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In the Matter of Interest Arbitration	-	Case XVI
Between	-	No. 27107
CITY OF ANTIGO	-	MIA-521
and	-	Decision No. 18614-A
ANTIGO PROFESSIONAL POLICE ASSOCIATION	-	Gordon Haferbecker, Arbitrator
	-	October 4, 1981

Appearances:

Mulcahy & Wherry, S.C., Wausau, by Gary M. Ruesch, for the City of Antigo (Employer).

Rogers & Runyon, Lawyers, Merrill, by James T. Rogers and Sheree L. Gowey, for the Antigo Professional Police Association (Union).

ARBITRATION AWARD

BACKGROUND. On September 15, 1980, representatives of the City of Antigo (hereinafter referred to as the "City") and the Antigo Professional Policemen's Association (hereinafter referred to as the "Union") commenced negotiations on a contract to replace their existing agreement which expired on December 31, 1980. Thereafter, the parties met on two occasions to attempt to negotiate a new agreement. On November 20, 1980, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC) pursuant to Section 111.77 of the Wisconsin Statutes. A WERC investigator, Duane McCrary, held investigation sessions with the parties. After the WERC investigator concluded the parties were at deadlock he closed the investigation and the parties submitted their final offers.

On July 1, 1981, Gordon Haferbecker of Stevens Point was notified by the WERC that he had been appointed as the arbitrator for the purpose of issuing a final and binding award.

The arbitration hearing was held at the Antigo City Hall on August 17, 1981. The Arbitrator attempted to mediate the issues but the mediation efforts were not successful and the matter proceeded to formal hearing. Exhibits and witnesses were presented by the parties. It was agreed that briefs would be exchanged through the Arbitrator by August 16, 1981. This was done as scheduled. It was also agreed that the City would submit corrections concerning some of its exhibits within one week after the hearing. Also to be included were copies of certain labor contracts. It was also agreed that the hours and pay of the City of Shawano Police would be verified by letter. The corrections by the City, the additional contracts, and the Shawano data were received by the Arbitrator as scheduled.

Reply briefs were sent to the Arbitrator on September 28, 1981.

FINAL OFFERS

The City is offering a two-year contract with a \$109.00 increase for all employees (with the exception of new employees who would start at 95% of the stated rates for the first six months), an increase in the City's payment of health insurance rates from 75% to 80% and deletion of the "me, too" clause from the contract as it was in 1980 (this clause refers to the City's health insurance contribution). The City proposes that the contract could be reopened on two issues for 1982: wages and uniform allowance.

The Union is requesting a one-year contract with an 8½% across-the-board increase in wages effective January 1, 1981, plus an additional 2% across-the-board increase effective July 1, 1981. The Union is also proposing that each bargaining unit employee be granted twelve "Kelly days" per annum. The net effect of these "Kelly days" would be to reduce the average work week of each employee from the existing 42.115 hours to 40.27 hours. Under the Union position the annual hours worked will equal 2094. This Union request would be retroactive to January 1, 1981. The hourly wage of an employee would be determined by dividing his annual wage by 2,094 hours.

The Arbitrator has made the above summary from the Union Brief, page 1, and the City Brief, pages 2, 3, 4. The offers are shown in Union Exhibit 11 and City Exhibits 2 and 3.

Section 111.77 of the Wisconsin Statutes concerning Law Enforcement Personnel and Firefighters provides as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and financial ability of the unit of government to meet these costs.
- (d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally;
  1. In public employment in comparable communities.
  2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

The Union contends that in this case, subsections (a), (b), (c), and (g) are not relevant. The main factors for consideration are subsections (d), (e), (f), and (h) (Union Brief, p. 2). The City states that it considers the relevant sections of the statute to be (c), (d), (e), (f), (g), and (h) (City Brief, p. 6).

#### WAGE AND TOTAL COMPENSATION RECEIVED BY OTHER CITY EMPLOYEES

City Position. The City contends that the wage package offered to its Police employees is consistent with and exceeds the wages voluntarily agreed to by both the City of Antigo Fire Department and Department of Public Works employees.

The City is offering each Police employee a \$109 monthly pay increase. The Antigo Firefighters' increases range from \$102 to \$108 per month and \$109 to the captain of the unit. The lowest increase under the Union's final offer would be \$122 a month. This is \$20 per month more than the lowest increase received by a firefighter (City Exhibits 4, 5, 6, 20).

The DPW employees will receive a monthly increase of \$98.80 per month, compared with the \$109 the City is offering the Police (City Exhibit 22). Under the Union offer, the increase for a Patrolman would be \$122, exceeding the DPW increase by \$23.20 (after the July 1, 1981 increase).

