BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

THE APPLETON PROFESSIONAL POLICE ASSOCIATION

and

THE CITY OF APPLETON

Case 389
No. 57890
MA-10770

(Moderson Call-In Grievance)

Appearances:

Previant, Goldberg, Ulemen, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Milwaukee, Wisconsin, by **Attorney Frederick Perillo**, on behalf of the labor organization.

City Attorney Greg J. Carman, 100 North Appleton Street, Appleton, Wisconsin, on behalf of the municipal employer.

ARBITRATION AWARD

The Appleton Professional Police Association ("the Association," or "the APPA,") and the City of Appleton ("the City") are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Association made a request, in which the City concurred, for the Wisconsin Employment Relations Commission to designate a member of its staff to hear and decide a grievance over the interpretation and application of the terms of the agreement relating to call-in pay. The Commission appointed Stuart Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Appleton, Wisconsin on October 20, 1999; it was not transcribed. The parties submitted written arguments on November 22, and waived their right to file reply briefs.

ISSUE

The parties stipulated to the following statement of the issue:

> Did the City of Appleton violate the collective bargaining agreement and past practice by refusing to pay Officer Moderson a three-hour Court Call Time guarantee for his work performed on March 16, 1999?
>
> If so, what is the remedy?

RELEVANT CONTRACTUAL LANGUAGE

Article 4 – Overtime

> Employes will be compensated at the rate of time and one-half (1 ½) based on their normal rate of pay for all hours worked in excess of the scheduled work day or work week. Overtime and normal work day compensation may be either by pay or time, the choice to be determined by the employe.
>
> . . .
>
> An officer recalled to work or required to appear in court shall receive three (3) hours call-in pay at his regular straight time rate plus pay for the actual hours worked at the rate of time and one-half (1 ½). Call-in pay for an officer recalled to work shall not apply when the recall occurs within one-half (1/2) hour of the conclusion of the officer's scheduled shift. Call-in pay for court appearances shall not apply when such appearances are continuous with the officer's scheduled shift or commenced within one-half (1/2) hour of the conclusion of the officer's scheduled shift.

BACKGROUND

This grievance concerns the amount of pay an Appleton Police Officer is entitled to for time spent preparing court testimony by telephone from home while off-duty.

On March 1, 1999, Calumet County assistant district attorney Heather J. Krause issued Appleton Police Officer Mark Moderson a subpoena for a March 17 jury trial arising out of an arrest Off. Moderson made of an individual for operating a motor vehicle while under the influence of an intoxicant. Moderson was in Madison at an official training session at the time Krause had the subpoena delivered to the police station. He attempted to call Krause when he

returned to Appleton on March 12, but she was absent due to illness. Moderson called again on Monday, March 15, his day off, but Krause was still out sick. Later that day, a member of Krause's office contacted Moderson, and the parties agreed to conduct a telephone conference the next day at 1:00 p.m.

March 16 was also an off-day for Moderson, so it was agreed that ADA Krause would call him at his home. Moderson was available to take Krause's call at the scheduled hour, but she did not place it until 1:40. Krause and Moderson then prepared his court testimony until 2:00 p.m.

Moderson thereafter submitted a Voucher for Overtime Worked, indicating that he performed overtime work from 1300 to 1400 hours on the 16th; that the overtime was authorized by Lt. Danoski; that the work consisted of "phone conference w/ Assistant DA Schulz (sic), Calumet Co DA's office, at her request, re: jury trial." Moderson later clarified that the conference was with ADA Krause, and the City does not challenge the claim on this aspect. Moderson did not submit any vouchers for pay for the phone calls he made and received on March 15.

The Voucher, in addition to having lines for signatures, dates and times, includes the following lines:

Method of Compensation: []Pay []OTO

Type of Activity: []Court []Held Over []Maintain Staffing
[]Training []Called In []Special Event
[]Meeting []Scheduled []Off-duty Services

Duty Status: []Day Off []Vacation []Leave
[]Shift _____to_____

Court Call Time: [] Yes []No

Moderson checked the boxes indicating that the activity was of the "Court" type, that his duty status was "Day Off," and that he sought time off rather than pay. Moderson did not check either box on the line regarding Court Call Time. On March 17, Danoski denied the voucher. On April 22, 1999, Moderson and the Association filed the following grievance:

> **Remedy for Grievance:** Pay Officer Moderson by providing him with court call time for his pre-trial conference with the Calumet County District Attorney's Office.

