

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
RICHLAND COUNTY (SHERIFF'S DEPARTMENT)

and

RICHLAND COUNTY DEPUTY SHERIFF'S ASSOCIATION/WPPA

Case 166
No. 68715
MA-14324

Appearances:

Andrew D. Schauer, Staff Attorney, 340 Coyier Lane, Madison, Wisconsin, appeared on behalf of the Association.

Godfrey & Kahn, S.C., Attorneys at Law, by **Jon E. Anderson**, One East Main Street, Madison, Wisconsin, appeared on behalf of the Employer.

INTERIM ARBITRATION AWARD

Richland County Deputy Sheriff's Association, WPPA, herein "Association" and Richland County (Sheriff's Department), herein referred to as the "Employer" or "Department," jointly selected the undersigned from a panel of arbitrators from the staff of the Wisconsin Employment Relations Commission to serve as the impartial arbitrator to hear and decide the dispute specified below. The arbitrator held a hearing in Richland Center, Wisconsin, on September 17, 2009. Each party filed a post-hearing brief and reply brief. The last of these was received November 16, 2009. The parties notified the arbitrator that they were waiving reply briefs on November 26, 2009.

ISSUES

The parties stipulated to the following statement of the issues in this case:

1. Did the Employer violate the collective bargaining agreement when modified work schedules to facilitate a department-wide training program?

2. If so, what is the appropriate remedy?¹

FACTS

The Employer is a Wisconsin County. It operates a Sheriff's Department. The Association represents sworn officers of the department including those who perform jailer/dispatcher duties. The Department works on a twenty-four hour, seven day per week basis. The Department is a small department and has approximately 12 road officers and a minimal number of jailer/dispatchers. Some of the units' transport and similar duties are performed by retired officers on an as-need basis; however, they are not available to perform regular road or jail duties. The chief executive officer of the Department is the elected Sheriff, Darrell Berglin. The Department operates on a 6-3 work schedule for most unit employees. A "6-3" schedule is one in which employees on the schedule work six days at work and three days off.

The Department planned to change its operating software to a comprehensive law enforcement system designed by Spillman Technologies. The software affected essentially all employees in the bargaining unit. The software is complex and requires that each employee using it be trained in how to use it properly. Part of the contract with Spillman required that Spillman provide the needed training to all affected employees. Spillman provided the instructors to perform the training and established the schedules for the training. The Employer had no significant control over the nature of the training or the schedules which Spillman established for the training. Spillman's actions in regard to the training were reasonably related to its role and not motivated at all by any factor relevant to work hours or pay for hours worked. The training was scheduled for various dates commencing January 4, 2009 and ending by the end of February, 2009.

At times material to this dispute, the Sheriff was under considerable pressure from the County Board to hold down overtime costs.

Prior to October 31, 2008, the Sheriff directed the creation of a temporary work schedule to accommodate having all affected unit employees scheduled for the various training sessions without paying overtime while at the same time providing what the Sheriff deemed as minimum coverage for all duties of the Department. It did so by requiring some employees to change shifts² and by requiring many unit employees to work substantially more days than six days in a row. One sworn officer retired effective December 31, 2008. One sworn officer was required to be at a major trial from January 29 to February 10, 2008. Another deputy was at recruit school during the disputed period. The schedule provided for minimum coverage for these events without the payment of premium pay which otherwise would have required additional work by other sworn officers at premium pay. The Sheriff did not consult with the

¹ The parties stipulated that I might reserve jurisdiction over the specification of remedy, including, but not limited to the calculation of back pay if either party requests that I do so in writing, copy to opposing party, within sixty (60) days of the date of the award.

² The change in shifts is not in dispute herein.

Union at any time about these changes. On October 31, 2008, he sent a letter to all departmental staff with a copy to the Union president broadly outlining what the changes would be. The letter read in relevant part as follows:

As most of you are aware we have begun preparing for the new Spillman software changes for the department. This new system will have a major impact on how we conduct our department operations. It will be far more efficient, stream line complaints, eliminate time wasted steps, and make all our jobs a lot easier. It truly will be an "Extreme Makeover".

