BEFORE THE ARBITRATOR

In the Matter of the Petition of

MILWAUKEE POLICE SUPERVISORS' ORGANIZATION

For Binding Arbitration Involving
Law Enforcement Personnel in the Employ of

CITY OF MILWAUKEE

Case 514
No. 64279 MIA-2629
Decision No. 32301-A

Appearances:

Rettko Law Offices, S.C., by Mr. William R. Rettko, on behalf of the Milwaukee Police Supervisors' Organization.

Office of the Milwaukee City Attorney, Mr. Grant F. Langley, by Mr. Thomas J. Beamish, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein "MPSO" and "City," selected the undersigned to issue a final and binding award pursuant to Section 111.70(4)(jm) of the Municipal Employment Relations Act, herein "MERA." A hearing was held in Milwaukee, Wisconsin, on May 12, 13, 15, 16, 27, 28, 29, 30, June 2, 3 and 4, 2008. The hearing was transcribed and the parties subsequently filed briefs and reply briefs that were received by September 6, 2008. Pursuant to the undersigned's request, the parties agreed to extend the time that the Award is to be issued.

Based upon the entire record and the arguments of the parties, I issue the following Award.

INTRODUCTION

The MPSO represents for collective bargaining purposes a supervisory law enforcement bargaining unit consisting of about 1,635 sergeants, lieutenants, captains, and deputy inspectors employed in the City of Milwaukee's Police Department.

The parties engaged in negotiations for a successor collective bargaining agreement, herein "agreement," to follow the prior agreement which expired on December 31, 2003, and the MPSO filed an interest arbitration petition on December 17, 2004, with the Wisconsin Employment Relations Commission, herein "WERC." The WERC appointed Marshall L. Gratz to serve as an investigator and to conduct an investigation and the investigation was closed on December 26, 2007. The WERC on January 15, 2008, issued an Order appointing the undersigned as the Arbitrator.

The parties subsequently submitted their Final Offers by April 15, 2008, and they have agreed to a number of tentative agreements, one of which is the three-year duration of the agreement which will run from January 1, 2004 to December 31, 2006.

The issues in this matter are addressed below as follows:

ISSUES

1. ARTICLE 9 – SALARY

The MPSO requests across-the-board wage increases, herein "ATB," to the top step base wage of 3.2% for 2004; 3.4% for 2005; and 3.3% for 2006. It also requests a seventh step to the sergeant rank, thereby creating a new top step base wage for sergeants.

The City proposes ATB increases of 3% effective the first pay periods of 2004, 2005, and 2006, and it opposes the MPSO's request for a new seventh step for sergeants.

The MPSO contends that parity is "inequitable" and an "archaic theory" which must be broken because "Parity disadvantages MPSO members" as can be seen by looking at external comparables, and that its members deserve higher wages because they "have greater work and more stress" and because "Automation and change in duties allow for a break in parity." It adds that while parity may be beneficial to firefighter supervisors and police detectives, it has caused a "huge inequality" for its members and that City of Milwaukee Police Chief Edward Flynn does not favor parity. The MPSO also asserts that its requested seventh step is needed to help retain more senior sergeants; to make sergeants' pay more competitive with the metropolitan comparables; to make up for the two step pay gap that now exists for lieutenant's pay; and to overcome the unfair wage parity which now exists between sergeants and other outside ranks.

The MPSO maintains that the CPI favors its proposal and that the City's proposal "continues the MPSO's slide in external comparables" because sergeants in 1988 ranked second

in pay and lieutenants ranked first in pay among the suburban comparables, whereas sergeants under the City's proposal will rank nineteenth in pay out of 28 external comparables and lieutenants will rank tenth in pay. It thus argues that its proposed suburban, state, and national comparables should be adopted, along with the comparables relating to the hiring of Police Chief Flynn and the reclassification of bargaining unit member Sam Steffan.

