

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
FOREST COUNTY DEPUTY SHERIFF ASSOCIATION

and

FOREST COUNTY

Case 78
No. 59143
MA-11194

(Denial of Kelly Time for Clerk-Matrons)

Appearances:

Ms. Carol J. Nelson, Director, Northern Tier Uniserv-East, Box 9, Crandon, Wisconsin, for the labor organization.

Ruder, Ware & Michler, S.C., by **Attorney Dean R. Dietrich**, 500 Third Street, Wausau, Wisconsin, for the municipal employer.

ARBITRATION AWARD

The Forest County Deputy Sheriff Association and Forest County are parties to a collective bargaining agreement which 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 over the interpretation and application of the terms of the agreement relating to “Kelly Time” in lieu of overtime. The Commission designated Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Crandon, Wisconsin, on December 13, 2000. The County and Association filed written statements on February 19 and February 22, and replies on March 19 and March 12, respectively.

STATEMENT OF THE ISSUE

The Association states the issue as follows:

Did Forest County violate the collective bargaining agreement when it denied deputized Clerk/Matrons the use of Kelly Time in lieu of overtime? If so, what is the remedy?

The County states the issues as follows:

1. Whether the grievance has been timely processed in order to be an arbitrable dispute;
2. Whether the County violated the Labor Agreement when it did not modify the work schedule of the Clerk/Matrons to allow these employees to earn Kelly Time. If so, what is the appropriate remedy?

I frame the issue as follows:

1. Did the Association's failure to meet the timelines of Section 4.02, Step 3 bar it from advancing this grievance to arbitration?
2. If not, did the County violate the collective bargaining agreement when it denied deputized Clerk/Matrons the use of Kelly Time in lieu of overtime? If so, what is the remedy?

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE IV
GRIEVANCES 1/

Should differences arise between the Employer and the Association concerning the interpretation or application of the written provisions of this Agreement, every reasonable effort shall be made to settle such differences. If the matter is not resolved informally, a grievance shall be processed under the provisions of this Article.

1/ The only position cited in the text of this article is that of deputy. Obviously, its provisions apply equally to all other positions within the bargaining unit as well.

Section 4.01: Only one incident shall be covered in any one grievance. A written grievance shall contain the name and position of the grievant, the date and the cause for the grievance took place, the particular section of the Agreement alleged to have been violated, the issue involved and the relief sought.

Section 4.02:

Step 1: Any Deputy covered by this Agreement who has a grievance shall, within fifteen (15) working days after the Deputy is aware of the cause for the grievance, report the grievance individually or with an Association representative to the Sheriff in writing, with a copy to the Personnel Administrator. The Sheriff shall meet with the grievant and Association representative, if requested, within five (5) working days of the receipt of the grievance and shall prepare a written response to the grievance within three (3) working days of the meeting.

Step 2: In the event no satisfactory agreement has been reached in Step 1 between the Sheriff and the grievant, the grievance may be submitted in writing to the Personnel Committee within ten (10) working days from the day that the Sheriff responded to the grievance in Step 1, or within ten (10) working days from the date that the response in Step 1 was due. In the event of a grievance, the grievant shall continue to perform his/her assigned duties.

If the grievance is submitted in writing to the Personnel Committee, a meeting shall be scheduled to take place within fifteen (15) working days of receipt of the written grievance unless by mutual agreement, a later date is set. However, in the event the nature of the grievance results from discharge of an employee, the Personnel Committee shall meet within ten (10) working days from receipt of the grievance.

Following the meeting, the committee shall give its answer in writing to the grievant within fifteen (15) working days of the date of the meeting. The Association shall have the right to have the aggrieved Deputy attend the meeting and to have him represented by another Association member or representative for the purpose of resolving the grievance. No Deputy shall lose any pay or benefits for attending any steps in this grievance procedure.

Step 3: Any grievance that cannot be settled through the above steps may be submitted to the Wisconsin Employment Relations Commission (WERC) for resolution. The WERC shall appoint an arbitrator from a member of its staff to resolve the dispute. The Association shall notify the Personnel Committee in writing within ten (10) working days after receipt of the Personnel Committee response that they intend to take the grievance to arbitration and shall submit a Petition for Arbitration with the WERC within ten (10) working days of the date of the notice to the Personnel Committee. The procedure for arbitration is as follows:

A. Arbitration Hearing: The Arbitrator so appointed, shall meet with the parties at a mutually agreeable date, to review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing, the Arbitrator shall render a written decision to both the County and the Association, which shall be final and binding upon both parties.