In order for us to accomplish this, required training is needed. I am asking for your help and cooperation. During this special assignment, for a very short time, it will be necessary to alter your hours and days off. Dispatch/Jail will be affected Jan. 4-10, and most of February 2009.

In dispatch there will be three team leaders that will be selected to participate in four 9 hr training day sessions the week of Jan. 4-10, 2009. In addition each member of dispatch/jail will also attend a one day session scheduled for the entire department in the first week of February 2009, and 4 other schedule days of training in February 2009.

This special assignment will also affect the road staff for a short period between Jan. 25-Feb 11 2009. During this time of the special assignment we will also be dealing with the Bayliss trial (Jan. 29-Feb 10), an officer away in recruit school, and a possible retirement. I will need your patience and understanding to maintain basic staffing levels.

Because these temporary changes will affect everyone in the department, I felt that this needed more than a 30 day notice. That is why this memo is issued now. I understand each of you make plans and I wanted each of you to be kept informed, and up to date with developments so that any inconvenience you may endure would be limited.

I am exited (sic) for the department and what this new system will mean for the staff, department operations, and the impact it will have on those we serve.

Thank you for you patience in advance. I appreciate your cooperation and understanding as we undertake these needed steps toward a successful transition.

The Union never responded to this letter or took any other action related to this matter other than filing the grievance in dispute herein. The changes to the schedule were implemented. Although the training began in January, the bulk of the training occurred in the period February 3 to March 12. The schedule changed employees' off days so that they worked more days in a row than six, but achieved the same total number of days off in any two week period

as they would have received. The result that many unit employees formerly on a 6-3 schedule were required to work more than six days in a row, but every employee received the same total number of days off as they would have received under the 6-3 schedule.

It was not possible as a practical matter to meet the Employer's operational needs and training needs during this period while maintaining its customary six days on, three days off schedule for every employee. It was possible to do so while paying additional pay for days worked in violation of the six days on, three days off schedule.

The Union timely filed a grievance concerning the proper compensation for unit employees assigned to these shifts. The same was properly processed to arbitration without resolution.

RELEVANT AGREEMENT PROVISIONS

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ARTICLE IV – MANAGEMENT RIGHTS

4.01 The Employer shall have the sole and exclusive right to determine the number of employees to be employed, the duties of each of these employees, the nature, hours and place of their work, and all other matters pertaining to the management and operation of Richland County and Richland County Sheriff Department, including the hiring and promotion of employees. The Employer shall have the right to demote, suspend, discharge or otherwise discipline employees for just cause.

The Employer has the exclusive right to assign and direct employees, to schedule work and to pass upon the efficiency and capabilities of the employees, and the Employer may establish and enforce reasonable work rules and regulations. Further to the extent that rights and prerogatives of the Employer are not explicitly granted to the Union or employees, such rights are retained by the Employer. However, the provisions of this article shall not be used for the use of undermining the Union or discriminating against any of its members.

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ARTICLE V – GRIEVANCE PROCEDURE

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5.03 Arbitration:

(a) The grievance shall be considered settled in Step Three above unless within ten (10) days after the last response is received or due, the dissatisfied party (either party) shall request in writing to the other that the dispute be submitted to arbitration.

(b) The parties shall attempt to mutually agree on the selection of the arbitrator to decide the dispute. If no agreement is reached within ten (10) days after notification of intent to arbitrate, either party may request the Wisconsin Employment Relations Commission to provide a panel of five (5) arbitrators from its staff from which the parties shall alternately strike until a single name remains.

(c) Time Limits: Time limits set forth above may be extended by mutual agreement in writing.

(d) Arbitration shall be limited to a determination of whether the Employer or the Union has violated the terms of the Agreement. The arbitrator shall not have authority to decide any dispute other than whether the Agreement has been violated, and he/she shall not add to, detract from or modify, in any way, the terms of this Agreement.

