

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**PORTAGE COUNTY CORRECTION OFFICERS' UNION,
TEAMSTERS LOCAL UNION NO. 662**

and

PORTAGE COUNTY

Case 211
No. 69035
MA-14450

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C. by **Attorney Jill M. Hartley**, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, on behalf of the Union.

Attorney J. Blair Ward, Portage Deputy County Corporation Counsel, 1516 Church Street, Stevens Point, Wisconsin 54481, on behalf of the County.

ARBITRATION AWARD

At all times material, Portage County Correction Officers' Union, Teamsters Local Union No. 662 (herein the Union) and Portage County (herein the County) were parties to a collective bargaining agreement dated May 15, 2008, covering the period from January 1, 2008 to December 31, 2008, which provided that the terms of the agreement would continue from year to year unless one of the parties gave notice by September 1 of any year that it wished to alter or amend the terms of the agreement. On July 6, 2009, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the County's assignment of Corporal Rocky Bolder and Correction Officer Penny Borski to duties in the County's Day Report Program, which involved regularly scheduled overtime, without offering the opportunity to other Correction Officers. The undersigned was assigned to hear the dispute and a hearing was conducted on May 24, 2010. The proceedings were transcribed and the transcript was filed on June 10, 2010. The parties filed initial briefs by July 19, 2010, and the County filed a reply brief on August 3, 2010. The Union advised the Arbitrator on August 3, 2010 that it would not file a reply brief, whereupon the record was closed.

ISSUES

The parties did not agree to a statement of the issues. The Union would state the issues, as follows:

Is the County violating the collective bargaining agreement and past practice by assigning recurring overtime work in the day report program to two individuals?

If so, what is the appropriate remedy?

The County would state the issues, as follows:

Whether or not Portage County violated Section 4 of the collective bargaining agreement when it assigned additional duties that resulted in overtime for the classification corporal and the home detention officer positions?

If so, what is the remedy?

The Arbitrator would frame the issues, as follows:

Did the County violate the collective bargaining agreement or past practice by assigning recurring work in the Day Report Program, resulting in regular overtime, to two individuals?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

SECTION II – MANAGEMENT RIGHTS

The County possesses the sole right to operate the Sheriff's Department 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:

A. To direct all operations of the Sheriff's Department;

...

C. To hire, promote, transfer, establish schedules of work and assign employees to positions within the County subject to the provisions of this Agreement;

...

- I. To determine the kind and amount of services to be performed as pertains to Sheriff's Department operations; and the number and kinds of classifications to perform such services, provided, however, that all bargaining unit work shall remain within the bargaining unit, except supervisory personnel in the Sheriff's Department may from time to time assist in bargaining unit work when directed by the Sheriff.
- J. To determine the methods, means and personnel by which County operations are to be conducted;

...

SECTION IV - JOB POSTING

- A. Job Posting: When it becomes necessary to fill a vacancy or a new position in the bargaining unit, the County will post such position for a period of fourteen (14) working days, and the date the posting will be taken down will be included on the posting. Each full-time corrections officer interested in applying for the job shall endorse his/her name upon such notice in the space provided. This notice shall contain the date, title of the positions, rate of pay and qualifications necessary for the position. Corrections officers who meet the minimum qualifications shall be afforded the opportunity to participate in the written examination for Deputy Sheriff. A minimum of four (4) corrections officers who score 75 or better on the written test shall be allowed to participate in the oral examinations.

...

SECTION XV - HOURS OF WORK

- C. Overtime: All permanent full-time employees of the department performing work in excess of the standard work day or work week as called for in Paragraph "A" above, shall be compensated at the rate of one and one-half (1½) at the discretion of the employee. If the employee chooses compensatory time off, the Sheriff may schedule the compensatory time off at his discretion. At the end of the year the employee shall have the option of having the compensatory time either paid out or carried over up to a maximum of two hundred (200) hours into the next year.

BACKGROUND

The Portage County Correction Officers Union (herein the Union) represents a bargaining unit of employees working for the Portage County Wisconsin Sheriff's Department. The classifications of employees within the bargaining unit include Correction Officer I, Correction Officer II and Corporal. These employees staff the Portage County Jail, providing supervision, monitoring and transportation services for inmates incarcerated or under supervision orders within the County.

