

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LINCOLN COUNTY

and

LINCOLN COUNTY DEPUTIES ASSOCIATION

Case 230
No. 64023
MA-12779

Appearances:

Mr. John Mulder, Administrative Coordinator, Lincoln County, 1104 East First Street, Merrill, WI 54452-2535, on behalf of the County.

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

ARBITRATION AWARD

According to the terms of the 2004-05 collective bargaining agreement, the parties requested that the Wisconsin Employment Relations Commission appoint a Commission staff member to hear and resolve a dispute between them regarding the County's denial of Kevin Orzech's request to use compensatory time off on March 27, 2004. The Commission appointed Sharon A. Gallagher to serve as impartial Arbitrator herein. Hearing in the matter was held at Merrill, Wisconsin, on February 21, 2005. No stenographic transcript of the proceedings was made. The parties agreed that they would postmark their briefs on March 29, 2005, and that they would send them directly to each other, and to the Arbitrator. The parties waived the right to file reply briefs. The Arbitrator received the briefs by March 31, 2005, whereupon the record was closed.

ISSUES

The parties stipulated that the following issues should be determined herein:

Did the Employer violate the terms and conditions of the collective bargaining agreement when the Employer denied the Grievant's compensatory time off request on March 15, 2004?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 2 – MANAGEMENT RIGHTS

2.1 The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this Contract and applicable law. These rights include, but are not limited to the following:

- 2.1.1** To direct all operation [sic] of the County;
 - 2.1.2** To establish reasonable work rules and schedules of work;
 - 2.1.3** To hire, promote, transfer, schedule, and assign employees to positions within the County;
 - 2.1.4** To suspend, demote, discharge and take other disciplinary action, for just cause, against employees;
 - 2.1.5** To relieve employees from their duties because of lack of work or any other legitimate reason;
 - 2.1.6** To maintain efficiency of County government operations;
 - 2.1.7** To take whatever action is necessary to comply with State or Federal law;
 - 2.1.8** To introduce new or improved methods or facilities;
 - 2.1.9** To change existing methods or facilities;
 - 2.1.10** To determine the kinds and amounts of services to be performed as pertains to County government operation; and the number and kinds of classifications to perform such services;
 - 2.1.11** To contract out for goods and services;
 - 2.1.12** To determine the methods, means and personnel by which County operations are to be conducted;
 - 2.1.13** To take whatever action is necessary to carry out the functions of the County in situations of emergency.
- 2.2** Any unreasonable exercise or application of the above mentioned rights, which are mandatorily bargainable, shall be appealable through the Grievance and Arbitration process; however, the pendency of any grievance or arbitration shall not restrict the right of the County to continue to exercise these management rights until the issue is resolved.

ARTICLE 12 – OVERTIME

12.1 Overtime. All hours worked in excess of the regular eight and one-half (8-1/2) hours shift shall be deemed overtime, and, when authorized by the Sheriff, shall be compensated at time and one-half (1-1/2) of the employee's normal hourly rate as indicated in Appendix A. The hourly rate shall be computed based upon the 2,080 hour work year. The parties, by mutual agreement, may agree that compensatory time be given in lieu of payment, up to a maximum of forty-two and one-half (42.5) hours, and the compensatory time bank can be replenished during the calendar year at the option of the employee. Any scheduled but unused compensatory time will count toward the maximum of 42.5 hours. Scheduling of compensatory time off shall be by mutual agreement between the employee and the Sheriff, or his designee.

...

ARTICLE 18 – VACATIONS

18.1 Vacation Benefits. All full-time employees shall receive the following vacation benefits:

Vacation Benefit	Completed Years of Service
51 Hours	1 Year
110.5 Hours	2 Years
161.5 Hours	9 Years
221 Hours	16 Years

...

18.4 No Accumulation. Vacations shall not accumulate from year to year.

...

18.6 Scheduling. The Department Head shall schedule the vacations within his Department. Choice of vacation time within a given classifications shall be by seniority.

18.6.1 Vacation selection shall be by seniority, and shall be made during the period of November 1st of the current year and March 1st of the successor year, the most senior deputy shall have the first selection, then the next senior deputy will pick, until all deputies on each shift have made their first round selections. If there are any vacation days left, a second round of selection shall begin in the identical same manner as the first round.

18.6.1.1 First Round Pick. All employees, will be limited to vacation selections not to exceed a block of fourteen (14) days inclusive of the normal scheduled days off.