(e) Costs: Both parties shall share equally the cost of the arbitrator. In the event the parties agree to a transcript of the proceedings, the parties shall each pay one-half of the cost of same.

5.04 The president, vice-president or steward of the Union or their designees shall meet with the sheriff from time to time to discuss Union/management problems, with a view toward the mutual settlement of problems without recourse to the grievance procedure.

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ARTICLE XIV – HOURS OF WORK,
WAGES AND CLASSIFICATION

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14.02 Work Schedules: Schedules of work shall be prepared in advance and posted by the sheriff or his/her representative. The hourly schedule shall be as follows:

Road Deputy: Day Shift: Start between 6:00 a.m. and 9:00 a.m.
Second Shift: Start between 2:00 p.m. and 4:30 p.m.
Third Shift: Start between 10:30 p.m. and midnight
Power Shift: Start between 5:00 p.m. and 8:00 p.m.

Dispatchers: Day Shift: Start between 6:00 a.m. and 9:00 a.m.
Second Shift: Start between 2:00 p.m. and 4:30 p.m.
Third Shift: Start between 10:30 p.m. and midnight

Swingpersons: Work the shift of the person off. Minimum of eight (8) hours between shifts for swingpersons.

Task Force: As assigned, minimum of eight (8) hours between shifts; the three days' off portion of the 6-3 schedule shall consist of at least 72 hours duty-free, except by mutual agreement.

Secretary: 8:00 a.m. to 4:30 p.m. (Monday through Friday).

Except for Task Force and part-time, start times for each officer on a shift shall be consistent from day to day, except by mutual agreement or in the case of a special assignment or a bonafide emergency.

Shift assignment shall be subject to change upon one (1) week's notice, except in the case of bonafide emergency. Upon determination by the sheriff that a change in the schedules and hours of work is necessary and after consultation with the employees and Union regarding said change, the sheriff shall have the prerogative to initiate modifications in schedules and the hours of work upon (30) days notice to the employees and the Union as represented by the local union president. Shift assignments may be changed on less than one (1) week's notice if mutually agreed to by the sheriff and affected employees.

The schedule for deputy sheriffs, task force officers, and radio operators/jailers will be a 6-3 schedule, with an 8½ hour day.

14.03 Overtime: Overtime opportunities which must be assigned to unit employees under and as limited by Section 14.10 will be split between full-time employees on the preceding and following shifts according to seniority. If said employees are unavailable or unwilling to work, then said work shall be offered to other full-time employees according to seniority. If said employees are also unavailable or unwilling to work, then the County may offer same to regular part-time employees on the same basis as was offered to full-time employees, subject to the provisions of Section 14.10. Overtime for the employees covered by this agreement shall be paid at the rate of one and one half the employee's straight time hourly rate. All compensable time shall count as time worked for

computation of overtime. The sheriff must authorize all overtime, except in his/her absence, overtime shall be authorized by the chief deputy. Overtime will be paid for in the check following the pay period in which the overtime was earned.

Compensatory Time: An employee shall have the option to receive his/her overtime in the form of pay at time and one-half or compensatory time off at time and one-half. The employee may accumulate a maximum of 25½ hours compensatory time off.

Overtime beyond the accumulated compensatory time off shall automatically be paid in cash. An employee must give at least two weeks' notice to the Employer when the employee wishes to schedule his/her compensatory time off. If the employee wishes to schedule his/her compensatory time with less than two weeks' notice, it must be by mutual agreement between the employee and the Employer. Compensatory time off must be taken in a block of at least two (2) hours.

Dispatchers: Effective June 23, 1991, the normally scheduled work shift for Jailers/Dispatchers shall be eight and one-half (8½) hours.

14.04 Emergency Duty: Employees required by the sheriff to participate in emergency or riot duty outside of their normally scheduled work week shall receive overtime and will be paid overtime in accordance with Section 14.03 and at a rate not lower than the rate provided in this agreement

14.05 Temporary Assignments: Temporary assignments on a shift other than the employee's regular shift shall not exceed one (1) week except in cases of relief for leaves of absence, including vacations and bonafide emergencies.