The City's revised cost analysis of the Union's final offer shows a 9.59% increase (City Exhibit 55) in wages and a 9.7% increase in total compensation. (City Exhibit 10 was revised in City Exhibit 55 because of the error in the City's computation which had originally shown the Union increase to be 10.7%.) This compares with the 9.5% increase in wages and the 9.6% increase in total compensation offered by the City (City Exhibit 9).

In City Exhibits 58 and 60, sent in after the hearing, actual 1981 cost figures were used instead of the end of 1980 cost projections. These exhibits show the City's offer to be 10.8% for both wages and total compensation and the Union's offer to be 11.04% for wages only and 11.02% for the total package increase. The City's final offer is closer to the Fire and DPW settlements than the Union's offer.

The City objects to Union Exhibit 13 which deals with non-union wage increase for 1980 and is therefore not pertinent for 1981. The Union noted that the Mayor received a large percentage increase in 1981 but the salary is still only \$9,900. This is \$5,076 less than a patrolman receives.

In comparisons of total compensation with other City employees, the benefits are very uniform. The City contributes 75% of the health insurance premium, 41% of the State Life insurance plan, and 100% of the full employee share of the Wisconsin Retirement Fund for all its employees. All employees have nine paid holidays.

The City proposes to increase its health insurance contribution to the Police to 80% in 1982. This is consistent with the health insurance increase provided to its Firefighters in 1982, the second year of their voluntarily-reached collective bargaining agreement.

The City contends that the data contained in City Exhibits 55 through 60 was developed from data contained in previously presented City Exhibits. These included the Union and City Final Offers (City Exhibits 2 and 3), City Exhibit 7, 1981 bargaining unit staff, City Exhibit 8, Cost Analysis Base, City Exhibits 9 and 10, Cost Analysis of the City and Union Final Offers. These documents were subjected to cross-examination by the Union at the hearing. The data contained in City Exhibits 55 through 60 contains matters which were supported by proof and the hearing and the Exhibits are a restatement of evidence presented at the hearing, evidence which is similar to the data in Charts B and C in the City's initial brief (City Reply Brief, pp. 3-4).

In conclusion, the City quotes Arbitrator Stern (City Brief, p. 15) who notes that "If an arbitrator makes an award that resolves the last outstanding dispute in a city and opts a position that overturns the pattern already set, he creates problems for the following year in the other negotiations. . .it discourages prompt voluntary settlements by the parties."

Union Position. The Union feels that the Antigo Firefighters and the Department of Public Works are not true comparables and while they can be considered, they should not be given much weight. In the previous arbitration between the parties, the Arbitrator said that Police should be compared with Police. There is also no way to determine whether the compensation paid to the other employee groups is reasonable.

If these departments are considered by the Arbitrator, he should note that the DPW received a 9.73% increase and the Firefighters a 9.47% increase (City Exhibits 21 and 23), both of which are in line with what the Union is asking here (9.585%).

The Union pointed out that the Mayor received an increase of 43.478% while the Superintendent of the Water and Sewer Department received a wage increase of 24.999%. Thus, the City is already treating some employees unequally.

The cost differences for wages between the Union and the City proposals, are very minute. The City has not contended that it could not meet the cost of the Union proposal so ability to pay is not at issue.

The Union asks that the City's post-hearing exhibits, particularly 56 through 60, be disregarded in that they do not actually correct errors previously made, but rather constitute an attempt to introduce new evidence or a new series in its case. It is unclear to the Union where some of the figures in City Exhibits 58 and 60 were derived and since they were not subject to verification by cross examination, should not be admissible (Union Brief, p. 4).

Arbitrator's Comments. I have looked at the City's earlier Exhibits, especially 9 and 10, and the post-hearing exhibits of the City, 55 through 60. I agree with the City that they are primarily restatements of the earlier exhibits. It would have been better had they been presented in their present form at the hearing but they do not seem to present really new evidence. The Union also has had ample opportunity to rebut the exhibits in its Brief and Reply Brief. As I understand it, City Exhibits 58 and 60 are based on actual 1981 wage experience rather than early 1981 wage projections. The results cannot be given much weight since it could be that if actual 1981 experience were used, the DPW and Firefighter percentage increases might also be different than they were in early 1981.

I do not agree with the Union that other City wage settlements are not significant. Collective bargaining between the parties does normally consider other local settlements and arbitrators do normally give previous local settlements considerable weight.

In this case as the Union has pointed out the difference in the percentage increase offered by the parties is very close:

	City	Union
Wage Increase	9.5%	9.59%
Total Compensation	9.6%	9.7%
(From City Exhibits 9, 55)		

However, the Union's proposal has more impact for 1982 in that the 2% increase of July 1, 1982, had about a 1% impact on the 1981 salary dollars but will have a greater effect in 1982 when it is in effect for all year. The rise in the Patrolman's base salary, under the Union offer, for example, in comparison to the Firefighters, may create some problems for the City in future bargaining with the Firefighters (as quoted earlier, a final \$122 per month increase compared to \$102 to \$108 for firefighters).

