Agreement or to the grievance procedure. For the purpose of this Agreement, a new employee shall be defined as a person newly hired by the Department. Upon satisfactory completion of said probationary period, the employee's seniority shall date back to his original date of hire. During the probationary period the newly hired employee shall accumulate vacation benefits, but they may not be used. All provisions of Article X (Sick Leave) shall apply to newly hired employees.

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ARTICLE VI – JOB POSTING

Section 1: It will be the policy to fill positions with the most qualified candidate. Whenever a vacancy occurs, or a new position is created, said vacancy or new position shall be posted for five (5) days in overlapping weeks. Said posting shall contain the date, title of the position, rate of pay and qualifications necessary for the position. Each bargaining unit employee interested in applying for the job shall sign his/her name on the posting indicating such interest.

Section 4: The Employer shall have the right to make temporary assignments to positions which are temporarily vacant because of recruitment, posting, vacations, absenteeism, sickness, injury and professional schooling.

ARTICLE VII – HOURS OF WORK

Section 1. The normal work week for Patrol Officers shall average 37.5 hours per week based on a (6-3) cycle. The normal work week for Communications/Correctional Officers shall average 37.5 hours per week based on a (5-2, 5-3) cycle. The normal work week for Detectives and Process Servers shall average forty (40) hours per week based on a (5-2) cycle. The normal work day for all employees shall be eight (8) hours. Upon mutual agreement, with forty-eight (48) hours notice, shifts other than the following hours may be worked.

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Section 5. Patrol Officers and Communications/Correctional Officers shall have the opportunity to rotate their respective shifts, based on seniority, on a six (6) month basis, changing on February 1 and August 1 of each calendar year. Not less than ten (10) days prior to each shift change, said officers shall be given an opportunity to select which shift they wish to work. Shift assignments shall be made consistent with said selections. However, the Employer may reassign employees for up to eighteen (18) days per calendar

year to fill shifts which are temporarily vacant. Reassignments beyond eighteen (18) days per calendar year shall be compensated pursuant to Article VII, Section 4. In the event more officers select a shift than there are openings on such shift, seniority shall be the deciding factor.

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ARTICLE XXII – ENTIRE MEMORANDUM OF AGREEMENT

This agreement supersedes the previous Agreement between the County and the Association, and constitutes the entire Agreement between the parties. Any Amendment or Agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto.

The parties further acknowledge that during the negotiations which resulted in this Agreement, they each had the unlimited right and opportunity to make demands and proposals with respect to any subject and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the County and the Association for the life of the Agreement, each voluntarily and unqualifiably waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement unless otherwise mutually agreed by the parties.

If a law is changed that makes a change in this Agreement necessary, the parties may negotiate with respect to such changes.

ADDENDUM “A”

The purpose of this Addendum is to complement Article VII, Section 1 with specificity regarding hours of work (shifts) for the classifications of “Patrol Officers” and “Communications/Correctional Officers”. Accordingly, regularly scheduled shifts for these positions shall be as follows:

PATROL OFFICERS	COMMUNICATIONS/ CORRECTIONAL OFFICER
A. 5:00 A.M. to 1:00 P.M.	A. 7:00 A.M. to 3:00 P.M.
B. 10:00 A.M. to 6:00 P.M.	B. 3:00 P.M. to 11:00 P.M.
C. 1:00 P.M. to 9:00 P.M.	C. 11:00 P.M. to 7:00 A.M.
D. 7:00 P.M. to 3:00 A.M.	B/A – This is a split shift on which an employee works the first half (1/2) of his/her cycle on “B” shift and the last half (1/2) of his/her cycle on “A” shift.
E. 9:00 P.M. to 5:00 A.M.	
A/C – This is a split shift on which an employee works the first half (1/2) of his/her cycle on “A” shift and the last half (1/2) of his/her cycle on “C” shift.	
D/E – This is a split shift on which an employee works the first half (1/2) of his/her cycle on “D” shift and the last half (1/2) of his/her cycle on “E” shift.	
B/D - This is a split shift on which an employee works the first half (1/2) of his/her cycle on "B" shift and the last half (1/2) of his/her cycle on “D” shift.	

BACKGROUND

Jason Cummings and Terry Nichols are communications/corrections officers employed by Jackson County with dates-of-hire of January 19, 1998 and April 6, 1998, respectively. Each underwent an evaluation after working six months, and each received a satisfactory evaluation. This grievance concerns whether or not they were entitled to premium pay for being reassigned to vacant shifts more than 18 times during 1998, when they were each still probationary employees.

On or about August 1, 1998, Cummings and Nichols participated, with the rest of the relevant work-force, in the semi-annual shift selection process and were both assigned to the "B/A split shift rotation." This is a split shift under which employees work the first half of their cycle on the "B" shift and the second half of their cycle on the "A" shift.