14.06 Shift Differentials: Employees working the second shift shall receive \$50.00 per month added to their base pay. Employees working the third shift shall receive \$60.00 per month added to their base pay. The swing person, powershift, and task force officers shall receive \$60.00 per month added to their base pay.

14.07 Hourly Rates: Hourly rates shall be computed as provided in the Memorandum of Understanding attached to this Agreement.

14.08 Call-In Pay: Any employee called in to work at a time other than his/her regular schedule of hours, except where such hours are consecutively prior to or subsequent to the employee's regular schedule of hours, shall receive a minimum of two (2) hours pay at time and one-half of his regular rate of pay.

Scheduled court appearances, unless canceled at least six (6) hours before the scheduled time, shall be paid for at a minimum of two (2) hours at time and one-half.

. . . . “

POSITIONS OF THE PARTIES

Union

The Employer violated Section 14.02 of the agreement which provided for a strict 6 days on, 3 days off schedule when it scheduled employees in the disputed way. The Sheriff failed to consult with the Union at all about the disputed change as required by that provision. The letter of October 31, 2008, was, by the Sheriff's own admission, not a consultation. Even though another provision of the agreement provides that the Sheriff has the authority to modify schedules upon thirty days notice, another specifically provides for a 6-3 schedule, that provision has to be read in context with the provisions of Section 14.08 which provides for time and one half for employees working outside their normal schedule. The provision allows the Sheriff to modify the schedule, but not the overtime pay. The Employer contends that he can do so without paying overtime. Additionally, the Sheriff admitted that he and his command staff alone choose the go-live date of March 9, 2009, with Spillman for its software. He did not discuss with the Union as to the practical ability of the employees of the department to accomplish this in the time allotted. The Union requests that the arbitrator order the Employer to pay time and one-half under, or in analogy to, the call-in provision of Section 14.08. The Union notes that in emergency situations when employees are asked to come in on their days off, they are paid time and one-half for the additional time. The 6-3 schedule is important to employees. Employees need rest. Many employees were required to work seven or eight days and some were required to work eleven days in a row. This was an once-in-a-lifetime situation. However, a cease and desist order will be of little value should a similar situation occur again.

Employer

The Sheriff had the authority under Sec. 14.02 to vary the 6-3 schedule. The Employer had no option in the scheduling of the training offered by Spillman and it had the responsibility to maintain police services at the same time. Sheriff Bergland testified that Spillman required that every employee who used their software be trained and that he understood that the software would not function correctly if any untrained employees used it. The Sheriff also had one deputy who retired and one who was scheduled to be at a long jury trial. Thus, the changes to the schedule were required by operational necessity. It was not possible to maintain a 6-3 schedule. The Sheriff was also aware of cost constraints coming. This emanated from the County Board. The Sheriff's budget did not increase because the Employer had to do systems training. There would have been dire consequences had the Sheriff failed to do so. In

any event, it is evident that the Employer did not need to use overtime to accomplish the changes at hand.

Instead, the Employer is empowered to schedule work by the Management Rights (Art. IV), and Sec. 14.02, to schedule work. Section 14.02 requires that any overtime only be authorized by the Sheriff. The call-in provision does not apply because it only applies when an employee is “called in” to work. This did not occur. The employees were scheduled in advance. In any event using contract precepts, the most specific provision should govern over the other provisions which are general. Overtime is generally applicable only in an emergency.

The Union’s contention that the Employer “must” follow the 6-3 schedule is not supported by the agreement and would limit operational necessity. There is nothing which requires that the 6-3 schedule be completed in a week’s time. The Sheriff scheduled it so that days off were “swapped” out within two weeks. The schedule ultimately returned to normal by March 12, 2008. The modification of the schedule was within the bounds of operational necessity. The Union’s admission that the schedule has been modified in the past to accommodate training (without the payment of overtime) supports the Employer’s position that it can be changed for operational necessity. The Employer requests that the grievance be dismissed.