I do take note of the fact that as the Union has shown the 1981 cost impact of its offer falls between the Firefighter and DPW increases (DPW 9.73%, Firefighters 9.47%, and Union Police request, 9.585%). Also as the Union notes in its Reply Brief, the Patrolman's increase for the first six months of 1981--under the Union proposal--would be \$97, which is considerably below the Firefighter's increase. With the July 1 increase, the Patrolman will have an increase of only \$90 more for 1981 than the lowest firefighter increase.

## PRIVATE SECTOR WAGES

City Position. While private sector employees have different responsibilities than the Police, the private enterprises do compete with the Police Department for employees because they are part of the same labor market. Voluntary settlements in the private sector are also an indicator of cost of living in the area.

The City surveyed fourteen private employers in the City of Antigo. The businesses employ from 11 to 130 employees. The City received ten written responses, which are summarized in City Exhibit 27. The City converted Police wages to an hourly basis, giving a 1980 rate of \$6.25 an hour and a 1981 rate under the City's offer of \$6.93. Not one business listed on City Exhibit 27 offered a comparable cents-per-hour increase to its production employees and only three businesses offered a greater percentage increase.

The Union's request for reduced hours under its final offer would bring the hourly rate to \$7.26 per hour, an increase of \$1.01 or 16.2% (City Exhibit 60). Only three of the Antigo private employers exceed the hourly rate offered by the City. Only one exceeds the Union proposal (City Exhibits 68 to 77, City Brief, p. 18).

The City contends that its final offer not only keeps pace with private sector settlements but that it exceeds many of the settlements and hourly wage rates while the Union's final offer grossly exceeds the private sector settlements and most of the hourly wage rates.

City Exhibit 37 shows that since 1980 there has been only one vacancy in the Police Department and that arose because of a promotion. Thus, it appears that police employees are generally satisfied with the level of wages and that they prefer City employment to private employment.

Union Position. At the hearing the Union requested more information concerning the City's wage survey of private employers in Antigo. After the hearing, the City submitted Exhibits 68 through 77 showing its questionnaire and the responses of the private employers. The Union contends that the private sector comparisons are only marginally relevant. Such comparisons with private sector wage rates have been given little weight due to the difference in the regularity of work, hours and type of work and higher municipal fringe benefits. The City has not submitted any data for employees performing security-type work in the private sector. The Union contends that the information received by way of the City's letters is unreliable and since it is not subject to cross examination, it should be inadmissible in these proceedings. As one example of the deficiency of the City survey, the first question is, "What is the number of employees currently engaged by your firm?" This question does not indicate whether "employees" means full or part-time.

Arbitrator's Comments. I think both parties would agree that it is difficult to compare police wages and benefits with those in the private sector and that normally comparisons with other police units would have greater weight. There may be shortcomings in the City's survey but it was a good faith effort to ascertain area wages and it deserves consideration. The Wisconsin statutes do require that some consideration be given to private sector wages.

## THE ISSUE OF PROPER COMPARABLES

City Position. The City uses as comparables six other communities and one county. The comparables include the municipalities of Clintonville, Merrill, Rhinelander, Shawano, Tomahawk and Langlade County. These were selected on the basis of geographic proximity, population, bargaining unit size, full value tax rate (City Exhibits 28, 29, 30). Arbitrator Kerkman in an Antigo Police Department decision in 1978 accepted the City's comparisons which were the same as the City is using here (City Brief, p. 23).

The Union's comparables include Merrill, Rhinelander, Minocqua, Wausau, and the Counties of Langlade, Oneida, Shawano, Lincoln, and Marathon. The Union did not provide quantitative evidence to support its conclusions that these comparables are similar. The Union provided population figures and department size figures for Merrill, Rhinelander, and Shawano but not for the other cities and counties. Wausau has a population of three and a half times the size of Antigo and the Wausau Police Department is four times the size of the Antigo Police Department (Union Exhibit 11). The City objects to the inclusion of county law enforcement units other than Langlade County. It cites Arbitrator Zeidler's opinion that there are significant differences between city and county units and that comparisons of like units (city and city or county and county) should be given greater weight (City Brief, p. 26). The Union has not provided statistical evidence to support its choice of county comparables on the basis of population, department personnel, or tax rates.

Union Position. The Union contends that the best comparison is with the cities of Rhinelander and Merrill (Union Exhibit 1). The three cities are county seats; their counties are contiguous to Langlade County. Their populations are comparable. The City comparisons includes several other cities with considerably smaller populations than Antigo: Shawano, Waupaca, Clintonville, and Tomahawk.