B. Costs: Both parties shall share equally the costs and expenses of the arbitration proceedings, including transcript fees when requested by the Arbitrator. Each party, however, shall bear its own expenses for attorneys and witness fees.

C. Authority of Arbitrator: The decision of the Arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the terms of this contract.

D. If the question of arbitrability is raised, the arbitrator shall hear arguments of the parties on the question of arbitrability and the arguments on the merits of the grievance. The arbitrator shall first decide the question of arbitrability, with the decision of the arbitrator being final and binding on both parties. If it is determined that the issue is arbitrable, then the arbitrator shall proceed to issue a decision on the grievance.

Section 4.03: If the grievance has been processed beyond Step 2, and the grievant wishes to add new facts or information into the file, he/she shall immediately transmit a written notice to the Sheriff and the Personnel Committee indicating in said notice the nature and details of the new facts. When such notice has been transmitted by the grievant, the grievance cannot progress through the arbitration procedures until the Sheriff has had an opportunity to respond.

Within five (5) days of receipt of such special notice, the Sheriff shall exercise one of the following options:

- A. He/she may reopen the proceeding for purpose of reconsidering his/her Step 1 decision.
- B. He/she may acknowledge receipt of the facts and the grievance shall proceed.

Section 4.04: Any adjustments resulting from the grievance conferences under this provision shall not be inconsistent with the terms of this Agreement.

Section 4.05: Any and all reference to “days” or “working days” in this section shall mean Monday through Friday excluding Saturday, Sunday and holidays. All time limits in this procedure may be changed by mutual agreement of the parties.

Section 4.06: Past grievances may not be filed under the provisions of this procedure and all grievances which bear a filing date which precedes or is the same as expiration date of the Agreement, must be processed to conclusion under the terms of this Procedure.

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ARTICLE XVI **HOURS PER WEEK**

Section 16.01: The normal work day for all deputies and Jailer/Dispatchers shall be 12 consecutive hours per day. The normal work day for the deputized Clerk-Matron shall be eight (8) consecutive hours per day.

Section 16.02: The normal work shifts for employees covered by this agreement shall be as follows:

- A. Patrol Deputies and Jailer/Dispatchers shall work on a day or night shift. The normal work schedule shall be four (4) days on duty, followed by four (4) days off duty.
- B. The normal work shift at the Mole Lake post shall be 12 hours per work day from 4:00 p.m. to 4:00 a.m. and with a work schedule of four (4) days on duty followed by four (4) days off duty.

- C. One “fill-shift” position shall be utilized by the department. The fill-shift position shall work 12 hours per work day, and may be assigned to either a day shift, night shift, or Mole Lake post. The fill-shift position shall not be scheduled with more than six (6) consecutive duty days followed by a minimum of four (4) days off. The fill-shift position shall not be scheduled with less than 12 hours rest period between assigned shifts. The fill-shift position shall not work in excess of 14 days in any 28 day cycle. No more than two shift changes will be scheduled in any eight (8) day period.
- D. The Deputized Clerk-Matron shall work Monday through Friday with flexible hours between 7:00 a.m. and 5:00 p.m.
- E. As an offset for the number of hours worked, each Deputy and Jailer/Dispatcher shall receive kelly days equivalent to one-hundred and ten (110) hours of off time, yielding a work year of 2,080 hours and an average work week of 40 hours. If the Sheriff elects to replace the deputies on kelly days, he/she may assign part-time deputies.

Kelly day off scheduling shall be initiated by employee request and in all cases shall be subject to approval or disapproval by the Sheriff in his discretion.

(NOTE: Parties agree that this language means County can fill all or part of a shift absence at the Sheriff’s discretion; if it’s a kelly off absence, then Sheriff may use full or part-timers; if it’s some other kind of absence, Sheriff must offer to full-timers per Article XXIII, Section 2.)

Section 16.03: The Sheriff will establish regular work schedules which will permit the deputies to obtain as nearly as possible the hours per day and hours per week as necessary for efficient operation of the Department.

Section 16.04: The assignment of shifts and vacations shall be made by the Sheriff to the Deputies on a seniority basis.