The jail is a 24/7 facility and the work of the employees in the bargaining unit is divided into three daily shifts. Occasionally, the needs of the Department result in overtime opportunities for the employees. This usually occurs as a result of employees being absent from work as a result of vacations, sick leave, military leave, funeral leave, worker's compensation, training or the like. The collective bargaining agreement provides that employees working more than the normal workday or workweek receive wages at time and one-half for all hours so worked. The agreement does not, however, provide for a means by which overtime is to be allocated among the employees. As a result, in the 1990s a system was developed between the Sheriff and the Union for equitable distribution of overtime among the employees, which has never been incorporated into the contract itself. According to this system, employees' names are placed on a list (the call-in list) in order of seniority. When overtime is known in advance, such as vacation, a sign up sheet is posted for the overtime opportunity which the employees may sign and the overtime is offered to the employees who sign up in the order on which they appear on the list until it is filled. If overtime arises on short notice, so that a sheet cannot be posted, employees are called and offered the overtime in the order in which they appear on the list. The Corporals note when employees accept or decline overtime and when an employee either works a total of ten hours of overtime, or declines three overtime opportunities, his or her name is moved to the bottom of the list. Occasionally, overtime is also assigned by having an employee come in before his or her shift, or by extending a shift beyond normal quitting time. In certain rare circumstances, the Sheriff also assigns overtime to specific employees who are deemed to have special qualifications unique to the duties to be performed.

In 1991, the County entered into a contract with an organization called Alternative Treatments to Incarcerated Citizens (ATTIC) to provide correctional services to specified corrections participants. One of these services is the Day Report Program, which provides intake and assessment services, as well as drug and alcohol screening for persons in the corrections system who are placed within the community. Such persons include those who are on probation or parole, those ordered to report as a condition of bond, those placed by the Wisconsin Department of Corrections, those assigned to in the Sheriff's Home Detention Program, or those participating in a Deferred Prosecution Plan or Volunteer in Probation Program. This program is administered by the County's Justice Program Director, Kathy King. The ATTIC program is operated on the lower floor of the County Jail, but the ATTIC staff are not County employees.

In 2007, King became concerned that a number of ATTIC participants were submitting fake urine samples for analysis because ATTIC employees were not authorized to conduct supervised urinalysis tests (UAs). She therefore requested assistance from the Sheriff's Department in conducting UAs and Preliminary Breath Tests (PBTs). Initially, the Sheriff responded by providing four COs to conduct the tests, and later by offering to have participants sent to the jail for testing. This system was unsatisfactory due to the number of participants and the fact that the officers were often busy with other duties. Eventually, King asked the Sheriff to dedicate two staff members to work with the Day Report Program. The Sheriff agreed and assigned Classification Corporal Rocky Bolder and CO-II Penny Borski to work with the Day Report Program one day per week each on alternating weeks, so that each employee would be in the Day Report Program two days per month. The hours of work for Bolder and Borski were from 8:00-10:45 am. and 3:00-7:00 p.m., resulting in Bolder and Borski receiving 4 hours of scheduled overtime every other week.

CO John Ciulla, also a Union Steward, was notified of the assignment by Sgt. Cory Nelson on January 13, 2009 by an email, as follows:

This is to let everyone know that starting Wed. 1-14-09, Rocky and Penny will be helping out in Day Report, in the AM (8a-1045a) and 3p-7p for the PM shift. They will be doing supervised UA's among other things. After January, one of them will do one shift per week and rotate weeks. Therefore there will be an increase of bailjumpings, since the clients will not be able to bring in their own urine anymore. So it will be business as usual in the Jail when a bail jumping comes up. Misdemeanor – follow the bond book and sig bond out, book and release. Felony – book in and stay to see the judge. Any questions feel free to contact me.

Ciulla responded to Nelson and Captain Mike Baumhofer with a handwritten note, as follows:

Mike and Cory,

This is not at all fair, you are selecting special people to receive overtime. This is exactly why years ago management set up the call in list, which past practice will reflect we do follow. Everyone here is able to do supervised UA's. The overtime should be posted for everyone, I am sure you will not have a problem filling it by using the call in list. After all it is four hours.