Describe the Grievance:

Issue: Did the City violate past practice by denying Officer Moderson court call time with respect to his pre-trial conference on March 16, 1999 with the Assistant District Attorney of Calumet County.

Facts: Officer Moderson received a subpoena from the Calumet County District Attorney's Office that instructed him to contact the District Attorney's Office to schedule an appointment with ADA Krause. Officer Moderson called the Calumet County DA's Office several times, over the course of several days, but was unable to speak to ADA Krause due to her being ill. On March 15, 1999, Officer Moderson was contacted by that office and was asked to set up a time on March 16, 1999, when ADA Krause could call him at his residence. That day was Officer Moderson's off day. However, he advised the office that he could be contacted at 1300 hours on March 16, 1999.

On March 16, 1999, Officer Moderson waited from 1300 to 1340 hours, at his residence, for the Calumet County ADA to call. At 1340 hours he received a call from ADA Krause. ADA Krause then spoke to Officer Moderson for twenty minutes concerning the upcoming trial. Officer Moderson concluded his conversation at 1340 hours.

Argument: Officers attendance at pre-trial conferences, in preparation for court trials, has consistently been allotted court call time. It is the position of the APPA that this issue is not an exception to the standard practice of compensating officers with court call time, regardless of whether the conference is held in person or by telephone.

On April 27, 1999 Deputy Police Chief Bryce D. Kolpack replied to the Association president as follows:

. . .

As you have indicated, the issue relates to the appropriate compensation for a telephone call which was held with a Calumet County District Attorney for a pre-trial conference. Officer Moderson was contacted and was asked to meet with ADA Krause. As a matter of convenience, a pre-established time was set for Moderson to receive a call, at home during his off-time. Officer Moderson turned in an overtime slip and received one-hour of overtime in compensation for his handling the phone call.

> It is understood that the current contract does not address telephone calls that are held with attorneys to discuss pending court action.
>
> I am not aware of any prior occasions when officers have been paid court time for telephone calls with various attorneys. As the current contract does not include language on the payment of "court overtime" for such telephone calls, I believe that your grievance does not have standing for further deliberation. Therefore, I will be denying the grievance.

Following an Association appeal of that denial, Police Chief Richard W. Myers wrote to Association representative Cary Meyer on May 5, 1999, as follows:

> I have reviewed your memo dated April 29, 1999, your Grievance Form dated 4-22-99 for this referenced grievance, and the Letter of Denial of Greivance by Deputy Chief Kolpack to APPA President Lund dated April 27, 1999.
>
> I agree to meet to discuss this grievance with you as you've requested in your April 29th memo. Please contact Beth Jasiak to schedule the meeting at our earliest mutual convenience. I would request that we mutually agree to waive any timiliness (sic) limits until we have the opportunity to meet and discuss your grievance; please let me know if this is satisfactory to you.
>
> Additionally, to expedite my response and make our meeting productive, would you please bring with you any evidence you have supporting your claim of "past practice" with respect to compensation of officers for telephone calls with prosecutors.

The record does not include the April 29th memo referenced in the Myers memo, nor any account of a Myers-Meyer meeting, nor any formal grievance response from Myers. On July 28, 1999, the Director and Deputy Director of the City's Human Resources Department responded to the grievance as follows:

> This letter acknowledges receipt of the Appleton Professional Police Association grievance number 99-001, dated April 22nd. A Step 3 grievance meeting was held on July 19, 1999.
>
> The issue presented by the Union: What is the appropriate compensation for a telephone call from an outside Attorney for a pre-trial conference?

> Our records indicate that Officer Moderson received one-hour overtime in compensation for the handling of a telephone call from his home on March 16, 1999.
>
> Both the Union and the City of Appleton agree that the contract does not address court call time for telephone calls that officers participate in from their home.
>
> The Union did not provide any documentation to establish any type of practice with regard to this issue.
>
> The City of Appleton is willing to discuss and consider a solution to address these types of situations, at the next round of contract negotiations.
>
> Therefore, based on the fact that there is no contractual violation and no established past practice exists, this grievance is denied.