ARTICLE XXIII
OVERTIME/COMPENSATORY TIME

Section 23.01: Overtime will be compensated at the rate of time and one-half. Overtime is defined as any hour worked in excess of the normally required hours provided those hours are actually worked. Any overtime pursuant to this Article shall be compensated by either being paid time and one-half, or granted compensatory time of time and one-half, at the discretion of the deputy who works that overtime.

. . .

BACKGROUND

This grievance concerns the policy of Forest County to decline to offer so-called “Kelly Time” in lieu of overtime to its deputized clerk/matrons. The county had accreted the position of deputized clerk/matron into a unit consisting of deputy sheriffs and jailer/dispatchers in 1997, when the county opened its new jail.

The clerk/matrons work an eight-hour shift Monday through Friday, with flexible hours between 7:00 a.m. and 5:00 p.m. They have been deputized for the purpose of serving legal papers. They have limited powers of arrest, with their jurisdiction restricted to the courthouse, law enforcement center, and such other sites as the Sheriff authorizes. They are not considered protective status employees. They do not wear a uniform. They have no special education, training or certification relevant to their employment. They are not authorized to carry concealed weapons.

In order that the county may maintain an around-the-clock, daily law enforcement presence, the collective bargaining agreement provides that all deputies and jailer/dispatchers work a 12-hour shift, with a work schedule of four days on duty, followed by four days off duty, for a total of 2190 hours per year. The county neither needs nor ordinarily maintains the services of its deputized clerk/matrons outside the 40-hour, standard work-week noted above.

In order to reduce the hours of the deputy sheriffs and jailer/dispatchers to the standardized 2,080 hours, these employees receive 110 hours time off at straight pay under the so-called “Kelly time” provision. For hours worked in excess of 2,190 in a year, these employees also receive overtime or compensatory time off at time-and-one-half. The

clerk/matrons do not receive Kelly time, but do receive pay or compensatory time-off at the rate of time-and-one-half for all hours worked in excess of eight in a day or 40 in a week. 2/

2/ As noted above, the only position referenced in the text of section 23.01 is "the deputy." Apparently, the parties have not yet addressed in a comprehensive manner the 1997 accretion of the clerk/matron position. Based on the employer's representation at hearing, I hold that all provisions of the first paragraph of section 23.01 apply to all positions in the bargaining unit, not just deputy sheriffs.

The county also offers Kelly Time to the Jail Administrator, who works a 42-hour work week, Monday-Friday, and to the School Liaison Officer, who works a 42.5-hour work week, Monday-Friday. At the time of hearing, the position of Liaison Officer was within the bargaining unit, the position of Jail Administrator was not.

Bethyn Baldauf was hired as the county's second deputized clerk/matron on August 9, 1999. Shortly after completing her six-month probationary period, she requested Kelly Time off for herself and veteran colleague Kathleen White. That request was denied.

On March 21, 2000, the Association submitted to Sheriff Roger Wilson at Notice of Grievance and Request for Remedy, in which it asserted that the County had "violated the collective bargaining agreement and past practice when they denied Ms. Wadzinski and Ms. White kelly-time in lieu of overtime." The Association claimed that the County's actions violated sections 16.01 and 16.02 of the agreement, as well as past practice. Sheriff Wilson denied the grievance.

On March 31, 2000, the Association advanced the grievance to Step 2, the Personnel Committee. In her cover letter to the Personnel Committee Chair in care of the County Clerk, Association Executive Director Carol J. Nelson wrote she was "requesting that a meeting be scheduled with the Personnel Committee within the timelines outlined in the Collective Bargaining Agreement to try to resolve this grievance."

The record does not indicate the date on which the Personnel Committee met to consider this grievance. On June 16, 2000, County labor counsel Dean Dietrich wrote to Nelson as follows:

I am writing on behalf of the Forest County Personnel Committee to advise you that the Committee has voted to deny the grievance filed by the Forest County Deputy Sheriff Association regarding Kelly days for the position of Clerk-Matron. The Committee voted to deny this grievance for the following reasons:

- * The provisions of Section 16.01 of Article XVI – Hours Per Week, clearly provide that the workday for the Clerk-Matron position shall be eight consecutive hours per day and the language of Article XVI – Hours Per Week does not provide for the Clerk-Matron position to receive Kelly days.
- * The suggestion by the Association that the Clerk-Matron position work eight and one-half hours per day for five days per week for several months and four days per week for the remaining months would constitute a violation of the Fair Labor Standards Act which requires the County to pay time and one-half for hours worked in excess of 40 hours per week for the Clerk-Matron position.
- * The Association’s argument that the hours of work worked by the Jail Administrator constitutes a past practice for the assignment of Kelly days for the Clerk-Matron position is completely unfounded since the Jail Administrator position is a law enforcement position and also is not included in the bargaining unit represented by the Deputy Sheriff Association.