A better solution would be to change Rocky's hours to 11 am – 7 pm, then you would be accomplishing the mission and saving the County a bundle of cost in overtime. I would think you could even adjust Penny's hours to fill the needed hours.

Johnny

Ciulla's protest did not result in a change in the assignment. As a result, the Union filed a grievance, based on an alleged violation of the contractual posting language and past practice regarding overtime, which was denied. The grievance was then processed through the contractual procedure to arbitration. Additional facts will be referenced, as necessary, in the DISCUSSION section of this award.

POSITIONS OF THE PARTIES

The Union

The Union notes that the collective bargaining agreement does not specify a method for the assignment or distribution of overtime. It asserts, therefore, that where the contract is silent the arbitrator must rely on rules of contract interpretation to determine the parties' intent. Among these is reliance on past practice to fill the gap in the contract language. Binding practices are those which are clear and consistent, which have the characteristics of longevity and repetition and which have attained acceptability by the parties. Mittenthal, "Past Practice and the Administration of Collective Bargaining Agreements," 59 *Mich. Law Rev.* 1017, 1019 (1961)

Here, the Union maintains that the parties have adopted such a practice for the distribution of available overtime, which restricts management's rights to assign overtime as and how it wishes. Overtime arises in a variety of contexts and, in all cases except the situation here, it has been assigned by allowing bargaining unit members to volunteer and receive the work via a call-in list. This practice has been in effect for at least sixteen years according to Union Steward John Ciulla. Where overtime opportunities are known in advance, a sign-up sheet is posted listing the time and date of the vacancy. Interested employees sign up and the overtime is offered according to their relative position on the call-in list. Where overtime opportunities are not known in advance, supervisors call the employee on the top of the list and proceed down the list until the overtime is assigned. Once an employee has accumulated ten hours of overtime, he or she is moved to the bottom of the list. The only exceptions to this practice are when the particular work requires specialized skills, such as updating records on the live scan fingerprints system, which the Union does not dispute, otherwise the overtime is offered on a unit-wide basis. This practice is confirmed by the memoranda contained in Joint Ex. #5.

Here, the overtime was known in advance, did not require specialized skills, and the County did not have the authority to deviate from the established practice in assigning it. Arbitrators have held that where an established practice exists the employer may not unilaterally alter it, but must bargain for its removal. UNITED STATES BORAX & CHEMICAL CORP. 48 LA 641, 645-46 (Bernstein, 1967) As such, the practice here becomes a term of the contract, which the County could not alter or eliminate without giving notice during negotiations, providing the Union an opportunity to bargain. No such notice was given here.

Neither the County's management rights, nor the particular skills of Officers Bolder and Borski justified the County's actions here. The County asserts that the overtime in question was not subject to the practice, but was a work assignment, which the Sheriff could assign according to management rights. This argument is without merit. Arbitrators have consistently held that management rights do not permit the disregard of an established practice. (citations omitted) The overtime in question here is not subject to any special treatment. There is not need for special qualifications to do the necessary work. It is work that any member of the unit could perform, and do perform in the jail on a regular basis. There is no merit to the argument that Bolder and Borski have special qualifications due to their work in the Home Detention Program or Day Report or that they have special skills making them uniquely qualified to perform the work. The officers conduct supervised urinalysis (UA's) and preliminary breath tests (PBT's) and fill out the necessary paperwork. These are no different than the tests conducted in the jail. Further, Borski testified that she did not have any experience with filling out the particular paperwork before starting in the day report program and that the paperwork she fills out could be learned by any of the other COs. There is also no added benefit to having Borski ct as Day Officer by virtue of her role in the Home Detention Program. Other officers besides Borski have served as HDP Officer and so have experience with that program. Further, any claimed benefit from having her see her clients more frequently in Day Report is negated by the fact that there is no guarantee that her clients will report at the times that she is on duty, so whether she actually sees her clients is merely a matter of coincidence. The County has not shown any justification for departing from the established practice and the grievance should be sustained.

The County

The County asserts that it did not violate the collective bargaining agreement in assigning the overtime to Officers Bolder and Borski. The Union asserts that the County violated Section IV – Job Posting, but this language only addresses vacancies. Here, the Sheriff assigned extra duties, which are within his management rights under Section II. Since the only pertinent language to this issue – Section II – supports the Sheriff's action, there can not have been a violation of the contract.