On August 11, 1999, the Association submitted to the Wisconsin Employment Relations Commission a Request to Initiate Grievance Arbitration in this matter. There are no issues regarding timeliness or other procedural matters preventing consideration of the grievance on its merits.

At hearing, the City stipulated that it would pay Moderson overtime pay at time and one-half for the hour spent awaiting and conducting the telephone call, but maintained its opposition to paying him three hours court call time.

At hearing, the parties presented testimonial and documentary evidence supporting their position.

The Association's documentary evidence consisted of the records of two vouchers submitted by Sgt. Donald C. Kramer. The first dealt with a ten minute phone call on the afternoon of February 6 1997, in which Kramer gave a tape recorded statement via telephone to a private attorney representing a party in civil litigation. On his Voucher for Overtime Worked, Kramer indicated that this was Court activity, that his normal shift was from 2000 to 0400 hours, that the conference took place from 1300 to 1310 hours, and that this was for Court Call Time. Kramer's supervisor thereafter authorized payment of three hours call-in time and .2 hours at time and one-half. The second dealt with a 45-minute phone conference with a Calumet County ADA in the early afternoon of September 9 1997, preparing for testimony in a jury trial the following day, a conference Kramer testified was pursuant to subpoena. Kramer made the personal decision to place the long-distance call from the Police Department because he did not want to make such a call from home and so that his young children would not overhear the profanity he would have to use in the conference. The overtime voucher which Kramer submitted indicated again that this was Court activity during

his non-shift hours, that he sought time off, and that this was Court Call Time. 1/ Again, the request was approved by a supervisor, again for three hours of call time and time and one-half for the time actually worked. Kramer also testified that he had never been denied court call time for preparation conferences during his off-duty time except for one incident transpiring on August 26 1996, discussed below. Kramer also testified that he had been paid court time for meetings with an assistant city attorney regarding another officer's disability claim.

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*1/ **Although the substance of the voucher forms remained constant over this period, the particular layout and graphics indicate that the vouchers appear to have been reprinted between February and September, 1997, and then again prior to March, 1999.***

The Association also presented testimony from Officer Michael J. Parker, a 20-year veteran, concerning an incident "several years ago," in which a Lieutenant directed him, on a day off, to make phone calls contacting potential witnesses informing them that a case had been cancelled. Parker testified that he made some of the calls from the station house and some from home, and that he received a call-in guarantee (at that time, two hours) plus overtime for time actually worked. On cross-examination, Parker acknowledged that he had been denied call time for activity in December 1989, which denial he said was appropriate (because supplemental payment was barred by contractual provisions not relevant to the current grievance).

The City's documentary evidence related to a voucher Officer Tom Poss submitted in April 1996 pursuant to the contractual provision for court appearance payment "unless the officer is notified of a cancellation prior to the day on which such appearance is required." Poss had telephoned the Outagamie County District Attorney from his fishing boat the day of the hearing, seeking to be excused from testifying; when a back-up officer became available on very short notice, Poss was excused from the subpoena. Poss then submitted his voucher for payment under the "same day cancellation" provision, which Deputy Police Chief Greg Peterson rejected. The Association did not grieve this matter.

As noted above, the City also denied overtime vouchers arising out of two other incidents in 1996. On June 27, 1996, four off-duty officers (including Parker) were called to a lengthy (two hours and forty-five minutes) conference with outside defense counsel representing the City in a civil rights action which arose out of a traffic stop. On August 26, 1996, an Assistant City Attorney met with Officer Kramer for twenty minutes regarding a civil trial on Kramer's off day. All five officers put in for court call time; the City rejected all vouchers, and the Association grieved. On December 22, 1999, Wisconsin Employment Relations Commission arbitrator Lionel L. Crowley denied the grievance as having been "not timely appealed to arbitration" and therefore invalid.