Thereafter, Cummings was reassigned to work other than this shift on 27 occasions from September 27 to December 31, 1998; twelve of these shifts paired him with another Corrections Officer of lesser seniority. Nichols was reassigned to work other than this shift on 29 days, eleven of which paired him with a Corrections Officer of lesser seniority.

On September 27, 1998, Cummings submitted a request for premium pay for a shift which marked the 19th occurrence of being reassigned to a shift other than the "B/A split shift." The County, through a Lt. Preston, denied payment, indicating the denial was based on Cummings' being a probationary employee. Cummings subsequently sought payment for 26 additional reassignments.

Nichols likewise sought premium pay after filing a vacant shift on November 11, 1998, and for ten subsequent reassigned shifts thereafter. The County again denied all such claims, on the basis of the employees' probationary status.

On November 30, 1998, Association Vice President Joel C. Smith filed a grievance, contending that Officers Cummings and Nichols were not being compensated properly. He described the grievance as being that both officers had

exceeded 18 assignments to a different shift to fill a temporary vacancy created when Officer Mark Patterson was reassigned to Patrol Division. Compensation has been refused by Lt. Preston because Nichols and Cummings are probationary employees. No where in Section 5 is it stated probationary employees are not to be compensation (sic) pursuant to Article VII Section 4.

On December 2, Chief Deputy Sheriff Dennis A. Blanchard replied as follows:

Response: Refer to Page 1, Article 1, Section 1.

Language regarding recognition. This section identifies all regular employees. Officers Nichols and Cummings are probationary employees. (emphasis in original).

Management would be unable to fully train new employees by assignment to one shift in the training and orientation process. Complete exposure to all facets of our process and the differences which occur on each respective shift are necessary components of training and orientation.

Also on December 2 1998, Smith wrote Blanchard as follows:

In response to your letter dated today's (sic) date, re: grievance on behalf of Officer (sic) Nichols and Cummings I am writing this letter per our verbal conversation.

A. I wasn't aware that we had proceeded past step #1 to step #2 in the grievance process, but with receipt of your response, I accept that we have proceeded to step #2 since I didn't receive a written response from Lt. Preston. I am providing you with a copy of the grievance, denied payroll sheets, duty roster/schedule and copy of the grievance process from the Union Contract and the Section the Union believes is not being adhered to.

B. Addressing your response, Refer to Page #1, article #1, Section #1

Language regarding recognition.

Officer (sic) Nichols and Cummings are still on their 1 year probationary period, however, they are regular full-time Law Enforcement employees of the Jackson County Sheriff's Department. In the past, there have been part-time Communications/ Corrections Officers hired and utilized in the Sheriff's Department that were assigned shifts as needed to be filled and were not assigned to a permanent full time shift. Officers Nichols and Cummings were hired as full-time, not part time employees, given shift picks and were assigned to the A/B split (see attached duty schedule). Therefore, they do fall under the item being grieved, Section #5, page #9 in the JCPPA Union Contract which states ALL employees.

B. In regards to training new employees.

Officers Nichols and Cummings are probationary employees, however, they have been with the Sheriff's Department for 7 and 9 months respectively and have successfully completed the training programs as provided in the Jail and Dispatch areas as provided for them. The Union contract under Section #5, page #9 allows management to reassign employees to fill vacant shifts. Reassignment after 18 times, (sic) requires management to pay these employees being reassigned overtime, which is not being done and is the entire basis for this grievance.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Association asserts and avers as follows:

The County's assertion that it is not obligated to pay Cummings and Nichols after reassigning them on more than 18 shifts because they were probationary employees is wrong. All bargaining unit members, including probationary employees, are covered by the terms of the parties' collective bargaining agreement; just as the wage schedule covers probationary employees, so too does the article on hours of work. It is undisputed that the grievants selected a six-month regular shift pursuant to Article VII, Section 5; if that section applies to probationary employees for the purpose of shift selection, it must also apply for the purposes of the shift reassignment pay provision.

It is further undisputed that the County hired the grievants as full-time regular employees, and thus has no reasonable basis for now claiming that while on probation they were not regular employees within the meaning of the agreement's recognition clause. That clause does not exclude probationary employees. While the grievants could have been discharged without cause during their probationary period, their wages, hours and conditions of employment were otherwise covered by the terms of the collective bargaining agreement as soon as they were hired.

Association testimony that Cummings worked 45 shifts that were reassignments and Nichols worked 29, and that most of these reassignments were for the purpose of filling temporary vacancies created when another officer was reassigned to the patrol division stands unrefuted.