For these reasons, the Personnel Committee has denied the Grievance filed by the Forest County Deputy Sheriff Association.

On August 23, 2000, the Association informed the county that it was filing with the Wisconsin Employment Relations Commission a request to initiate grievance arbitration in the matter. On August 24, 2000, Dietrich wrote Nelson as follows:

I have received a copy of your request to initiate grievance arbitration filed on behalf of the Forest County Deputy Sheriff’s Association in the above noted matter. I note that this request is dated August 23 and the denial of the grievance submitted by the Personnel Committee was dated June 16, 2000.

The current Labor Agreement between Forest County and the Forest County Deputy Sheriff’s Association provides, in Article IV – Grievances, Section 4.02 that “the Association shall notify the Personnel Committee in writing within ten (10) working days after receipt of the Personnel Committee response that they intend to take the grievance to arbitration and shall submit a petition for arbitration to the WERC within ten (10) working days of the date of the notice to the Personnel Committee.” It is our opinion that the Forest County

Deputy Sheriff's Association has not complied with either of these requirements under Step 3 of the Grievance Procedure. As a result, the County will object to the processing of this grievance to arbitration and will raise a defense before the Grievance Arbitrator that the grievance is untimely and should not be considered by the Arbitrator. We do agree to raise this issue as part of the grievance arbitration process in lieu of refusing to schedule a grievance arbitration hearing.

If you should have any questions regarding this, please feel free to contact us.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Association asserts and avers that the clerk/matrons are members of the Association, with the same rights as other members including, but not limited to, Kelly time; that clerk/matrons are deputized, and their schedules described as flexible, and that the Sheriff has been flexible with other members of the Association who work Monday-Friday days and receive Kelly time. The Association also states that because the parties have a collective bargaining agreement which includes all members of the Association, the County cannot arbitrarily and capriciously select which members receive which benefits, and that the collective bargaining agreement clearly indicates that all members of the Association have the right to request and receive Kelly time.

In support of its position that the grievance should be denied, the County asserts and avers that the grievance was advanced in an untimely manner, making it procedurally not arbitrable. The County further posits that the clear and unambiguous language of the collective bargaining agreement establishes that the Clerk/Matrons are not entitled to Kelly time, and that the Association's claim of past practice is unsupported by relevant law and contrary to the evidence.

In its reply brief, the Association addresses the issue of timeliness by positing that the employer had repeatedly cancelled scheduled meetings and bargaining sessions at which the parties could have discussed the grievance in a timely manner, and that the grievance is a continuing matter which would allow for a new grievance to be filed at any time. As to the merits, the Association further posits that other positions have scheduling flexibility and receive Kelly time, and that the collective bargaining agreement is clear that as deputized deputy sheriffs the clerk/matrons receive all benefits that other deputized members receive, including the right to request Kelly time.

In its reply brief, the county further posits that the association has ignored the unambiguous language of Article XVI which plainly states that only deputies and jailer/dispatchers receive Kelly time; that the Sheriff has no need to adjust the clerk/matron schedule to create additional overtime; that because the clerk/matrons do not qualify as law enforcement personnel, the county is required to pay overtime for all hours worked over 40 in one week, meaning they could not receive the Kelly time as requested.

DISCUSSION

Timeliness

The employer has made a very strenuous argument that I should deny and dismiss the grievance because the Association was untimely in advancing the grievance from Personnel Committee denial to arbitration. For the reasons explained below, I have declined to do so.