The County also did not violate past practice. The Union asserts that these hours should have been posted and offered to all employees in the same way as other overtime that occurs as a result of vacations, sick leave, military duty, or other situations when an employee is not able to come to work and their shift(s) must be filled by others. This is a different situation, however, where the department is undertaking new duties and there is no support for the Union's position that these hours should be filled in any particular manner. The memoranda in Joint Ex. #5 apply to situations where there are extra shifts to be filled, not to situations where there are new duties to be assigned. In fact, the testimony of Union witness Johnny Ciulla supports the County's position that not only is the call-in list used to fill vacant shifts during absences, but also that the call-in list is not always referred to in assigning overtime. Thus, the Union's past practice argument does not apply here.

The clear and unambiguous language of Section II of the contract vests the Sheriff with the right to assign additional duties. This includes assigning the Classification Corporal and Home Detention Officer to conduct supervised UAs in the Day Report program. In this case, the Sheriff determined that it was necessary to designate officers to work in the Day Report program to assist the ATTIC employees in performing PBTs and supervised UAs because it was more efficient than sending the inmates up to the jail for testing. In his discretion under Section II.C. of the contract, the Sheriff determined that the Classification Corporal and the Home Detention Officer were best qualified to perform those functions and assigned them to those duties. This was a reasonable decision given the clear nexus between the duties of those officers and the needs of the ATTIC program. The County does not dispute that the other Corrections Officers are qualified to perform UAs, however, the assignment requires more than just performing this function, but also calls on the employees to assist in establishing policies to benefit the program, as set forth in the testimony of Kathy King, Captain Baumhofer and Sheriff Charewicz. The Sheriff has a responsibility to the taxpayers to operate his department as efficiently as possible and this decision fulfilled that obligation. The arbitrator should defer to the Sheriff's exercise of discretion and not substitute his own judgment for that of the Sheriff.

Union Reply

The Union declined to file a reply brief.

County Reply

The Union concedes that there is no specific contract language addressing the assignment of overtime, but relies instead on what it characterizes as a "gentlemen's agreement" used over the course of years to assign overtime. In actuality there are written department procedures and an established practice that have governed the assignment of overtime. The Union also concedes that this practice has not been followed uniformly. On occasion the Sheriff has assigned overtime to specific officers rather than offering it to the entire bargaining unit. The Union claims there is an exception where an officer has specialized training for certain duties, as in the case where Officer Borski was assigned overtime to update records for live scan fingerprints, but there is no "specialized training" exception in the contract or department policies. The Union also notes its failure to grieve the assignment of overtime for the removal of files from the basement, but fails to adequately distinguish that instance from the present case. The Union cannot credibly assert that the County must use the call-in list for offering overtime, but then claim that deviation from this procedure is acceptable on some occasions, but not others. The fact of the matter is that the Sheriff assigned specific duties to two officers which resulted in overtime. This circumstance falls outside the established procedure for assigning overtime and, as such, was within the Sheriff's discretion.

The Union is attempting to take a practice used for assigning vacant shifts arising due to vacations, sick leave, work related injuries and military leave and apply it to all circumstances where overtime is assigned. That is not the case. The Union concedes that sometimes officers

are held over on their shifts or called in early. This is assigned overtime which is not offered unit wide and the argument could be made that in the present case the officers' overtime results from having their shifts extended, which is consistent with County policy. Thus it is difficult for the County to understand why the Union is grieving the particular assignment of overtime in the present case when it did not do so on all the previous occasions where overtime was directly assigned. The fact is that the policies in Joint Ex. #5 apply to specific types of overtime and even then the policies are not deemed to be absolute in all cases. To make its case in this instance, the Union must show that there is an established practice of using the call-in list in assigning overtime in cases similar to this one. There is no such evidence. The assignment of duties in this case falls squarely within the Sheriff's management rights and the fact that the duties resulted in additional overtime to the employees cannot be used to curtail the Sheriff's management rights.