18.6.1.2 Second Round Pick. All employees, will be limited to vacation selections not to exceed a block of fourteen (14) days inclusive of the normal scheduled days off, or the remainder of the employee's vacation accrual, whichever is less.

18.6.1.3 Third Round Pick. Any remaining vacation accrual may be selected in block format in the third round selection.

18.6.2 An employee with more than 161.5 hours of vacation may "bank" up to seven (7) vacation days for use at a later date on a first-come/first-served basis. [sic] Employees with less than 161.5 hours of vacation may "bank" up to four (4) vacation days for use at a later date on a first-come/first-served basis. [sic] The employee must give the County at least seven (7) calendar days notice of vacation requests of less than one week (4 days), unless due to unforeseen circumstances, or emergency.

18.6.2a Banked Vacation Requests/Compensatory Time Off Requests. Each banked vacation and compensatory time off request shall be subject to cancellation for a seven (7) calendar day period commencing the day the request is received and ending seven (7) calendar days later. After the time period has expired, the leave request shall be considered confirmed, and no other banked vacation requests or compensatory time requests for that time will be granted. Multiple requests for time off from within the shift by deputies shall be granted on a first come first served basis. Requests under this paragraph shall not be unreasonably denied, as determined on a case by case basis in the context of the needs of the day.

18.6.3 On November 1st of each year, each shift will receive a vacation calendar in order to make vacation selections. Each bargaining unit employee on the shift shall have four (4) calendar days to make their selection.

18.6.4 If a vacation request falls during a period that would require overtime to maintain adequate manpower the vacation request will be denied. Requests under this paragraph shall not be unreasonably denied, as determined on a case by case basis in the context of the needs of the day.

18.7 No Waiver. An employee may not waive a vacation and take vacation pay in lieu of vacation.

STIPULATIONS OF FACT

The parties stipulated the following facts:

1. On March 13, 2004, the grievant submitted a written request for compensatory time off for March 27, 2004.

2. Ken Schneider is not a member of the collective bargaining unit. His position as shift supervisor counts/affects time off requests.
3. On March 15, 2004, the Employer denied the Grievant's compensatory time request.

BACKGROUND

The Lincoln County Sheriff's Department (Department) schedules its Deputies on three shifts: first shift is from 5:45 a.m. to 2:15 p.m.; second shift is from 1:45 p.m. to 10:15 p.m.; and third shift is from 9:45 p.m. to 6:15 a.m. Department employees work four days consecutively and then they are off two days.

The documentary evidence herein (Association Exhs. 7-16) showed that during 2003, five Deputies and one Lieutenant (or Shift Commander) were normally assigned to first shift, while six Deputies and one Lieutenant were assigned to second shift and four Deputies and one Lieutenant were normally assigned to the third shift.¹ In 2004, during the timeframe covered by Joint Exhibit 6, staffing levels had fallen to five Deputies and one Lieutenant on first and second shifts and only two Deputies and one Lieutenant on third shift, a loss of three law enforcement employees across all shifts. During 2003 and 2004, the Department had regularly assigned one shift supervisor, Lieutenant Ken Schneider, and three Deputies to the third shift.

This situation was created by two unfilled Deputy vacancies, and an unknown number of Workers Compensation leaves which occurred in 2003. In 2004, three additional vacancies occurred — one second shift Deputy retired, one third shift Deputy quit and a Detective died. A County Deputy was ultimately promoted to Detective to fill the position created by the 2004 death of the County Detective, which created an additional Deputy vacancy. During 2003-04, three Deputies (including Lt. Schneider) working third shift were considered to constitute sufficient manpower; openings due to primary vacation, a single day of vacation or compensatory time were normally posted on third shift to assure that three Deputies were working on the shift.

The way that the Department has handled requests for compensatory time off has changed in the past five years.² In approximately 2000, the Department commonly granted compensatory time requests if doing so did not create an overtime liability. The Department then posted and filled the compensatory time openings pursuant to the contract. Prior to 2003, if four Deputies were assigned to a shift and one requested primary vacation or a single vacation day, the remaining Deputies agreed among themselves not to request compensatory time off.

¹ Only four or five Deputies actually work first and second shifts due to the 4/2 rotation of employees.

² Although Chief Deputy Soucy stated herein that the criteria for granting leaves have not changed from that in effect before he became Chief Deputy (in 1998), County Exhibit 1 shows that Soucy's statement herein was not accurate. Therefore, this Arbitrator has credited Orzech's statements regarding the history of compensatory time approval/denial.