DISCUSSION

There are three determinative issues in this matter. First, whether Sheriff consulted with the Union as required under Sec. 14.02. Second, whether under the agreement and the circumstances, the Sheriff violated the 6-3 schedule provision by altering it to the extent that he did. Third, what is the appropriate remedy?

It is the role of the arbitrator to apply the parties’ agreement as it is written. If the agreement is ambiguous, it is the responsibility to interpret the ambiguous provision to determine what the parties intended or, in some unforeseen circumstances, what the parties would have intended. Language is ambiguous if it is fairly susceptible to two or more meanings. In deciding how to interpret ambiguous language, arbitrators look to the bargaining history, the general scheme of regulation of the relevant provisions of the agreement, the practices of the parties under the ambiguous provision and/or the rules of construction of ambiguous language normally applied by arbitrators and the courts. Further, arbitrators tend to look at ambiguous language in the context of the nature of the enterprise to which it applies as collective bargaining agreements tend to be negotiated in different patterns in different enterprises.

In this case, the adoption of the Spillman software and the consequent need for extensive training of virtually everyone in the Sheriff’s Department is a situation which both parties agree was unique and unforeseen when they negotiated the disputed contract provisions. Not every situation can be foreseen in labor negotiations and parties often develop procedures

to deal with unforeseen circumstances and/or establish enough standards from which an arbitrator can determine what the parties would have intended had they foreseen the situation.³ Section 14.02 of the agreement is ambiguous as to the level of authority the Sheriff has to vary the schedules specified in the section. Section 14.02 provides in relevant part:

Upon a determination by the sheriff that a change in the schedules and hours of work is necessary and after consultation with the employees and the Union regarding said change, the sheriff shall have the prerogative to initiate modifications in the schedules and hours of work upon (30) days notice to the employees and the Union as represented by the local union president.

At the same time Section 14.02 sternly provides:

The schedule for deputy sheriffs, task force officers, and radio operators/jailers will be a 6-3 schedule, with an 8 1/2 hours day.

As is relevant herein, this section can be narrowly construed to forbid the Sheriff from ever changing an employee's 6-3 schedule to one requiring work more than six days in a row without the payment of overtime penalties or it can be broadly construed to allow the sheriff to change the 6-3 schedule without payment of premium pay in his discretion after complying with the other requirements of that sentence.

Before addressing any limitation on the authority granted under Sec. 14.02 to change schedules, it is important to address whether Sheriff Berglin violated the disputed sentence of Section 14.02 by not giving the union notice of his need to change and "consulting" with them first. As noted, both parties agree that this situation was highly unusual and involved a major disruption of the department. Sheriff Berglin testified forthrightly as to the difficult situation he faced in dealing with the Spillman training amidst other staffing issues. He testified that the County Board was considering reducing the staffing of the Sheriff Department below that which Sheriff Berglin viewed as minimally necessary to meet basic staffing needs.⁴ As a result he viewed the payment of extensive overtime as a threat to the department's overall budget. During the week of February 2 through February 7 he had to have everyone in the department go through training on the day shift.⁵ Additionally, he was faced with having one officer retire as of December 31, 2009, one officer in required basic training and one officer occupied in a long trial. It is undisputed that Sheriff Berglin had substantial advance notice that the situation would occur, but was under considerable pressure to get a schedule in place. While he had an adequate opportunity to discuss this with the Union after he received the notice of when Spillman planned to send its trainers in to train the department, the discussions necessarily had to proceed quickly if they were going to be effective. The undisputed evidence is that Sheriff

³ NAA, *The Common Law of the Workplace: The Views of the Arbitrators* (BNA, 2ed.), Sec. 2.22; Elkouri and Elkouri, Rubin Ed., *How Arbitration Works*, (BNA, 6th Ed.), pp. 442 et seq.