It is also irrelevant that the other Corrections Officers are able to perform UAs. Supposing that the Day Report duties were so specialized that only the Classification Corporal and the Home Detention Officer could perform them, would the Union then be able to demand training for all other officers so that they could qualify for the overtime? If the Sheriff cannot make an assignment of duties as he did in this case, the management rights language becomes meaningless. The Sheriff properly exercised his discretion and the Union cannot take away his contractual rights. The key to deciding this case is to consider the circumstances giving rise to the overtime. These circumstances are not addressed in the contract, the department policies regarding overtime, or the past practice. This is a case of first impression. There is no evidence of a previous case where overtime has resulted from an expansion of job duties, therefore the Union can have no argument that the County is bound by a past practice. Thus, the grievance should be dismissed.

DISCUSSION

In this case, the Union is grieving an assignment of duties to two specific Correction Officers in the Day Report Program, which is operated on a contract basis by a private agency, Alternative Treatments to Incarcerated Citizens (ATTIC), which resulted in each of those employees receiving approximately four hours of overtime every two weeks. The parties are at odds about the existence and scope of a binding past practice regarding the assignment of available overtime. Section XV.C. of the contract specifies that employees shall receive compensation at the rate of time and one-half for all hours worked in excess of the standard work day or work week, but the parties agree that the contract is otherwise silent as to how overtime is to be allocated. The Union asserts, however, that there is a binding practice that requires the County to post available overtime and to offer it to employees who sign up on the basis of their relative position on a call-in list. As employees work ten hours of overtime they are moved to the bottom of the list, in order to equalize the distribution of overtime throughout the bargaining unit. The County asserts that this practice is not binding according to the principles applicable to such practices and, further, that the type of overtime in issue here is not subject to the practice, assuming that any such exists. Rather, the County maintains that, in making the assignment, the Sheriff was exercising his management right to assign specific

duties and that any resulting overtime is not subject to any practice governing overtime generally.

The evidence reveals that the persons in the Day Report Program are required to submit to regular preliminary breath tests (PBTs) and urinalysis tests (UAs) to establish they are not violating the drug and alcohol use restrictions applicable to participants in the program. In 2007, Kathy King, the Program Director, became concerned that participants were submitting false urine samples and requested assistance from the Sheriff's Department in testing the subjects. Initially, the Sheriff allowed participants to be sent to the jail for testing by Correction Officers and occasionally sent officers to the Day Report Program to perform testing there. This method proved unsatisfactory, however, and, in early 2009, the Sheriff, at King's request, decided to dedicate two officers to work in the Day Report Program one day per week on an alternating basis and perform the necessary testing. He assigned these duties to Corporal Rocky Bolder, the Classification Corporal, and Officer Penny Borski, the Department's Home Detention Officer, because he determined that they were the best fit for the Day Report Program duties. Initially, it was anticipated that the officers would be in Day Report during their normal work hours and regular overtime was not anticipated. It soon became apparent, however, that coverage was needed outside of normal work hours and Bolder and Borski were thus assigned to work an additional three and one-half (in Borski's case) or four (in Bolder's case) hours of overtime on days they worked in Day Report. When the Union discovered this situation it complained to the Sheriff that the assignment violated the practice regarding the assignment of anticipated overtime with no result. This grievance then was brought to challenge the Sheriff's action.

The Union asserts that whenever there is anticipated overtime it is to be posted and offered throughout the unit using the call-in list and that the only exceptions are when the duties are assigned to specific officers based on particular qualifications necessary to the assignment. In this regard the Union asserts, and the County does not seriously dispute, that all Correction Officers are qualified to perform the PBT and UA duties needed in Day Report and could, with minimal training, also handle the additional paperwork and follow-up duties involved in the assignment. Indeed, Bolder and Borski had no previous training in these additional tasks and learned them primarily on the job. While conceding this point, the County asserts that the assignment was discretionary with the Sheriff under management rights and his selection of the particular officers was a rational decision based on considerations of efficiency.

The criteria for determining the existence of a binding past practice are well established. These include that the practice must be 1) unequivocal, 2) clearly enunciated and acted upon and 3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by the parties. *CELANESE CORP. OF AMERICA*, 24 LA 168 (Justin, 1954) The testimony of Officer Johnny Ciula establishes that for a number of years the parties here have been using a mutually agreed practice for assigning anticipated overtime involving four or more hours. This practice involves the posting of the available overtime for which all officers may apply. When the posting is taken down, the overtime is then offered to the officers in descending order according to their relative position on the call-in list. If no officer

signs up for the overtime, it is offered to officers working the preceding or successive shifts on a seniority basis. If none of these officers accepts the overtime, it is assigned to officers on the basis of inverse seniority. Where the anticipated overtime is for a period of less than four hours it is offered to officers on the preceding or successive shifts on the basis of seniority and, again, if none of these officers accepts the overtime, it is assigned to officers on the basis of inverse seniority. The existence of this practice is established not only by Officer Ciula's testimony, but also by a series of memoranda issued by the Department over a number of years and appearing as exhibits in the record.