While the Union believes that the true comparables are Antigo, Merrill, and Rhinelander, it has also included Minocqua, Shawano, and Wausau if it is deemed necessary to expand its exhibits. These are included on the basis of geographic proximity. The comparisons could

also include the Lincoln County Sheriff's Department, the Langlade County Sheriff's Department, and Oneida County Sheriff's Department. The Union also makes reference to the Marathon County Sheriff's Department.

Arbitrator's Comments. The Union's primary comparables, Merrill and Rhinelander, are certainly good choices. They are also included in the City's comparables. The Union's secondary list of comparables is not well documented with statistics to show comparability (Wausau, Minocqua, etc.). The City has done a good job of documenting the reasons for its choice of the six cities and Langlade County. The earlier arbitrator's opinion supporting the City's choice of comparables also should be given some weight. The Union's primary comparables are too limited and its secondary list is not adequately documented as comparables.

This arbitrator finds that the City's comparables are more reasonable than those of the Union but I would also note that within the City's comparables, the cities of Merrill, Rhinelander, and Shawano should be given more consideration than the smaller and more distant communities of Clintonville, Tomahawk, and Waupaca.

The City has included only the Langlade County Sheriff's Department, contending that other Sheriff's departments are not comparable. While I agree that comparisons with other city police departments are more pertinent than city-county law enforcement comparisons, I do not feel that other neighboring counties should be disregarded and given no weight at all. Therefore, consideration will be given to Union data on hours and wages in neighboring counties. I note from Union Exhibit 11, pages 10 and 11, that the city police departments and the corresponding county sheriff's departments have very similar wages for the city patrolman and the sheriff's deputy (Antigo-Langlade County, Rhinelander-Oneida County, Shawano-Shawano County, Merrill-Lincoln County, Wausau-Marathon County). These county employees do work similar to a city police department and are more comparable than employees in private employment.

The Arbitrator will make some use of all of the comparables provided by both parties.

#### POLICE WAGE COMPARISONS WITH OTHER CITIES AND COUNTIES

City Position. The City contends that its wage offer is more reasonable than the Union's offer when considered in light of comparisons with police employees in comparable communities.

The City of Antigo and Langlade County law enforcement employees have historically displayed a highly competitive wage relationship. City Exhibit 36 shows the wage relationship between the wages of an Antigo patrolman and a Langlade County Deputy from 1976 to 1981. The patrolman's monthly wage has ranged from 97.9% to 99.9% of the deputy's wage. For 1981 under the City offer, the ratio would be 100.4% and it would be 101.4% under the Union proposal. The dollar difference would be \$5 per month in favor of the patrolman under the City offer and \$18 under the Union offer. The City's offer demonstrates the City's good faith effort to provide a fair wage to its police employees. For the first time in six years there has been a positive change in the wage relationship in favor of the patrolman.

The increases offered to the Antigo Police by the City compare favorably to the voluntary settlements in comparable communities (City Exhibits 31 through 35). The most commonly found positions in the comparisons are patrolman and sergeant. Patrolmen make up 50% of the Antigo Police Department (7 employees) and there are two sergeants. The average monthly wage increase in the Sergeant's wage rate equals \$116 per month. The City's offer here is \$109, within \$7 of the area average. The Union's proposal, based on year-end changes (1980-1981) exceeds the area average by \$12 per month. The City's offer is closer to the increases received in Rhinelander, Shawano, and Langlade County and the Union's proposed increase exceeds the increases made available to sergeants in any of the comparable communities. The City's offer to sergeants represents a 9.1% increase, compared to 9.3% for the area average, and 10.7% for the Union offer.

For the patrolman level the City is offering a \$109 monthly increase, compared to an area average of \$111, and a Union offer of \$122 (City Exhibit 35). The percentage increase in the area is 9.2%, compared to the City offer of 9.6% and the Union offer of 10.7%. The City's proposal is in line with the area pattern of voluntary settlements but the Union's proposal would distort the comparative balance.

Antigo has had a historically low wage position but the City's final offer makes a good faith effort to reduce the disparities. A comparison of sergeant's pay with those of Merrill, Rhinelander, Shawano, and Langlade County shows a 1980 percentage range of 90.4 to 98.7 for the Antigo sergeant. This rises under the City's offer to a 1981 range of 92.2% to 100.8% (City Brief, p. 33).

Similarly, the City's 1981 offer for patrolmen increases the Antigo percentages by two to three percentage points in comparison with the wages in the six cities and Langlade County. The 1981 percentage comparisons with Shawano goes to 100.8% (from 97.7%) and to Langlade County to 100.4% (from 97.3%). Antigo no longer ranks last because the monthly rate proposed exceeds that of Shawano and Langlade County (City Brief, p. 34, 35).