Beginning in 2003 and continuing into 2004, Department managers began denying compensatory time usage requests based upon “manpower needs of the day” due to the many vacancies the Department had suffered. No definition of the phrase “needs of the day” was ever published or circulated in the Department. In 2003, however, compensatory time requests were granted, as follows. Deputy Tim Fischer’s request to use compensatory time was granted for June 15, 2003, on third shift. Only Deputy Heisel and Shift Supervisor Schneider were scheduled to work that night. The Department posted and filled the opening created by Fischer’s request. Deputy Christine Haas³ requests for compensatory time were granted for the following dates: May 2, July 13 and 14, July 25 and 26, and August 2, 2003. On all of the above dates Deputies Fischer and Heisel were scheduled for and worked third shift, and the County posted and filled the openings created by Haas’ requests. Finally, Shift Supervisor Schneider’s requests for compensatory time off on August 8 and 9, 2003, were granted by his supervisor (either the Sheriff or the Chief Deputy). On these dates, only Deputy Haring was scheduled and worked third shift. The Department posted and filled these third shift openings.

Chief Deputy Michael Soucy stated that during all times relevant to this case, the criteria for granting compensatory time requests are based on the “manpower needs of the day.” Soucy stated that such requests are considered on a case-by-case basis taking into consideration the reason an employee needed time off and that this test is applied to both unit employee and shift supervisor’s requests. Soucy stated that “the needs of the day” might require the assignment of more than six Deputies to the first and second shifts on major holidays such as Memorial Day or Independence Day and opening day of hunting and fishing.

Soucy stated that Deputy Haas was granted five of the six compensatory time requests described above⁴ because she would not have been able to use compensatory time unless her requests were granted due to the fact that on the first two days of Haas’ work week, four Deputies were normally scheduled to work third shift, but on the second two days of her work week, only three Deputies were scheduled.

Soucy admitted that third shift has been working short for several years due to unfilled vacancies and Workers Compensation leaves. Soucy stated that some employees may have been granted compensatory time off in 2003 and 2004 while others were denied compensatory time off although the number of employees working that shift may have been the same. Soucy also admitted that all of Haas’ honored compensatory time requests occurred on days when only three Deputies were scheduled on third shift and that this is the same situation that was in effect on March 27, 2004, when Orzech requested to use compensatory time (a day when only three Deputies were assigned to work).

³ Deputy Haas quit her employment with the County in January, 2005.

⁴ One request was apparently granted as part of a grievance settlement. No evidence was placed in this record regarding Haas’ grievance or the terms of the settlement thereof.

FACTS

Grievant Kevin Orzech has been employed by the County as a Deputy Sheriff for approximately five years. From January until June of 2004 on the first two work days of Orzech's work week, three Deputies were scheduled to work third shift and on the second two days, four Deputies were scheduled to work, making it impossible for Orzech to use compensatory time on the first two days of his work week.

In March, 2004, the third shift supervisor was Ken Schneider, and Deputies Heisel, Walrath and Orzech were regularly assigned to that shift. Orzech, Walrath and Heisel were scheduled to work on March 27, 2004. On March 13, 2004, Orzech requested to use compensatory time on March 27th which request was denied by Schneider for failure to meet "manpower needs of the day" on March 15th.

On March 23, 2004, Orzech filed the instant grievance. On April 2, 2004, Soucy sent the following Memorandum (County Exh. 1) to County Administrator Mulder regarding Orzech's grievance and compensatory time request:

...

This is to inform you of a grievance that will probably go to step three. Kevin Orzech's request for comp time off on March 27, 2004 was turned down by Lt. Schneider on March 15. Kevin grieves this as unreasonable, arbitrary and capricious.

I denied the grievance after discussing it with Lt. Schneider. One circumstance involved in his decision is beyond his control. Unfortunately, we are short staffed by three workers in patrol. It is likely that available patrol staff will soon be down by two or three more for an extended period of time due to medical reasons. Management is working hard to find good new hires, but the process takes time.

Lt. Schneider and I both believe it is not only reasonable to staff with more than two workers in the patrol division at all times, but necessary for public safety and safety of workers.

This decision is likewise not arbitrary. Lt. Schneider cited a period of time last summer (we were short staffed to a lesser degree) when patrol supervisors granted some comp requests because they recognized that certain workers fell on a schedule where they could not take any leave for an extended period of time without causing staff levels to fall below what was necessary to meet the needs of the day. In response to this hardship and on a case-by-case basis, some leave was granted. The result was accumulation of ever more comp time and

complaints to supervisors from L.A.W. union membership that they were being required to work overtime too frequently. Therefore, with the best interest of the workers and the department in mind, it would now take extremely unusual circumstances for a supervisor to grant a comp time request that would result in staffing levels that do not meet the needs of the day.