The City counters that "base parity and internal comparables of voluntary settlements carry great weight"; that "Milwaukee suburbs are not comparable to the City of Milwaukee and should be afforded little weight"; that the state's largest cities are "somewhat more comparable to Milwaukee" and favor the City; that "the Midwest cities rather than the Vernon 18, are far more comparable to Milwaukee" and that they also favor the City; and that the MPSO's proposed "Chief Flynn and Sam Steffan comparables are not." The City also argues that the "record does not support" the MPSO's ATB wage proposal or its requested seventh step for sergeants; that the Vernon 18 national comparables bear "little relationship to Milwaukee, other than on the sole criteria of population size"; and that its proposal "compares favorably" with the suburban jurisdictions.

It adds that total compensation must be considered under Section 111.70(4)(jm)4.a. of MERA and that it favors the City's proposal; that the City's "generous pension" also establishes that employees are well paid; that City Exhibit 121 - the City's 2004-2006 costing calculations for the parties' economical proposals - "reconciles all data and supports the City's proposal"; and that its proposal is supported by the "detailed history of the relationship in comparables among the ranks of the protective service departments."

The City also contends that "the tail does not way the dog" which is why MPSO members should not receive a greater percentage increase in base salary for each year of the

agreement than that received by its Police Department employees represented by the Milwaukee Police Association, herein "MPA." It also states that many of the MPSO's proposed comparables are not comparable to the City for pay purposes; that the MPSO "selectively ignores the concept of quid pro quo"; that the MPSO over the last 15 years has agreed to the very compensation levels it now complains about; and that the MPSO's comments about base salary are "misleading." It also argues that "proper application of the statutory criteria regarding CPI favors the City's proposal"; that its proposed ATB wage increase "is reasonable and supported by those municipalities truly comparable to Milwaukee," whereas the MPSO's proposal is not supported by the evidence; and that the MPSO's brief "obscures the significant costs" of its proposal.

DISCUSSION

Internally, there are 19 bargaining units within the City of Milwaukee including the MPA which represents about 1,635 police officers and detectives below the rank of sergeant, and Local 215, Milwaukee Professional Fire Fighters Association, International Association of Fire Fighters, AFL-CIO, herein "Local 215," which represents the City's 1,000 or so firefighters and firefighter supervisors.

The MPA and Local 215 are the most important internal comparables for the purpose of this proceeding because their past negotiations with the City have greatly influenced the negotiations between the MPSO and the City and because almost all of those negotiations have involved the issue of parity.

The question of whether parity should be upheld as the City maintains, or whether it should be broken as the MPSO asserts, helps determine which party's wage proposals should be adopted. As used herein, parity refers to two different concepts.

One form of parity is base wage parity. It refers to total ATB wage increases which result in increasing the top wage steps for certain ranks by the same percentage wage increases and to also increase the pay for all other ranks and steps below by those same percentage increases.

That is what the City is proposing here. Its base wage proposal calls for 3% ATB wage increases in 2004, 2005 and 2006 which represents the same 3% ATB wage increases which were accepted by the MPA and Local 215 over their three-year collective bargaining agreements.

The City's proposal would maintain wage parity for the following ranks:

1. The sergeants here would be paid the same top wage step paid to police detectives and fire lieutenants.
2. The lieutenants here would be paid the same top wage step paid to fire captains.
3. The police captains here would be paid the same top wage step paid to fire battalion chiefs.
4. The police deputy inspectors here would be paid the same top wage steps paid to deputy fire chiefs.

Another form of parity refers to package parity, i.e., the total package costs of a proposal.

The City wants to maintain package parity by offering a total package costing 12.90% over three years, which represents the same total package cost of the three-year agreements reached by the MPA and Local 215 for 2004-2006 (City Exhibit 121).

Arbitrator Zel Rice in the parties' only prior interest arbitration proceeding addressed parity by stating:

. . .