The City should not be penalized for maintaining a low ranking among the comparables. The "catch-up" provided by the City must be viewed as sufficient at this time and under these circumstances.

Union Position. In a comparison with the maximum base wage rates of the Merrill, Rhineland, and Antigo patrolman, Antigo ranks lowest and will continue to be lowest even under the Union's offer (Merrill, \$1337; Rhineland, \$1268; Antigo, \$1261). The City offer of \$1248 is \$20 behind Rhineland and \$69 behind Merrill (Union Brief, pp. 3, 4).

City Exhibit 35 and Union Exhibit 1, show the Antigo Police Department still ranking at the bottom of the list even if the Union's position is awarded. Only the Shawano Police Department has a lower base wage than that proposed by the Association and the City of Shawano is not a true comparable. The Union has shown disparity between Sheriff's department county wages paid in Lincoln, Marathon, Shawano, and Oneida counties with the Antigo Police Department (Union Exhibit 11, p. 11).

While the City's exhibits show comparability with the Langlade County deputies, the comparison is misleading because the deputies have guaranteed overtime earnings of 2.115 hours per week. This increases their monthly pay beyond the amount shown.

The City originally contended that the cost of the Union's wage proposal would amount to a 10.7% increase, compared to the City's offer of 9.5%. The City has now admitted that the Union increase amounts to 9.585 (City Exhibit 55, and Association Exhibit 12).

The Union's offer must be granted so that the Antigo Police Department can obtain parity with other comparable communities. The Union's offer would still leave Antigo lower than other communities but it is clearly more reasonable than the City's offer.

The City notes that the area average increase from December, 1980 to December, 1981 equals \$111 per month. The City's proposal is \$109 per month and the Union's average increase is \$109.50.

The Union argues also that its proposal is more reasonable than that of the City when total compensation is considered. The Antigo Police Department is not receiving higher benefits when other benefits are considered such as health insurance and uniform allowances (Union Brief, p. 6).

Arbitrator's Comments. The City has shown that its wage offer will improve the position of the Antigo Police in comparison with the Langlade County deputies. While Antigo is still low in the City's comparison list it is no longer last, being above Shawano and Langlade County under the City's offer. The percentage and dollar increases offered by the City are in line with increases in the comparables for 1981 while the Union offer is in excess of the area trend.

The Union has shown that even under its wage offer, Antigo would continue to be below its primary comparables of Merrill and Rhineland. The City's offer is not as favorable compared to Langlade County deputies as it might appear to be since the deputies have more take-home pay because they have 2.115 hours of guaranteed overtime per week. Antigo Police are not higher in other benefits such as health insurance and uniform allowance than area comparables so total compensation is not an excuse for Antigo's low ranking.

#### COST OF LIVING

City Position. The City argues that the Consumer Price Index of the U.S. Department of Labor exaggerates the increases in the cost of living. The CPI has shortcomings in that it ignores the fact that consumers switch from higher priced to lower priced goods, for example, shifting from beef to chicken. However, the CPI assumes that consumers continue to consume a fixed quantity of beef. The CPI gives a high weight to the cost of buying a home. The CPI does not adjust for the improved quality of some products such as appliances and clothing. The City notes that Wisconsin arbitrators are giving less credibility to the CPI.

The PCE is a more accurate measure of the cost of living. It is an inflation index derived from the Commerce Department's quarterly report on the gross national product. It measures the prices of goods and services currently purchased by consumers. It does not measure constant items in a hypothetical basket of goods selected in 1972 (as the CPI does). The City contends it is a better measure of real market behavior.

The PCE Index from the first quarter of 1979 to the first quarter of 1981 is shown in City Exhibit 52. Consumer prices rose 9.02% from the first quarter of 1980 to the first quarter of 1981. The City's final offer to the Police exceeds that figure.

The City also notes that the CPI is rising more slowly in 1981 than it did in 1980. As indicated earlier also, local wage settlements may be considered indicators of an area's cost of living and voluntary settlements in police cases and in private employment have been in the 9% to 9.5% range.

The City also points out through City Exhibits 38 through 40 that American workers generally are not receiving wage increases large enough to offset the purported cost of living.

Union Position. The Union is asking for a 9.585% increase in wages. The City's Exhibit 53 shows that in 1980 the Consumer Price Index increased at an average of 13.5%. The 9.585 Union wage request is clearly less than that. The Union request is also under the percentage increase of the PCE shown in City Exhibit 52.



Arbitrator's Comments. Both the City's wage offer of 9.5% and the Union's of 9.59% are below the CPI and PCE increases for 1980. In view of the closeness of the offers, the outcome of this case cannot rest to any major extent upon cost of living.