⁴ Tr. p. 77

⁵ Tr. pp. 86-7

Berglin issued the letter of October 31, 2008, notifying the employees of the change which was going to be made without consulting with anyone in the Union in his or her Union capacity. The only evidence of any discussion is the conversation alluded to by Sgt. McCarthy ⁶ in which he directed her to prepare a schedule without regard to the 6-3 schedule and to avoid any overtime premium payments. She stated that she told him that his actions would likely lead to a grievance, but that she would comply with his direction to prepare a schedule of that nature. The evidence indicates that Sheriff Berglin had decided how he was going to approach the situation and did not indicate any willingness to meet with the Union or discuss the matter further, even though I believe he was willing to receive input from the Union. In short, it was a very difficult, urgent and unusual situation.

The disputed sentence of Section 14.02 requiring consultation with the union before action was taken incorporates some basic concepts of the duty to bargain recognized in labor relations.⁷ Those concepts include the responsibility of an employer to give the Union notice before making a unilateral change in matters affecting, wages, hours and working conditions and giving the Union a meaningful opportunity to bargain before implementing the change. By acting first, and requiring the Union to come to him, the Union was thus presented with a *fait accompli* and no effective way to seek change. Irrespective of the duty to bargain concept, it is the purpose of this provision to get the Union and the Sheriff trying to work together as much as possible in unforeseen situations. The intent is to make the two allies insofar as is possible to come up with solutions to unusual problems. It goes beyond mere notice to the Union and requires actual consultation with the Union before an action is effectively taken. While Sheriff Berglin was well intentioned, he did not consult with them in advance, identify the problem and outline what he thought the solution would be before making that decision. This violated the disputed sentence of Section 14.02. I note here that there were a number of creative ideas which surfaced at the hearing herein and there were still many more which were not raised but might have made this process easier. I conclude that Sheriff Berglin, thus, violated Section 14.02 when he sent the October 31, 2008, notifying the parties and ultimately implemented the changed schedule without consulting with the Union and giving it a meaningful opportunity to consult on this matter.

I now turn to the major issue of whether Sheriff Berglin had the authority under Sec. 14.02's 30-day provision to vary the 6-3 schedule without the payment of premium pay to the extent which occurred herein. I conclude that he did not.

I first address the scheme of regulation of the agreement. The concept of a work schedule is fundamentally linked with important benefits to the parties. Schedules are negotiated to encompass time off benefits for employees and are related to employee basic compensation. The agreement in Sections 14.02 and 14.03 provides for the availability of work beyond the fundamental work week to meet the Employer's unusual needs, but compensates the employees for the loss of bargained-for time off by additional pay while

⁶ Tr. p. 23 It is unclear if she held any union office at this time. See, tr. p. 21.

⁷ See *NLRB v. KATZ*, 396 U.S. 736, 50 LRRM 2177 (1962); *ST. CROIX FALLS SCHOOL DISTRICT v. WERC*, 186 Wis.2d 671, 677-8 (Ct. App., 1994).

discouraging the Employer from seeking additional work by requiring it to make the additional payments. Additionally, the timing of time off is important to employees to maintain their family lives and attend to personal need. It is also important to the Employer in order to be able to schedule properly and have employees who are fit for duty. If the Employer were free to easily disregard the 6-3 schedule without the agreed-upon penalty (even with advance notice) it would leave the 6-3 provision with very little, if any, practical meaning. Accordingly, the Employer's construction of Section 14.02's exception provision tends to be a strained interpretation of that provision.⁸

If one looks at other provisions of the agreement, other related provisions strongly suggest that the authority, if any, to vary from the 6-3 schedule without paying premium pay would be very limited. Section 14.04 deals with emergency duty and specifically requires that employees be paid overtime pay. These are situations the department plans to deal with, but which cannot be scheduled. Nonetheless, it is not likely that parties who negotiated this provision would have permitted easy revision of the 6-3 schedule under Sec. 14.02.