The County's argument that it had the right to assign Cummings and Nichols for the purpose of training and evaluating them should be rejected as being without basis in the collective bargaining agreement, and because the record shows no credible evidence that the grievants were in fact ever trained or evaluated in this time-frame.

Effective August 1, 1998, the grievants received their regular Article VII, Section 5 shift assignments, and thereafter – like non-probationary employees – they independently performed their assigned duties and responsibilities. As of that date, the grievants were entitled to receive premium pay for time spent working in excess of 18 reassigned shifts.

In support of its position that the grievance should be denied, the County asserts and avers as follows:

The grievance is not subject to arbitration, in that the affected employees were newly hires or probationary employees who are not included in the recognition clause. As these employees are not included within the recognition clause, they are not subject to any of the terms of the entire agreement, including the grievance procedure. Accordingly, the Association, which filed the grievance, is not an authorized agent for prosecuting employee grievances on their behalf.

Further, as the employees in question did not have seniority status, they are not entitled to a seniority shift selection, and therefore are not covered under the shift change policy. The applicable provision in the collective bargaining agreement gives officers the opportunity to rotate their respective shifts “based on seniority....” Thus, it is important to understand how the term “seniority” is used throughout the agreement.

Of particular note is the provision that “(u)pon satisfactory completion of said probationary period the employee’s seniority shall date back to his original date of hire.” Thus, probationary employees simply do not have a seniority status until they complete their probationary period of employment; it then follows that if a new employee serving his probationary period has no seniority, then the employee is not entitled to make a shift selection under the so-called “rule of 18.”

If the parties had intended for the shift selection clause to apply to probationary employees, they could have easily specified that selection was based on the date of hire, or they could have specified that new employees had limited seniority rights for shift selection purposes. They did not.

Also, Cummings and Nichols were both provided with specific training, such that certain shifts should not be counted towards the limit of 18 shift changes.

While new employees have been allowed to use the seniority shift selection procedure, the collective bargaining agreement does not require the County to provide them that opportunity. Nor is there any binding past practice. The County is not obligated to allow employees without seniority to make a seniority-based shift selection.

Further, the shift assignment of newly hired probationary employees without regard to the limitations of additional payments for shift assignments is within the management rights of the County.

The new employees and the Association have drawn a distinction between shift assignments for training and shift assignments with less senior employees. The County of course maintains that work performance, regardless of designation, is far more than informal training and, particularly where the position involves reliance upon a significant amount of independent judgment, is a necessary component of the probationary evaluation process.

Regardless of how it is characterized, the implication of the employee's concern with the training aspect of the assignments is that such assignments are in fact an exception to the 18 shift change rule. From a practical standpoint, the employees do not meet the 18 shift change threshold if this is in fact a correct interpretation. Perhaps more importantly, this is an implied acknowledgement of the County's management rights in this regard.

Perhaps the County should have developed the issue of past practice more thoroughly at the hearing. One reason of course was that the practice was so well settled that there had never been any dispute that no additional payments had been made to other probationary employees. The net effect though is that the Association's actions in attempting to enforce this provision amounts to the unilateral repudiation of a past practice (which both parties would argue to some degree involved the interpretation of an ambiguous provision of the contract).

And while the implications of the payment of a back pay remedy for Cummings and Nichols would not be insubstantial, it is the possibility of a prospective application of an award in favor of the Union which would significantly impact the County. To impose the Union's interpretation of these provisions on the County would in all probability significantly alter the legally mandated, formal and informal training of all new employees, hiring, classification, scheduling, assignments and employee evaluation in response to the potential budgetary and other issues. This is a harsh result that the award should avoid.

Further, the Association's application and interpretation would lead to a number of contradictory if not absurd results. For example, a new employee hired shortly before a shift selection period who was voluntarily provided a shift assignment, but who has not yet engaged in mandatory training would rapidly accumulate changed shift assignments to be applied toward the "rule of 18" and thus could be eligible for time and one-half pay throughout virtually the entire shift assignment period.

Because the grievance is not subject to arbitration, and because probationary employees are not entitled to a shift selection, and because the ability to assign without paying time and one-half is a necessary management right, and because the Union's interpretation of the contract prospectively would work a harsh result against the County, the grievance should be denied.

In its reply brief, the Association states further as follows:

The County errs in claiming that the grievance is not subject to arbitration because Cummings and Nichols probationary employees; the grievants were regular law enforcement employees with bargaining unit status and rights which accrued when they worked their first shift.

Further, they had seniority status pursuant to the collective bargaining agreement, as the County implicitly acknowledged by providing them the right to make seniority-based shift assignments as of August 1, 1998. Having the right to an established shift assignment schedule, the grievants were thus entitled to receive premium pay for being reassigned more than 18 times in a calendar year.