The collective bargaining agreement establishes timelines for each step in the grievance process. The grievant “shall” file a written grievance within 15 days after becoming aware of the cause of the grievance; the Sheriff “shall meet” with the grievant within five days and “shall prepare” a written response” within three days afterwards. If this Step 1 result is deemed unsatisfactory, the grievance “may be submitted” to the Personnel Committee within ten days of the Sheriff’s response; if it is, “a meeting shall be scheduled to take place within fifteen days,” unless by mutual agreement a later date is set. Following that meeting, the Personnel Committee “shall give its answer in writing ... within fifteen days of the date of the meeting.” If that answer is deemed unsatisfactory, the Association “shall notify the Personnel Committee in writing within ten days” after receipt of the committee response that it intends to take the grievance to arbitration, and “shall submit a Petition for Arbitration with the WERC within ten working days” of the date of notice to the committee.

Just as it is important to note what the collective bargaining agreement says, it is also important to note what it does not say – specifically, what it does not say regarding the sanction for the association’s failure to provide timely notice of its intent to advance the grievance.

The county inadvertently makes this very point by several of the cases it cites in support of its argument that this grievance should be dismissed. For example, the county has cited MARQUETTE COUNTY, No. 37294 (Schiavoni, 5/87), in which the arbitrator dismissed a grievance because the union did not appeal a step one denial in a timely manner. But the critical factor in Arbitrator Schiavoni’s decision was a provision – not present in the Forest County collective bargaining agreement – explicitly and unambiguously stating that “a grievance not presented within the time limitations or procedural requirements of this Article *shall be considered dropped.*” (emphasis added). As Arbitrator Schiavoni corrected noted, this

language “makes it clear that the parties intended that untimely grievances or those which failed to comport with the procedural requirements ... are to be considered dropped.”

The county here has cited yet another case with similar, explicit language far different from that before me. In *KAUKAUNA SCHOOL DISTRICT*, No. 37988 (Houlihan, 8/87), the collective bargaining agreement explicitly provided that “grievances not processed to the next step within the prescribed time limits shall be considered resolved against the grievant.” Accordingly, while acknowledging the “policy preference favoring decisions on the merits,” the arbitrator dismissed a grievance as not arbitral because it was processed outside the rigid timelines.

As the county knows, it is the language of the particular collective bargaining agreement that is of the greatest importance; an arbitration award interpreting a collective bargaining agreement with language far different from that under review is simply not a persuasive precedent. If the collective bargaining agreement before me contained language similar to that in the cases before Arbitrators Houlihan and Schiavoni, I would reach the same conclusion as did they. But it doesn’t, and I don’t.

There is yet another reason for declining the county the preemptory relief it seeks – its own handling of this grievance. The record shows that the grievance was filed with Sheriff Roger Wilson on March 21, 2000, and that Chief Deputy Aaron Huettl denied the grievance, in writing, on March 28. On March 31, well within her ten-day window, NTU-East Executive Director Carol Nelson advanced the grievance to Step 2, noting in her cover letter that she was “requesting that a meeting be scheduled with the Personnel Committee within the timelines outlined in the Collective Bargaining Agreement to try to resolve this grievance.” Allowing two days for mail delivery, Nelson’s letter put the county on notice that it was required to schedule a Personnel Committee by no later than April 16, or seek Nelson’s agreement for the meeting to be held at a later date. On April 12, county special legal counsel Dean Dietrich wrote to Nelson to inform her he would be meeting with the Personnel Committee on April 17 to discuss the grievance, and would “contact you shortly after the April 17 meeting to discuss the processing of this grievance....” Thus, the first violation of the grievance timelines was not committed by the association, but by the county.

The record does not indicate the date the Personnel Committee finally met. The next record evidence is Atty. Dietrich’s June 16 letter to Nelson, in which he advises her of the committee’s denial.

The collective bargaining agreement *requires* the Personnel Committee to meet within fifteen days of the Step 2 notice and respond in writing within 15 days of that meeting, unless by mutual agreement an alternate schedule is set. It does not appear the Association agreed to

later dates, thus requiring the county to have submitted its written response from the Personnel Committee with 30 days of the Step 2 notice. Instead, that notice was not provided until June 16, or 77 days after Nelson's Step 2 notice and request for a meeting – more than two and a half times the allowable duration.

Having failed to comply with the contractual timelines, the county now seeks to have the grievance dismissed because the association failed to submit a timely notice to the Personnel Committee that it was advancing the grievance to arbitration.