The County asserts that this practice has not, in fact, been uniformly followed, pointing out that at least on one occasion the Sheriff assigned to specific employees the task of clearing files that had accumulated on an overtime basis without objection by the Union. On another occasion, Officer Borski was assigned the task of updating records for live scan fingerprints on an overtime basis, again without objection from the Union. I do not regard these examples to be dispositive. The circumstance of updating the live fingerprint records was one where Officer Borski had particular qualifications for the task, which in my view distinguishes it from a situation where the duties are common to the skill sets of all officers. The file disposal incident was one occasion over a period of many years and, in my view, is not sufficient to counter the argument that there is an established and mutually accepted practice, especially since on this occasion other officers were offered the opportunity to work overtime, as well. I find, therefore, that there was an established practice for offering anticipated overtime in excess of four hours to officers on a unit-wide basis according to their position on the call-in list.

I take note, however, of the County's point with respect to the nature of the overtime. The memoranda referred to above all refer to overtime that arises due to vacations, sick leave, comp time and other forms of leave. Officer Ciula's testimony also supports the County's assertion that overtime assigned by use of the call-in list is typically that occurring as a result of vacancies due to vacations, sick leave, etc. None of the memoranda address the situation of overtime arising as a result of an assignment of specific duties and the testimony of all witnesses establishes that there is no precedent of assigning overtime under such circumstances according to the established practice. In effect, therefore, the question is whether the practice was intended to encompass all occasions giving rise to anticipated overtime or just those that have typically arisen in the past.

In this regard, I note that it has been recognized that "...the scope of a past practice is restricted by circumstances under which it arose. The practice may be enlarged over time through administration of the agreement, but it remains linked to its origin and purpose." *The Common Law of the Workplace*, 82, Theodore St. Antoine, ed. As such, an arbitrator should be hesitant to ascribe to a practice a scope broader than that assigned to it by the parties. This is because such a practice is not based upon the contract language itself, but upon the actions of the parties over time in interpreting and applying it. Where, as here, therefore, the arbitrator is limited to interpreting and applying the specific terms of the agreement, he should not extend to a practice that, in effect, fills a gap in the contract language a breadth greater than that adopted by the parties themselves.

I have already noted that the assignment of overtime in this case occurred under circumstances unlike those referred to in the exhibits or the testimony. I also note that, as the County asserts, the assignment of particular duties is a management right reserved to the Sheriff. To require the Sheriff to assign particular duties according to the call-in list, therefore, simply because they may result in overtime to the officers so assigned, would significantly restrict his discretion in directing the operations of the Department. The parties have not historically interpreted the contract or the practice in this way and so I am hesitant to do so, as well.

The Union advances a fairness argument, as well, however, asserting that the Sheriff's action defeats the purpose of the practice in equalizing overtime among bargaining unit members. It claims that the action grieved herein has the effect of giving preferential treatment to certain employees to the detriment of others, which the practice was intended to prevent. The testimony of Officer Ciula, however, reveals that there is no evidence of any officer not receiving as much overtime as they want as a result of the Sheriff's action, which undercuts this argument. Also, the fact that this is the first instance where overtime has apparently resulted due to the assignment of specific duties under these circumstances, it seems unlikely that this will be a recurrent problem, or that it is an attempt by the County to subvert the practice by making all assignments of overtime subject to management discretion.

For the reasons set forth above, therefore, and based upon the record as a whole I hereby enter the following

AWARD

The County did not violate the collective bargaining agreement or past practice by assigning recurring work in the Day Report Program, resulting in regular overtime, to two individuals. The grievance is dismissed.

Dated at Fond du Lac, Wisconsin, this 17th day of September, 2010.

John R. Emery /s/

John R. Emery, Arbitrator