POSITIONS OF THE PARTIES

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

> While the language in the collective bargaining agreement does not explicitly recognize work performed over the telephone as "recall," it is clear that trial preparation by telephone is a "recall to work" under article 4 of the collective bargaining agreement. Officer Moderson, in doing pre-trial preparation work with the District Attorney's office, was performing work duties; the City recognizes this by paying overtime for the time actually spent preparing testimony. It follows logically that being called to prepare testimony is being "recalled to work."
>
> The purpose the of premium also supports this interpretation, in that it is to make up to the officer for the inconvenience and disruption the officer suffers for this obligation on an off-day. The City has agreed that the disruption is as great when the testimony is by phone as when it is in person, and pays the premium accordingly. It follows that this rationale applies equally to preparation by phone, in that an officer waiting to prepare testimony with the district attorney is no less inconvenienced than an officer actually testifying. If testifying by phone is being "recalled to work," then preparing to testify by phone is as well. There are several arbitration awards which treat such preparation as call-in pay, even though the officers did not appear in court at the time.
>
> Officer Moderson was ordered to assist the district attorney with an impending trial on his day off. His work constituted "recall to work" within the meaning of Article 4 of the collective bargaining agreement, whether or not it is also "Court Call Time."
>
> Further, preparatory meetings by telephone are guaranteed court call time by past practice. Even though the words "court call time" appear nowhere in the collective bargaining agreement, the established use by both parties both indicates it has essentially contractual status. The evidence of past practice shows that "Court Call Time" is broader than just the phrase "to appear in court" as found in the agreement, and includes any call-in related to court or preparation for court in a suit involving official police business.
>
> The practice of paying officers a three-hour guarantee for court preparation easily meets the established tests for determining past practice. The practice is over ten years old; it is consistent; it is accepted. The City is not free to argue

that this is simple a long, repetitive series of mistakes consistently made the same way over many years. The practice has been approved by authorized supervisors, it is modeled after the contractual provision, and it is grounded in the same policy considerations; the practice is thus particularly strong and cannot be disavowed by the City.

The City's response – that not all officers have claimed Court Call Time for every off-duty phone call made from home – is not convincing. It is disingenuous for the city to suggest that officers waived a 15-year practice by not lodging pay claims for a handful of trifling one-minute phone calls. Further, the City's denial of Officer Poss' claim does not vitiate the practice, because of the quite different circumstances. Equally not relevant is the issue of the relationship between a training and a regular shift.

The practice of paying Court Call Time for work performed over the telephone related to court business stands in the record without serious contradiction. It is supported by the language of Article 4 and the rationale, as well as documented cases of past practice. The City violated this well-established practice by refusing to pay to Officer Moderson a Court Call guarantee for March 16,1999. Because Office Moderson's work was a "recall" with the meaning of the collective bargaining agreement and a Court Call within the meaning of past practice, the City should be ordered to pay the three hour guarantee.

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

The language of the collective bargaining agreement is clear and unambiguous and must be given full force and effect by the arbitrator. There is no question about the clarity of the phrases "recalled to work" and "required to appear in court." They mean, respectively, being ordered to return to one's workplace and a mandatory participation in a court-related proceeding. Given the clarity of these terms, the arbitrator should not resort to an exhaustive review of past practice in order to interpret contract language. The terms are explicit, and the arbitrator has neither the authority nor the function of rewriting the parties' contract.

Even if the arbitrator finds the contractual terms to be ambiguous, the grievant has failed to prove that a past practice has operated to define any ambiguity in the contract language. No uniform past practice exists that would amount to a mutual agreement of the parties to modify the contract, and a single incident does not establish a practice.

No uniform past practice exists to pay call-in pay to an officer for a phone conversation, especially when the call did not emanate from the workplace. The purported past practice is not unequivocal; it is not clearly enunciated and acted upon, and it is not readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. These are the tests for establishing a past practice in Wisconsin, and the grievant fails to satisfy any of these elements.

Because the language of the collective bargaining agreement is clear and unambiguous, and because the grievant has failed to meet his burden of provding a uniform past practice, the grievance should be denied.

DISCUSSION

There is little dispute over two essential elements in this grievance. The City does not dispute the Association's assertion that Officer Mark Moderson, responding to a valid subpoena, arranged to submit on his day off to a phone conference with a Calumet County Assistant District Attorney to prepare his testimony for a court proceeding arising out of his official duties. The Association does not dispute the City's assertion that the literal language of the collective bargaining agreement does not explicitly authorize payment beyond overtime for such telephonic conferences.

Beyond the agreement on those two points, however, there are considerable disagreements of fact and opinion.

The first issue before me is the determination of whether the text of the collective bargaining agreement is sufficiently clear – as the City asserts – to forestall any consideration of past practice.