There is no question that the association's notice to the committee was 58 days late, just as there is no question that the county's response to the association was 47 days late. I will not honor the county's request for rigid application of the timelines when the county itself has failed to abide by them.

Finally, I decline to dismiss the grievance on procedural grounds because such an action would be counter to the efficient administration of industrial justice. The recurring nature of the underlying event – the denial of Kelly time – makes this a continuing grievance that would allow the association to start the process anew at any time. That being the case, there is little to gain, and much in the way of time and attention to lose, by putting the parties through a completely new grievance.

Accordingly, for these three reasons – that the collective bargaining agreement does not specify a sanction for untimely notice of an intent to arbitrate, that the county was the first to violate the procedural timelines, and that this constitutes a continuing grievance which the association could refile at any time – I find the grievance arbitrable.

I now turn to consider the grievance on its merits. Here, the county is on firmer footing.

The crux of the associations' argument is that "all members of the Forest County Deputy Sheriff's Association have the same rights under the Collective Bargaining Agreement," that "all members of the Association receive the option of Kelly time in lieu of overtime," and that as members of the association, the deputized Clerk/Matrons are entitled to the same rights and benefits as all other members.

The association contends that among the benefits all deputized members receive is the right to request Kelly time, and that as deputized deputy sheriffs, the clerk/matrons are entitled to this benefit as well.

There are several problems with the association's theory of the case. The first is the clear language of the collective bargaining agreement. Section 16.02E does not provide, as the association asserts, that all deputized personnel receive Kelly time; instead, it specifically refers to "each Deputy and Jailer/Dispatcher."

The clerk/matrons have been deputized for the specific and limited purpose of serving legal papers. As their identification badges plainly state, they have only limited powers of arrest and are not authorized to carry concealed weapons. They are neither trained nor credentialed as law enforcement personnel. In the context of collective bargaining and contract administration, a "deputized clerk/matron" is not a deputy sheriff.

Moreover, to demand Kelly time for non-law enforcement personnel shows a fundamental misunderstanding of the purpose of Kelly time, which is to address the unique circumstances of employees who provide round-the-clock protective services on schedules quite different from the standard 40-hour work week.

The collective bargaining agreement makes absolutely clear that the Kelly time provision is only for the deputies and jailer/dispatchers – indeed, it not only says that, it even explains why that is so. Section 16.02(E) leaves no ambiguity:

As an offset for the number of hours worked, each Deputy and Jailer/Dispatcher shall receive Kelly days equivalent to one-hundred and ten (110) hours of off time, yielding a work year of 2,080 hours and an average work week of 40 hours.

It is hard to see how this could be any clearer. Based on their 12-hour shifts, four days on, four days off, the deputies and jailer/dispatchers work 2,190 hours; 110 hours in Kelly time brings them down to 2,080 hours – just as is provided for in 16.02(E). In contrast, the clerk/matrons work 8-hour shifts, Monday-Friday, already putting them at the standard 2,080 hours.

The association has focused on the phrase "flexible hours" in section 16.02(D), and claimed that other personnel with flexible hours get Kelly time. But in this paragraph, the reference to "flexible hours" is to indicate that the work window (7:00 a.m. to 5:00 p.m.) is ten hours wide, with the employees only working eight of those hours.

I do not find the treatment of the jail administrator or school liaison officer particularly meaningful. At all times relevant to this proceeding, the position of jail administrator was outside the bargaining unit, and thus has absolutely no application here. And the liaison officer is a law enforcement position (which the clerk/matrons are not) regularly working a schedule exceeding 2,080 hours (which the clerk/matrons do not).

The Association has prepared a detailed analysis showing why it would be efficient and economic for the County to allow the deputized clerk/matrons to request Kelly time off. That may well be the case. Or it may not. I have not made a finding in that regard because whether or not allowing the clerk/matrons to request Kelly time is a good idea is not the issue before me. The issue before me is whether the collective bargaining agreement requires the county to allow such a request. It does not.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the argument of the parties, it is my

AWARD

1. That the Association's failure to meet the timelines of Section 4.02, Step 3 did not bar it from advancing this grievance to arbitration.
2. That the County did not violate the collective bargaining agreement by denying deputized Clerk/Matrons the ability to request Kelly Time in lieu of overtime.
3. That the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 21st day of May, 2001.

Stuart Levitan /s/

Stuart Levitan, Arbitrator