This decision is likewise not capricious. For the reasons stated above, the supervisors are clearly basing their decisions on the facts and circumstances on a case-by-case basis rather than on their whims.

. . .

Orzech stated that his situation was the same as Haas', and yet he was denied compensatory time while Haas' requests were granted. Soucy agreed herein with Orzech's analysis yet he stated without elaboration that "Orzech had many opportunities to use comp. time."

POSITIONS OF THE PARTIES

The Association

The Association argued that the County has granted Deputies the use of comp time in both 2003 and 2004 under the same circumstances that existed on March 27, 2004. In this regard, the Association noted that the night shift has been working short since 2003; that Deputies Walrath, Heisel and Orzech were scheduled to work the night shift on March 27, 2004; and that Orzech's request to take comp time off on March 27, 2004, was denied for failure to meet the needs of the day, yet the County granted other Deputies' requests for comp time under the same circumstances. Therefore, the Association argued that the County had been arbitrary and unreasonable in denying Orzech's request while granting other seemingly identical requests.

The Association pointed to evidence that showed that Deputy Fischer was granted comp time off for his night shift on June 15, 2003, when three Deputies (including Fischer) were scheduled to work the night shift; and that Lieutenant Schneider was also granted comp time off on August 8 and 9, 2003, when there were only two Deputies scheduled to work the night shift on those nights.⁵ The Department had to call in another Deputy on overtime to cover Schneider's absences. In addition, Deputy Haas was granted comp time off for her night shifts on May 2 and 3, 2003, and on July 13, 14, 25, 26, 2003, and August 1, 2003, when three Deputies (including Haas) were scheduled to work on each night shift involved.

⁵ Lieutenants (who are not in the bargaining unit) are counted in the same manner as unit Deputies for purposes of determining minimum manning, making it more difficult for unit employees to use comp time.

The Association asserted that there was no difference between Haas' situation and Orzech's situation. Indeed, Deputy Chief Soucy's explanation why Haas was granted comp time off on the above-described occasions constituted a distinction without a difference as both Orzech and Haas worked on the night shift and on two of their regular work days, there were only three Deputies scheduled to work making it difficult for both of them to take comp time if it were not granted to them on some of those three-on days.

The Association further argued that comp time was granted to Deputy Gartmann for his night shift on March 20, 2004, when only three Deputies were scheduled to work the night shift that day. These were the same circumstances as existed concerning Orzech's request for comp time on March 27, 2004. The Association urged that the documentary evidence in this record failed to show that employees were scheduled to work excessive overtime before Orzech's requested comp time. Furthermore, although Chief Soucy stated herein that Deputies had complained that they had had to work excessive overtime in 2003- 2004, the County failed to support Soucy's statement with any documentary or testimonial evidence.

In all of the circumstances of this case, the Association urged the Arbitrator to sustain the grievance, to order the County to cease and desist violating the agreement by refusing to grant reasonable requests for comp time off and to make Orzech whole by crediting him with 8.5 hours of comp time which he can use on another date mutually selected by Orzech and the Department, pursuant to the contract.

The County

The County argued that its decision to deny Orzech's request to use comp time on March 27, 2004, was not arbitrary, capricious or unreasonable. In this regard, the County noted that Article 2 of the labor agreement gives it the right to determine how the needs of the day will be met and to decide how many Deputies should be working on a particular day. The County asserted that the Association's evidence that other Deputies have been granted comp time off when only three Deputies were scheduled to work does not constitute a past practice, as each case was determined based upon the facts of those situations. Therefore, the County contended that the Association failed to prove that its denial of Orzech's request was unreasonable.

In regard to the evidence presented by the Association concerning Deputies who have been granted comp time off in 2003-04, the County asserted that in Fischer's case, there were more than three Deputies scheduled to work in June, 2003; that regarding Haas' requests, the County noted that one of these had been granted pursuant to a grievance settlement (Assoc. Exh. 9) and the others were based upon the needs of each day, which included the fact that there had been unfilled vacancies created by retirements and the death of one Detective and that Deputies had complained to Chief Soucy that they were having to work excessive overtime. The County urged that there is no way to write a rule regarding comp time approval which would cover all contingencies: One cannot simply use the number of Deputies scheduled on a shift as the only criteria as this ignores the needs of the Department.