> The concept of wage parity between comparable ranks in the police department and the fire department is firmly imbedded in the bargaining relationships between the Employer and its employees in those departments. It is not the proper role of an arbitrator to disturb such a firmly imbedded concept in the absence of some unusual circumstance or inequity that is clearly established by the evidence presented to him. No such evidence was presented in this proceedings that would justify disrupting the entrenched concept of wage parity that has existed between the Employer's employees in the police department and the fire department.

. . .

> Forgetting the concept of parity, the mainstream of arbitral opinion is that internal comparables of voluntary settlements should carry heavy weight in arbitration proceedings. The Employer's attempt to offer the same wage increase to all of its bargaining units in the protective services is a significant fact to be considered by an arbitrator in the absence of a factual situation that would distinguish one bargaining unit from another. The goal of collective bargaining is to have agreements reached by the parties through voluntary settlements as opposed to arbitral awards. Arbitrators should not issue awards that encourage the Employer's various collective bargaining units to seek to resolve their labor disputes through arbitration rather than at the bargaining table. If the Employer is to maintain labor peace with the many bargaining units with which it negotiates, changes in wages and benefits must have a consistent pattern. The worst thing that could happen to the Employer and the various collective bargaining units with which it negotiates would be to make the concept of arbitration so attractive that collective bargaining would be reduced to a series of multiple interest arbitration proceedings with different arbitrators issuing awards with no consistency between them. The Employer and the bargaining units representing employees in the protective services have been through that experience on more than one occasion and the result was turmoil. That turmoil only ended when consistency was reestablished in the wage patterns for the various collective bargaining units.

. . .

The question of parity also arose in the following proceedings involving the City and the MPA.

Arbitrator Joseph Kerkman upheld wage parity by stating:

. . .

Having determined that parity exists, the question is then presented as to whether base pay parity should be broken in this round of bargaining by the Arbitrator. Before answering that question, the Arbitrator would opine that there may be an occasion in the future when the parity issue will not draw as heavy weight as it does in the instant matter. Furthermore, there may well be occasions where record evidence establishes that the police, in comparison to their neighbors, are underpaid to the degree that an award in excess of base pay parity should be fashioned. The Arbitrator, however, concludes that this round of bargaining is not an occasion where parity should be broken. The foregoing conclusions are based on all of the discussion set forth above as it relates to the general increase issue.

. . .

Arbitrator Gil Vernon stated:

. . .

What is the significance of this parity relationship? It is very significant. Where such an historical parity relationship exists between two employee groups, particularly Police and Firefighters, arbitrators have commonly opted for the final offer which upholds that parity relationship. They have most often held that the party seeking to break the parity relationship faces a heavy burden.

There are a variety of circumstances when a parity relationship should be broken. However, the primary reason relates to external wage relationships. In this Arbitrator's opinion, the internal parity relationship should be upheld unless adherence to that settlement would result in an unacceptable level of compensation for the bargaining unit relative to the external comparables. What

constitutes an unacceptable level of compensation relative to the external comparables depends on the circumstances of each case. There shouldn't be any significant erosion, and given its historical position among the comparables, the unit should reasonably fit within the comparables.

. . .

Arbitrator George Fleischli stated

. . .

Like others before him, the undersigned cannot accept the proposition that the concept of parity precludes the MPA from ever justifying an increase greater than that agreed to or awarded to fire fighters which results in a breaking of the parity relationship that exists in base salary. However, like others before him, the undersigned is also very reluctant to do so, in the absence of compelling evidence requiring such a result, because of the consequences that may follow such an award. An award which disregards a well established internal pattern of settlements or a parity relationship can be very disruptive to the bargaining process. The MPA offer would do both.

Arbitrator John C. Oestreicher stated that while he "agrees with the rationale and decisions of highly regarded brethren discussed above" relating to parity, he ruled that parity nevertheless should be broken in the case before him because the salary offers "are so close" and because the City's offer would adversely affect the police officers' rankings among the comparables.