#### HOURS REDUCTION

As indicated earlier, the Union is seeking a reduction in the work week. This would be done by granting each employee twelve "Kelly days." This would reduce the work week from 42.115 hours currently to 40.27 hours. The annual hours worked would be 2094. The hourly wage of each employee would be determined by dividing the annual wage by 2094. The plan would be retroactive to January 1, 1981.

City Position. The Union proposal would be a reduction of twelve days per man or 168 man-days, or 1344 man hours per year.

Through arbitration the Union is seeking to reinstitute a benefit it has previously bargained away. Prior to January 1, 1977, the normal work week was 42.115 hours and the police employees received overtime pay for all hours over 40 per week. Negotiations for a 1977 agreement resulting in the 2.115 hours of overtime received per week being added to the base wage and the 1977 salary increase was based on the total. This change was the direct result of a voluntary agreement.

The Union is seeking to negate the previous agreement through the "Kelly days" approach. The effect is to place the Union members in the same position they were in prior to 1977 but the difference is that they are being paid for the 2.115 hours per week via days off. The Union cites the manner in which overtime is paid to other police in comparable communities, but such payments were voluntarily bargained away in 1976.

The City states that the actual issue raised by the Union is not whether the bargaining unit members should be compensated based on 40 hours per week but whether their salary is high enough. Previous negotiations changed the method of payment but not the amount of payment for the 2.115 hours per week. Now the Union wants to change the schedule back to 40 hours by virtue of the fact that 2.115 hours are not compensated for by overtime. This flies in the face of the bargaining history between the parties.

The City cites a Green County arbitration in which the arbitrator refused to rule in favor of the removal of the afternoon partial pay on the basis of the bargaining history. He noted that the condition was adopted in exchange for a large increase in hourly wages and a reduction of five hours of work per week (City Brief, p. 48). Here also the Union agreed to accept a work week of 42.115 hours in return for an increase based on the combined overtime and base rate received by the Police in 1976.

Case law generally indicates that arbitrators are unwilling to change the status quo by arbitration. The burden of proof falls on the party proposing the change. The City cites several Wisconsin arbitrators who expressed reluctance to eliminate a contract clause previously negotiated (City Brief, pp. 49-50).

At the hearing Chief Brehm testified that the additional days off would severely hamper his ability to adequately staff the working hours of the Police Department. There could be service cutbacks, reassignment of police staff, payment of additional overtime and the hiring of a new patrolman to cover off times. The City has shown that the police staff and the community will come to significant harm if the status quo is not maintained. The Union has provided no evidence that the police officers will sustain significant harm if the additional days are not awarded.

The only evidence used by the Union in supporting the work week reduction is in its comparisons of hours of work and work schedules among its comparables. The comparisons used by the Union are not enough to sustain its burden of proof. The City earlier objected to some of the Union's comparables. Of the three communities used by both parties (Merrill, Rhineland, and Langlade County), only one provides "Kelly days." City Exhibit 12 shows that only Merrill among its comparables provides employees with "Kelly days."

The Union maintains that the payment of overtime should be considered synonymous to the concept of "Kelly days", and because two communities provide overtime pay (Shawano and Langlade County), the Union asserts its offer is more reasonable. The two methods are distinctly different. More importantly, the City once had an overtime provision similar to Shawano and Langlade County but the parties voluntarily changed the practice.

In conclusion, comparability is not a factor but even so the Union comparables are inappropriate and uncomparable. The City asserts that the Union has failed to establish any reason for the change.

The City cites two additional concerns on this issue. One is retroactivity. If an arbitration decision were issued by October 1, and the police took their "Kelly days" off during this time period, the Antigo Police Department would be virtually unstaffed. This is not a viable alternative.

If the City paid each employee their average daily rate, the City would need to pay an additional \$9,768 in wages (City Brief, p. 55). It would also be necessary to hire one additional patrolman in order to man the Department. City Exhibit 11 shows that the cost of a new employee would be \$21,670. The 1981 cost for three months would be \$5,417. Because of the additional costs, the Union's percentage increase would become 13.9%.

The Union contends that the cost of its hours proposal would be less than the cost of a new patrolman because the hours due to "Kelly days" would be only about 65% of the hours of a full-time patrolman. However, the Union demand would require one new patrolman, not two-thirds of one. The Union has also presented no evidence that overtime costs would definitely be less with an additional patrolman.

In conclusion, the Union has not provided persuasive evidence that the present provision is unworkable, inequitable and that there is a compelling need for change.

Union Position. The Merrill Police Department has 40.115 average hours per week. Rhinelander has 40.11. The Antigo Police Department currently averages 42.115 hours and the Union is proposing a reduction to 40.27 hours per week. This would put the Antigo Police on a parity with the two primary comparables.