Similarly, the task force provisions support the view that the 6-3 schedule is intended to be rather inflexible without consent of the officers involved. The task force positions are cross trained to work in the jail and on the road.⁹ The nature of task force type work requires variations in schedules and there is considerable difficulty in performing that work on a fixed schedule. Nonetheless, the parties have made it clear that a 6-3 schedule applies and the three days off must be 72 consecutive hours. Again, it is unlikely that the parties who negotiated this provision would have intended that there be easy revision of the 6-3 schedule.

Sheriff Berglin was forthright in his testimony. He indicated that he had two reasons for making the changes he did. The first was the need to train employees on the Spillman software. The second reason was that the Employer was going to be extremely short-staffed for regular patrol and jail duty. Specifically, one officer retired and his position was vacant, one officer was in another required training program and a third was required to be in exceedingly long trial. Sheriff Berglin has testified that this department is at minimal staffing. These circumstances are likely to be a chronic issue in this department. It would leave the 6-3 schedule provision with little meaning if the 6-3 schedule could be changed merely if the department were short staffed. Even if Sec. 14.02's authority to change the schedules were broadly construed, the reasons justifying it would relate, at most, to the Spillman training and, conceivably, the trial. It would not extend to the mere fact that the Employer is short of staff. Those situations are handled under the ordinary premium pay provisions.¹⁰

The Employer heavily relied upon the fact those who ordinarily work a 6-3 do not always get compensated when the Employer changes them from that schedule. The evidence indicates that officers often are required to attend training schools in order to be certified to

⁸ Sections 14.04 and 14.08 effectively require premium pay for all hours outside the employee's regular schedule. Section 14.02 mandates that the 6-3 schedule for certain employees is their "regular schedule."

⁹ Tr. p. 69

¹⁰ See, top tr. p. 42, 43

perform their function. On some occasions, they do so voluntarily. Those schools are normally conducted on a weekday basis. Sheriff Berglin, without anyone's objection, has changed officers from a 6-3 schedule to a day-shift, 5-2 schedule to attend those schools. This appears to be a recognized exception to the 6-3 schedule because the employees are not performing services in the ordinary course of business. I note that the Sheriff ordinarily insures that employees get their scheduled time off before the change in schedule occurs. The circumstances in this case go far beyond merely a change in schedule for training and involve substantial redistribution of employee's days off. The exception may apply to some of the changes which were made, but not to all.

The evidence indicates that some officers were required to work for long periods without a three day break. Officer Harwick worked 11 days in a row without a day off.¹¹ None were paid premium pay under the agreement. The thirty-day-change provision of Sec. 14.02 does not allow the Sheriff to go this far and, therefore, it is clear that the Employer's actions violated Section 14.02 of the agreement and back pay or compensatory time off remedy is appropriate. Accordingly, it is clear that the Employer violated Sec. 14.02 and other related provisions in two ways. First, it failed to consult with the Union before deciding on how to change the schedule. Second, the Employer went beyond the authority conferred by the thirty-day provision of Sec. 14.02 and required employees to work in violation of the 6-3 schedule without premium pay.

Pursuant to an agreement of the parties, the hearing was bi-furcated as to remedy in order to allow the parties to attempt to resolve the remedy issue before a decision and to allow more detailed evidence on the remedy issue, if one were appropriate. Accordingly, I have entered an interim order and schedule hearing on the remedy issue should one be necessary. The hearing date specified herein may be changed by mutual agreement of the parties or for good cause shown.

¹¹ See, tr. Pp. 39-40, exhibits 11, 12, 13.

INTERIM AWARD

The Employer violated the agreement by scheduling employees to work more than six days in a row without additional compensation and by failing to consult with the Union prior to making a change in the schedule. The matter is remanded to the parties for the determination of a remedy. The parties will notify the arbitrator within thirty days of the date of the award as to whether they have reached agreement. I retain jurisdiction over the specification of remedy.

Dated at Madison, Wisconsin, this 17th day of December, 2009.

Stanley H. Michelstetter II /s/

Stanley H. Michelstetter II, Arbitrator