I concur with the City's basic legal point – that arbitrators generally should not engage in an exhaustive review of past practice when the collective bargaining agreement is clear and unambiguous. And I concur with its further point, which the Association acknowledges, that the language of the collective bargaining agreement does not explicitly support the Association's arguments. Indeed, the critical terms of the collective bargaining agreement – "recalled to work" or "required to appear in court" – on their face exclude Moderson from their application. There being no directive from a supervisor, Moderson had not been recalled; Moderson not having left his house, he was clearly not being required to appear in court.

Rather, the heart of the Association's case is the purported past practice. But I may not even consider its arguments unless I first make the preliminary determination that the text of the collective bargaining agreement is insufficiently clear and unambiguous and thus offers multiple interpretations.

The City asserts that the language is so clear and distinct that it forestalls further discussion. I disagree, due to the unique nature of police work.

For most municipal employes, the phrase "recalled to work" does in fact mean, as the City argues, "ordered to return to one's workplace." Certainly, an operator in a sewer plant or a school custodian must actually be at their workplace to be working; and while a member of a public works or highway workforce may either go to the garage or proceed directly to their assigned equipment out in the field, in either case they too would be at their "workplace," whether mobile or not.

But police officers, because of their unique duties and responsibilities, have a different application of "workplace." For police officers, the issue is not so much whether they are at their work *location* (e.g., a departmental building or squad car), but whether they are in *work status*. Certainly, an off-duty officer in civilian clothes who responded to a situation (e.g., undertaking to follow and/or apprehend the perpetrator of a crime the officer witnessed or was alerted to) would be in work status, whether or not the officer first reported to headquarters or drove in a squad car. Indeed, as the Association correctly notes, an arbitrator has explicitly found an officer to be "working" during the six hours he remained at home awaiting notice that he was being called as a witness in court. CITY OF HOLLYWOOD, 82 LA 48, 91 (Manson 1983). That is, the phrase "recalled to work" is subject to more than one definition.

I am also struck by the details of the Voucher for Overtime Worked which the department has prepared, particularly its inclusion of a line on which the officer can indicate whether the activity was "Court Call Time." Under the strict reading of the collective bargaining agreement which the City says it favors, there would be no need for this line, inasmuch as there are already lines to indicate whether the type of activity was for "Court" or because the officer was "Called In." These two terms reflect the text of the provisions of the fourth paragraph of Article 4; so "Court Call Time" must mean something else. If there were no provisions for paying court call time, the voucher which the department prepared would not have this line. Moreover, as noted above, it is clear from the graphics and typeface on the exhibits that this form went through three revisions between February 1996 and March 1999; each time, the department included the "Court Call Time" aspect. I find this to be persuasive documentary evidence that the department acknowledges that there is something understood as court call time which is different than being recalled to work or being required to appear in court.

Finally, the strict reading of the explicit terms of the collective bargaining agreement which the City says it favors would deny the court call minimum to an off-duty officer who gave formal telephonic testimony from home in an actual court proceeding. Since the City has stated that it does not endorse this result, this is another indication of the ambiguity inherent in the terms of Article 4.

Accordingly, because the language of Article 4 is subject to varying interpretations, and because the department has promulgated internal paperwork which supports the Association's legal theory and statement of the evidence, I find the collective bargaining agreement to be insufficiently clear and unambiguous so as to forestall consideration of the Association's further arguments as to past practice.

The City cites a decision I wrote in which I cited Arbitrator Justin's venerable three-part test for determining whether a binding past practice exists – that the practice be "unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both parties." LINCOLN COUNTY (HIGHWAY DEPT.), Case 154, No. 54708, MA-9765 (Levitan, 6/97). In that same Award, however, citing CITY OF TACOMA HOUSING AUTHORITY, 99 LA 265, 269 (Mayer, 1992), I also wrote that "the weight accorded a past practice depends upon the purpose for which it is introduced, the language of the agreement, the particular facts surrounding the creation and maintenance of the practice and the view of the arbitrator."