If the Arbitrator were to consider the fact that the County has granted comp time off based upon the number of Deputies scheduled on a shift, this would render meaningless the language of Article 12 which requires that comp time off be scheduled with the mutual agreement of the employee and the Department. In short, the County argued that it has not been unreasonable in considering requests for comp time usage as it has granted the following comp time requests during the months covered by the documents of record (submitted by the Association herein):

May, June and July, 2003: 11 requests granted each month;
August, 2003: 5 requests granted;
From March 20 through April 19, 2004: 4 requests granted.

In addition, the County noted that comp time was granted to Orzech on two occasions in May, 2003, one occasion in July, 2003, and one occasion during the period, March 20 through April 19, 2004. Therefore, the County urged that Orzech has not been singled out or unreasonably denied comp time off. In the County's view, a single denial of comp time out of 43 requests covered by the record documents cannot be construed as unreasonable and the Arbitrator must deny the grievance to discourage multiple grievances.

DISCUSSION

The effective labor agreement at Article 2, Section 2.1, states that the County ". . . possesses the sole right to operate County government" and its management rights include establishing "reasonable work rules and schedules of work." Section 2.2 further provides in relevant part that:

(a)ny unreasonable exercise or application of the above mentioned rights, which are mandatorily bargainable, shall be appealable through the Grievance and Arbitration process. . . .

In addition, Article 18, Section 18.6.2a, states that requests for compensatory time off "shall not be unreasonably denied, as determined on a case by case basis in the context of the needs of the day."

Based upon the above described provisions, the parties' labor agreement clearly requires that the County act reasonably in setting Deputies' work schedules. Put another way, the agreement clearly allows the Association to grieve County actions regarding setting work schedules and if the County's actions in this regard are unreasonable then the Association should prevail.

In this case, the Association has argued that the County's denial of comp time off to Orzech on March 27, 2004, was unreasonable because the County had granted other Deputies comp time off in 2003 and 2004 under the same circumstances as existed on March 27, 2004,

for Orzech. The Association relied heavily upon the evidence it presented regarding requests that were granted by the County in the past. In contrast, the County argued that the contract allows the County to consider each request for comp time off on a case-by-case basis, taking into consideration the “needs of the day,” and that therefore, no past practice could (or has) arisen regarding granting comp time requests.

Initially, I note that the only evidence submitted herein was submitted by the Association and concerned comp time requests which were granted. The County submitted no evidence to show that other requests were either granted or denied and on what basis it took action. Significantly, the County offered no evidence or explanation why the comp time requests raised by the Association herein were granted in 2003 and 2004.

The Association’s evidence covered comp time requests made from May through August, 2003, and from March 20 through April 19, 2004. Although this is an extremely limited period of time, as the County proffered no additional evidence on this point and lodged no objection to the limited nature of the Association’s evidence, I must assume that the period of time selected by the Association is representative of the what has occurred in the past regarding the subject at hand. However, I agree with the County that the evidence submitted by the Association was insufficient to prove a past practice existed regarding when comp time requests would be granted. In my view, the limited period of time covered by the Association’s documentary evidence failed to show that the County’s actions constituted a long-standing, mutually agreeable past practice. In addition, a past practice would be extremely difficult to find where, as here, the contract requires the Sheriff to make a determination on a case-by-case basis regarding what the needs of the days are.

Nonetheless, the record evidence showed that there was a definite and significant decline in comp time requests granted from May through July, 2003, when 11 requests per month were granted, to March through April, 2004, when only 4 such requests were granted. The County’s Sheriff’s Department is a small one, currently employing approximately 12 Deputies and 3 Lieutenants assigned across three shifts. Yet, each Deputy can accumulate 42.5 hours of comp time each year. In addition, the contract allows each Deputy to use earned comp time across the year and to refill their comp time bank repeatedly up to a maximum of 42.5 hours.

Even assuming, *arguendo*, that all 12 Deputies earn and use only 42.5 comp time hours per year, this would equal over 510 hours.⁶ When one considers the large amount of vacation time off per Deputy generated by Article 18 (ranging from 51 hours per year to 221 hours per year) and the fact that vacation cannot be accumulated under the express provisions of Article 18, the burden on this small Department for comp time off aggravates an already difficult staffing situation. Add to this stress the fact that the Department has been working at

⁶ As the three Lieutenants in the Department are counted in the determining the needs of the day, one must assume that they can also bank up to 42.5 hours of comp time per year and that they can refill their comp time banks across the year as the Deputies do, for a total of 127.5 hours of comp time for the Lieutenants.

least three Deputies short for the past two years (County Exh. 1), and that the Lieutenants' requests for comp time off are considered in the same pool as Deputy requests, and this explains why the Association filed the instant grievance and brought it forward to arbitration.