Arbitrators Rice, Kerkman, Vernon, Fleischli and Oestreicher thus all supported parity as an extremely important policy which ordinarily must be maintained because it provides needed stability in labor relations between the City and some of its unions by discouraging the whipsawing and one-upmanship that might otherwise occur if there is no parity.

They recognized, however, that parity can be broken in the face "of some unusual circumstance or inequality that is clearly established"; or when "the police, in comparison to their neighbors, are underpaid to the degree than an award in excess of base parity should be fashioned"; or when adherence to parity "would result in an unacceptable level of compensation for the bargaining unit relative to the external comparables"; or when there is "compelling evidence" requiring such a result because of the consequences that may follow such an Award." In addition, Arbitrator Oestreicher ruled that parity should be broken in his proceeding.

Given this history, I conclude that parity must be maintained here unless the MPSO meets its burden of proving that inequality clearly exists and that its members are underpaid because there is a substantial difference in pay and overall compensation between the City's offer versus what the external comparables provide, and that the City's offer will not appreciably raise the level of overall compensation.

Parity also can be broken if the MPSO meets its burden of proving that there has been significant erosion in these rankings over the years. For as Arbitrator Vernon explained:

. . .

> In some cases, a bargaining unit may have historically been paid at or near the average of the comparables. Thus, if adherence to the parity concept wouldn't result in any erosion and maintain the salary at or near the average, there would be no reason to break the internal patterns. However, the Milwaukee officer isn't average. Plainly, there isn't another police job in the State of Wisconsin like it.

For instance, they face more crime and danger than other officers throughout the state. Simply, they have a tougher job than any of the comparables.

Just as there can be no serious dispute about the applicability of the parity concept in this case, there can be no serious dispute that the Milwaukee Police Officer deserves to be number one in suburban and state-wide rankings. The MPA believes this, and the City stated in its brief that it agreed the Milwaukee Police Officer ought to be number one. It is noted too, that Arbitrator Kerkman stated a number one ranking was justified and this Arbitrator agrees. The evidence in this record mandates such a conclusion.

This Arbitrator also believes that base wages cannot be singled out as a measuring stick as to where the Milwaukee Police Officer fits in the compensation spectrum of statewide and suburban comparables. Total compensation must be considered and given significant weight.

. . .

The question of whether parity must be maintained thus requires an examination of the external comparables to determine whether there has been an erosion in this bargaining unit's overall compensation.

Arbitrator Rice in the parties' only prior interest arbitration proceeding considered certain suburban, state, and external comparables but he did not make a specific finding regarding which external comparables were most appropriate.

But Arbitrator Rice did relate that the City then asserted that: (1), its "wage rate for its sergeants would rank second among the 16 largest police departments in Wisconsin and its lieutenants would rank first"; (2), "its proposal would place its sergeants pay second among the 15 suburbs and sheriff's department in Milwaukee County, and its lieutenants would rank second in 1987 and first in 1988"; and (3), after adjusting for pension contribution disparities, its sergeants would rank fifth and its lieutenants would rank fourth out of 8 large mid-west cities.

He also pointed out that the MPSO then claimed that the "sergeants rate of pay ranks 16th among the top 31 cities in the nation . . ."; that "there are cities in Wisconsin that pay their sergeants more than the Employer does . . ."; and that "sergeants working in smaller cities in Wisconsin and around Milwaukee have a less difficult task and should not be paid more than the Employer's sergeants."

Both the City and the MPSO therefore relied upon suburban, state, and national comparables before Arbitrator Rice.

The question of external comparables also has been addressed in several prior interest arbitration proceedings between the City and the MPA.

Arbitrator Kerkman determined that 30 suburban communities and Milwaukee County constituted one set of external comparables, and that Minneapolis, Minnesota; Kansas City, Missouri; Chicago, Illinois; Detroit, Michigan; Columbus, Cincinnati, Toledo, Akron, Dayton and Cleveland, Ohio; Indianapolis, Indiana; and St. Louis, Missouri represented another set of external comparables.