The record evidence shows the following as to the parties' past experience in this regard: In April 1996 an officer managed to get himself excused from a subpoena to testify at a court proceeding in order to continue a fishing trip, and then had the chutzpah to file a voucher for "same day cancellation" call pay; the Chief properly rejected the voucher, and the Association wisely let the matter drop. In June 1996, the city denied call time for four off-duty officers who spent 2.75 hours in conference with outside defense counsel representing the City in a civil rights action which arose out of their official actions. In August 1996 the City denied call time for an off-duty officer who met with an Assistant City Attorney regarding a civil trial. The Association grieved these latter denials, but brought the matters to arbitration in an untimely manner so that no decision was ever reached on the merits of their grievances. CITY OF APPLETON (Police Department), Case 387, No. 57779, MA-10736 (Crowley 12/99).

Since those 1996 denials, however, the City has at least twice granted court call time for telephone conference calls by an off-duty officer – Sgt. Kramer's ten minute call to a private attorney in February 1997 and his 45-minute call to a Calumet County ADA in September 1997.

The city acknowledges that the first Kramer incident is "close in facts to the instant dispute," but asserts that the second incident is "clearly distinguishable" from the Moderson situation because Kramer chose to make the call from the police station, while Moderson phoned from home. I do not find that as meaningful a distinction as the city appears to. Kramer was not recalled in to headquarters any more than Moderson was; he chose on his own to phone from downtown for purely personal reasons (to avoid making a long-distance call on his own bill, and so that his children would not hear the offensive language he would be using). Further, a policy that treated off-duty officers making identical phone calls differently because one called from home while the other chose to drive downtown would only lead to officers making unnecessary trips solely to receive the added stipend.

The Association also presented anecdotal evidence from Officers Kramer and Parker as to numerous instances when the City paid Court Call Time for in-person sessions preparing officers to testify in court and administrative proceedings. Parker also testified that he had received Court Call Pay when he made phone calls from home contacting witnesses. While this testimony was without direct rebuttal, it was also without specific details as to date or other corroborating evidence.

It is useful to keep in mind the concept underlying a guaranteed minimum call-in pay. As the Association notes, an officer required to appear in court on a day-off effectively loses much of the value of the day; even if only a few minutes are spent in the witness chair, the need to be present and in a physical and emotional state appropriate for the proceeding is a significant curtailment of the officer's freedom of movement and activity. These restrictions are especially powerful in the context of police work, where the daily work environment is stressful and dangerous and the off-duty time may involve aggressive activities geared towards relaxation, which activities might significantly impair an officer's usefulness at trial or in trial preparation. In recognition of this reality, the parties have agreed that three hours pay is the proper added compensation for an officer who is recalled to work or required to appear in court, however short the actual work or appearance may be.

The City's arguments ignore the underlying principle of call-in pay in this regard. The City's position would have officers under subpoena who sacrificed their entire day off awaiting an official, work-related phone call receive as compensation time and one-half for just the minutes actually spent in conversation. Such a result would be contrary to the notion that arbitration awards should avoid an absurd or unduly harsh result.

This is not an instance of an officer attempting to abuse the system. Moderson made a timely, good faith attempt to contact ADA Krause during a time he was on duty; it was not his fault that she was absent due to illness. He also attempted to contact her on his first day off, and declined to file a claim for that activity. When someone from Krause's office finally contacted Moderson on March 15, the court proceeding was only two days away. Moderson had no choice but to make himself available for a preparatory interview on March 16, his scheduled day off.

Moderson was under subpoena to make himself available to prepare testimony for a court proceeding arising out of his official duties. Through no fault of his, that preparation was undertaken on his day off. That preparation required that Moderson remain at home for a period of his day off, and remain in a physical and mental state appropriate for the exercise at hand. While it is true that a telephone conversation from home does not come close to involving the degree of inconvenience and formality that testifying in court brings, it does involve a significant curtailment of the activities that police officers may otherwise undertake on their day off. Compensation for that infringement on an officer's free time is consistent with the parties' previous experience, is supported by the concepts for call-in pay, and is not barred by the explicit terms of the collective bargaining agreement.

Therefore, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, I conclude that an Appleton Police officer under subpoena who conducts a telephone conference with counsel to prepare testimony for a court proceeding arising out of the officer's official duties, has been "recalled to work" as used in Article 4, paragraph 4. Accordingly, it is my

AWARD

That the grievance is sustained. The City shall credit Officer Moderson with three hours call-in pay at his regular straight rate.

Dated at Madison, Wisconsin, this 18th day of February, 2000.

Stuart Levitan /s/
Stuart Levitan, Arbitrator

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