While they are not comparables, Union Exhibit 11, page 12, shows that Minocqua, Shawano, and Wausau all have average hours per week of 40.11 or less; only the Antigo Police Department works more. Lincoln, Oneida, and Marathon County Sheriff's Departments also work 40 hours or less. The Langlade and Shawano County Sheriff's Departments work more than 40 hours per week but they are compensated for hours over 40.

The Union objects to the City's use of the hours in Clintonville (40.43), Tomahawk (42.115) and Waupaca. Tomahawk and Waupaca are not true comparables. Waupaca also has not yet settled for 1981. The Tomahawk department also has benefits the Antigo Police do not have. In Tomahawk the Police receive 9 paid holidays plus an additional 9 days off. They also receive more guaranteed compensation for the overtime they work.

The City overstates the cost of the 12 "Kelly days." The 12 days per man amounts to 168 "Kelly days." It would not require a full-time employee to cover these days. Thus, only 64.6% of the City's cost figure for a new man would be due to the "Kelly days." In addition, there could be some reduction in overtime of a new employee was added.

The Union concludes that the 12 "Kelly days" per year would place the Department on a parity with Rhinelander, Merrill, as well as the other communities listed by both the City and the Association.

The Union argues that the Antigo Police Department employees simply want to reduce their hours. The 1977 agreement was the first written contract between the parties. Prior to that time, the parties had been paid by two separate checks. Thereafter, the employees were paid by one check. The Union is not trying to change the status quo. It is simply attempting to reduce work hours.

Arbitrator's Comment. I am deferring any discussion of this issue until later in this paper.

#### ONE OR TWO YEAR AGREEMENT

The City is proposing a two-year contract with a second year reopener on the issues of wages and uniform allowance. The Union is proposing a one-year contract.

City Position. The City has already proposed a 1982 improvement in the health insurance benefit that is consistent with the improvements received by other Antigo employees. The City believes that in view of the stormy bargaining relationship between the parties during this round of negotiations, and in view of the fact that 1982 negotiations will begin shortly, a two-year contract would be helpful by limiting 1982 issues and hopefully less time would be needed for negotiations.

Union Position. The Union contends that due to rapidly changing economic conditions, it would be unfair and unwise to bind either party to a two-year contract at this time. The Union also objects to the City's unilateral choice of the two items to be included in the reopeners. Two reopeners is also inadequate; typically four or five items would be left open.

Arbitrator's Comments. This is definitely a secondary issue in this dispute. I base this on the limited attention given to the issue at the hearings and in the briefs. There are certainly advantages in two-year agreements with limited reopeners as the City points out. However, a fairer proposal might have been a reopener on wages and two other items, one chosen by each party.

#### INSURANCE GROUP COVERAGE

The City is proposing the deletion of the following from Paragraph "A. Group Coverage" on January 1, 1982.

"As of January, 1980, in the event the City increases the coverage benefits and/or increases the City's share of the premium cost for other City bargaining unit employees, said increase shall also apply to employees covered by this agreement."

The Union, because of its proposed one-year duration, advocates no change in the existing health insurance coverage.



Union Position. The Union contends that the status quo in the current contract should not be changed and that other public employee contracts do contain this "me too" clause.

City Position. The City points out that this same proposal was voluntarily agreed to by the Antigo Firefighters and the City of Antigo.

Arbitrator's Comments. This is also a secondary issue. If the Union's final offer is selected, the City and the Union can bargain on this clause and the City's health insurance contribution for 1982. If the City's offer is selected the Union has the same contract provision as the Firefighters and the same City health insurance contribution.

#### ANALYSIS AND CONCLUSION

This has been a difficult case to decide. Neither side has taken a clearly unreasonable position. Each side has made a comprehensive presentation in its exhibits and briefs.

As indicated earlier, there are a few secondary issues, two related to health insurance and one related to the question of a one or two-year contract. These issues are subordinate to the two primary issues--wages and hours--and the Arbitrator's decision will be based on which party's final offer is more reasonable with respect to those two issues.

The Wage Issue. The difference between the offers of the parties in 1981 dollar cost very minimal. The City's offer is a 9.5% increase and the Union's offer is 9.59. If total compensation is considered, the differences are still minimal, 9.6 for the City and 9.7 for the Union (City Exhibits 9 and 55). However, the Union's offer includes a split increase, 8½% on January 1, 1981, and 2% on July 1, 1981. The City's analysis and comparisons emphasize the end of the year rates, not giving much attention to the fact that the dollar actually received in 1981 will be less than the year-end rates would indicate (for example in the firefighter's comparison). The Union emphasizes the average increase for 1981, not giving much attention to the impact of the split increase on 1982 wages.

In comparisons with other local public employee settlements, both the Union and the City proposals are close to the other settlements in 1981 percentage costs. As I have indicated earlier, one problem with the Union proposal is that it might create bargaining problems with the firefighters average comparisons in 1982. As the Union points out, we do not know whether Antigo Police rank lower in comparisons with other cities than the firefighters do in comparison with their counterparts.