The Association proved that other employees have received comp time off under the same circumstances that existed on March 27, 2004, in Orzech's case. At this point, the burden of proof shifted to the County to prove that its action toward Orzech was reasonable. However, the County failed to proffer sufficient evidence to meet its burden of proof that it acted reasonably in denying Orzech's request for comp time off on March 27, 2004.

In this regard I note that no evidence was submitted to show that the County has ever discussed comp time usage with the Association or informed the Association on what basis comp time requests would be granted. Indeed, the record showed that the County has never attempted to define "the needs of the day" either verbally or in writing. Nor has it any established written policies regarding comp time. In these circumstances, the County's action toward Orzech appears to have been unreasonable.

The County argued that Chief Soucy's testimony that Deputies have complained about having to work too much overtime showed that Orzech's request for comp time was unreasonable. However, the County failed to submit any documentary or other evidence to support Soucy's statement. Furthermore, the County failed to explain why Deputies Fischer and Haas' (numerous) comp time off requests were granted while Orzech's single request was denied.⁷ The only justification that Soucy gave for treating Orzech as the County did was Soucy's reliance, without giving any specifics or explanation, on the "needs of the day" and a bald assertion, without more, that Orzech had many opportunities to use comp time. In addition, Soucy's admission that some Deputies were granted comp time off in 2003 and 2004 while other requests (like Orzech's) were denied and his memo to Mulder further support a conclusion that the County's decisions to grant or deny comp time requests were not based upon reason, logic or any consistent justification.⁸

The County has argued that if the Arbitrator sustains the instant grievance, this will render meaningless the requirement contained in Article 12 that comp time be scheduled with the mutual consent of the employee and the Sheriff or his designee. I disagree. As discussed

⁷ The fact that one of Haas' requests for comp time was granted due to a grievance settlement does not lessen the persuasive power of this Association's argument, that in the other situations, Orzech was treated far less favorably than Haas for no apparent reason.

In addition, the evidence also showed that the County granted Deputy Fischer's request for comp time on June 15, 2003, leaving only two third shift employees to work that day, and it granted Lieutenant Schneider's requests for comp time on August 8 and 9, 2003, leaving only one third shift employee to work those days.

⁸ I note that Soucy did not state that there were special circumstances involved on March 27, 2004—such as the start of fishing or hunting season or any Citywide festival — that would require more Deputies to be scheduled, and Orzech's request to be denied. Furthermore, the fact that Orzech was not completely denied comp time off during the period surveyed by the Association is insufficient to prove that the County acted reasonably toward him regarding his request for comp time off on March 27, 2004.

above, Articles 2 and 12 specifically require the County to act reasonably in granting and denying comp time requests. Granting a remedy for the County's unreasonable action toward Orzech herein will not render meaningless the mutuality required by Article 12. On the contrary, after the issuance of this Award, each Deputy will continue to be required to arrange his/her comp time as before, with the consent of the Sheriff or his designee.

Association has requested that Orzech be granted 8.5 hours of comp time (which he did not earn) as a remedy herein. Such a remedy is neither supported by the evidence nor by equitable considerations. To grant such a remedy would give Orzech more than he would have received had the County properly granted his comp time off request in the first place, essentially rewarding him for bringing this grievance. The better approach is to grant Orzech the right to accumulate and use 8.5 hours of comp time he will earn, on a one-time basis, without regard to the 42.5 hour cap on comp time. Thus, for example, if Orzech now has 42.5 hours of comp time in his bank he will be allowed to work 8.5 hours over the cap and use that 8.5 hours at a time that is mutually agreeable with the Sheriff during the current year or the next year.

Based upon the above analysis I issue the following

AWARD⁹

The Employer violated the terms and conditions of the collective bargaining agreement when it denied the Grievant's compensatory time off request on March 15, 2004. The Employer shall therefore allow the Grievant to accumulate 8.5 hours of comp time in the future on a one-time only basis, without applying the 42.5 hour cap to those hours, and the Grievant shall be allowed to use this 8.5 hours of comp time pursuant to the express terms of Article 12 either during the current year or during 2006.

Dated at Oshkosh, Wisconsin, this 7th day of June, 2005.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

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⁹ I shall retain jurisdiction of the remedy only should the parties have difficulty in executing it.