Finally, the County has no management right to deny the grievants their premium pay, and no evidence exists in the record to substantiate the County's claim that the reassignments were for the purpose of training and orientation. Indeed, the record evidence shows that the grievants had completed all formal and systematic training and orientation, and that they were instead filling a temporary vacancy created when Officer Mark Patterson was reassigned to the Patrol Division.

Accordingly, the arbitrator should sustain the grievance and direct the County to make the grievants whole for all pay lost as a result of the County denying their request for Article VII, Section 5 premium pay.

DISCUSSION

The County's initial argument is that the grievance is not arbitrable because the employees at issue were probationary at the time of the underlying events, and "standard rules of interpretation" compel the conclusion that probationary employees are under the category of "all other" employees, distinct from the "regular" law enforcement employees covered by the collective bargaining agreement.

There are several problems for the County in this line of reasoning. First, the phrase “regular ... employees” in a collective bargaining agreement is a term of art, distinguishing such employees from those who are temporary, casual or seasonal. As a general rule, the word “regular” relates to the regularity of the employee’s work, not the length of time they have been performing it. The grievants, Officers Nichols and Cummings, were “regular law enforcement employees” as that term is understood in labor relations.

Further, the collective bargaining agreement has several specific provisions relating directly to probationary employees, thus indicating its coverage to them. Of particular importance is the provision that probationary employees may be discharged “without recourse to this Agreement or to the grievance procedure.” The parties thus knew how to draft a provision excluding probationary employees from the grievance process in a particular situation; the fact that they did not include other areas within the list of exclusions indicates that those subject areas not identified are in fact subject to grievances, even for probationary employees. That is, by explicitly including discharge issues as an item which probationary employees cannot grieve, the collective bargaining agreement implicitly includes other issues as items which probationary employees can grieve.

The County’s next argument is that the grievants had no seniority, and thus were neither entitled to the shift selection process, nor covered under the shift change policy. Here, the employer has a somewhat stronger case. The collective bargaining agreement provides that employees shall have the opportunity to rotate their shifts based on their seniority. The agreement also provides that seniority reverts to the original date of hire *only* upon satisfactory completion of the probationary period. Thus, the employer argues, probationary employees such as the grievants lack seniority status for the purpose of shift selection until completion of their probationary period.

The employer’s only problem is that its point is irrelevant in this particular proceeding, because this grievance is not about shift selection itself, but only its aftermath. The County acknowledges that the grievants participated in the shift selection process last summer, and, pursuant to that process, were assigned to the “B/A split shift rotation.” Whether they had a contractual right to do so is beyond the scope and record of this award.

The County’s final argument in its defense is that it had the management right to reassign Cummings and Nichols to alternative shifts for the purpose of continued training and orientation. Arguing along policy and fiscal analyses, rather than explicit provisions in the collective bargaining agreement, the County states that “such assignments are in fact an exception to the 18 shift change rule.”

I do not need to address the question of whether or not reassignments for orientation and training are in fact exceptions to the 18-shift change rule. That is because the County offered into the record no evidence that the purpose of the reassignments of Cummings and Nichols were indeed for training and orientation. The County's argument appears to be that, since training for probationary employees working other than the day shift is "mostly informal, on-the-job training," just about any reassignment would constitute further training and orientation. That argument is not persuasive.

As the Association notes, by August 1998 both officers had completed all formal training and orientation requirements. They often acted independently. On many occasions when they were reassigned to different shifts, they were teamed with officers with less seniority. There is no record evidence that any of these reassignments involved continued training and orientation.

Thus, even if reassignments for orientation and training are outside the parameters of the 18 shift change rule – a question I explicitly do not address – such an argument is inapplicable in this situation; the record simply does not support a conclusion that Cummings and Nichols were in fact reassigned for those purposes. Rather, the record indicates that they were reassigned to address fluctuating staffing concerns – that is, to fill shifts which were temporarily vacant.

The collective bargaining agreement provides that the employer may, without penalty, reassign employees for up to 18 days per calendar year to fill shifts which are temporarily vacant, but that reassignments beyond 18 days per calendar year shall be compensated at time and one-half. Cummings and Nichols were assigned to the B/A split shift rotation; on 27 and 11 occasions, respectively, they were reassigned to fill shifts which were temporarily vacant. They sought premium pay, which the County wrongfully denied.

Based on the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

AWARD

That the grievance is sustained. The County shall make the grievants whole by recalculating their wages so that they are paid time and one-half for hours worked on those shifts following their 18th shift reassignment during 1998.

For purposes of implementing the remedy, I shall retain jurisdiction until November 29, 1999, unless prior to that time either party requests my further participation in a supplemental proceeding, or both parties release me.

Dated at Madison, Wisconsin this 29th day of September, 1999.

Stuart Levitan /s/

Stuart Levitan, Arbitrator