In the wage comparisons with other law enforcement units, the offers of both parties are close to the area averages. The City's offer does provide a small improvement in Antigo's low rank in comparison with other law enforcement units. The Union's offer provides a greater improvement at year end but Antigo is still low compared to most City and Union comparables.

The maximum salary for a patrolman and a sheriff's deputy at the end of 1981 are as follows (from Union Reply Brief, pp. 2, 3 and City Exhibit 35):

Antigo Police - Union	\$1,261
Antigo Police - City	1,248
Minocqua	1,264
Shawano	1,237
Wausau	1,417
Clintonville	1,440
Tomahawk	1,319
Merrill	1,337
Rhineland	1,268
Langlade Co.-Sheriff's Depart.	1,243
Oneida Co. " "	1,302
Shawano Co. " "	1,341
Lincoln Co. " "	1,367
Marathon Co. " "	1,420

It should also be noted that the Shawano Police Department and Langlade County provide

The Hours Issue. This is a very important issue to both parties. The Union is proposing a reduction in the standard work week of the Police from 42.115 hours to 40.27. The City wants to leave the standard work week unchanged. The effect would be to reduce the hours worked by the individual police officer, and to raise his hourly rate. There would be no effect (from this change only) on his monthly pay. There would be a cost impact to the City, probably requiring the hiring of one more police officer.

The City argues that the Union is seeking to reinstitute a benefit it previously bargained away. Prior to January, 1977, the normal work week was 42.115 hours but the police employees received overtime pay for all hours above forty per week. In the bargaining for 1977, the 2.115 hours of overtime received per week were added to the base wage and the 1977 salary increase was based on the total.

The Arbitrator agrees with the City that it would have been better to negotiate a change in the work week rather than have it decided by an Arbitrator--but the issue is before the Arbitrator because the parties were deadlocked on their 1981 contract negotiations.

What the Union is proposing here is not identical to the 1976 situation. It is not asking for guaranteed overtime. I do not feel that the 1977 agreement locked in the parties permanently to a 42.115 hour work week. There is some similarity in the 1976 situation and the Union request here in that both situations looked at about 40 hours as a normal work week. I do not find it improper for the Union to seek the work week standard which is nearly universal in private employment and very common in public employment.

I cannot agree with the City that the issue of comparability is not significant here. Wages and hours are at the center of collective bargaining agreements and we have here a major hours issue in which the Union can properly use comparability in making its case. I do not think that the hours standard can or should be exempt from consideration by the Arbitrator.

Let us look next at the comparables on the hours issue. Data are from the Union Reply Brief, pp. 10-11-12.

	<u>Average Hours Per Week</u>	<u>Annual Hours</u>
Antigo Police - Union	40.27	2094
Antigo Police - City	42.115	2190
Merrill Police	40.115	2086
Rhineland " "	40.11	2086
Minocqua " "	40.00	2080
Shawano " "	42.115	2190
Wausau " "	39.63	2061
Clintonville " "	40.43	2102
Tomahawk " "	42.115	2190
Langlade Co. Sheriff's Dept.	42.115	2190
Lincoln Co. " "	40.00	2080
Oneida Co. " "	40.00	2080
Shawano Co. " "	40.27	2094
Marathon Co. " "	( 39.80 40.00	( 2170 2180

Thus, of the fourteen City and Union comparables, only Shawano, Tomahawk, and Langlade County work more than a forty-hour week but in all three cases there are offsetting benefits. The Tomahawk Police receive 9 paid holidays plus an additional 9 days off. The Shawano City Police and Langlade County Sheriff's Department both provide some guaranteed overtime at time and one-half rates.

It appears from the above that the Antigo Police Department stands alone in the area with its weekly hours of 42.115 and with no offsetting factor such as guaranteed overtime at time and one half. The only exception in the City's comparables is Waupaca which has not settled for 1981.

I find the Union's position in hours to be more reasonable than that of the City. Changing the hours of the Police will result in additional cost to the City but is a justified cost in bringing about more equitable hours for the Police in comparison with other law enforcement units and with standards in private employment and in other areas of public employment.

Concerning the problem of applying the hours change this late in 1981, the Union in its Reply Brief suggests that a solution could be worked out to take the days over a period of time extending into 1982.

Conclusion. On the basis of the presentations by the parties and the statutory standards, the Arbitrator finds the Union's Final Offer to be more reasonable than that of the City.

AWARD

The Arbitrator directs that the Final Offer of the Antigo Professional Police Association be incorporated into the 1981 contract between the Association and the City of Antigo.

October 11, 1981

Gordon Haferbeckey  
Gordon Haferbeckey, Arbitrator