Arbitrator Oestreicher also addressed suburban, state and national comparables in the proceeding before him.

Arbitrator Vernon established the following three sets of comparables:

. . .

> The Arbitrator believes it is appropriate to look at the following groups. (1) All the Milwaukee suburbs and the County Sheriff's Department, not just those in Milwaukee County, (2) the City's group of the fourteen most populous cities in the state, and (3) a national group of similarly sized cities. These groups were picked for the following reasons. The suburban city comparisons shouldn't be limited just to Milwaukee County since the metropolitan area is much larger, since the City is contiguous to other suburbs in counties other than Milwaukee, and since Arbitrator Kerkman used a version of these comparisons. The group of the most populous cities in the state is relevant because of assertions that Milwaukee Police ought to be the highest paid in the state.
>
> A smaller group than the top 100 cities nationwide is needed to be more manageable and more meaningful.

. . .

Arbitrator Vernon thus established three different sets of suburban, state, and national comparables.

The suburban comparables consisted of Bayside; Brookfield; Brown Deer; Cudahy; Elm Grove; Fox Point; Franklin; Germantown; Glendale; Grafton; Greendale; Greenfield; Hales Corners; Hartland; Menomonee Falls; Mequon; Milwaukee County Sheriffs; Muskego;

New Berlin; Oak Creek; River Hills; Shorewood; South Milwaukee; St. Francis; Waukesha; Wauwatosa; West Allis; West Milwaukee; and Whitefish Bay.

The state comparables consisted of Appleton; Eau Claire; Fond du Lac; Green Bay; Janesville; Kenosha; LaCrosse; Madison; Oshkosh, Racine; Sheboygan; Waukesha; Wausau; Wauwatosa; and West Allis.

The national comparables consisted of Austin, Texas; Baltimore, Maryland; Boston, Massachusetts; Charlotte-Mecklenberg, North Carolina; Columbus, Ohio; Denver, Colorado; Detroit, Michigan; El Paso, Texas; Fort Worth, Texas; Indianapolis, Indiana; Jacksonville, Florida; Memphis, Tennessee; Nashville, Tennessee; Portland, Oregon; San Francisco, California; San Jose, California; Seattle, Washington; and Washington, D.C.

The MPSO contends that the Vernon comparables should be utilized here because prior arbitrators have considered suburban and state comparables and because the City's proposed comparables consisting of midwest cities do not "contain any historical data beyond 2001 and is of little use to establish any historical trend as required by Arbitrator Vernon . . .," and because Chicago, Illinois, is not included within those comparables.

The City claims that suburban comparables should not be used because Arbitrator Rice "did not declare a particular set of municipalities as comparable to the City for purposes of this proceeding," and because smaller suburban communities "are not at all comparable to the City with respect to population, size of police department, wealth, diversity, geographic size and other factors . . ." It adds that the City promotes from within and does not recruit its supervisors from among the suburban communities, thereby showing that the labor pool for entry level officers and supervisors is different, and that Milwaukee never has been considered a comparable in the 20 or so interest arbitration proceedings involving many of these suburban jurisdictions. The

City also asserts that while some of the state's largest cities "are somewhat more comparable to Milwaukee," there is "a significant disparity . . ." between them and the City in a number of important areas; that arbitrators over the years have never "determined Milwaukee or its police department to be comparable to any of these other 15 large . . ." cities or police departments; and that the City and its residents are in far weaker economic shape than many of these larger cities.

The City maintains that the most appropriate comparables consist of the following cities in the midwest region of the country because they "present conditions far closer to those present in Milwaukee than do . . ." the Vernon 18 - i.e. Cincinnati, Cleveland, and Columbus, Ohio; Detroit, Michigan; Indianapolis, Indiana; Kansas City, Missouri; Minneapolis, Minnesota; Omaha, Nebraska; St. Louis, Missouri; and St. Paul, Minnesota (City Exhibit 39).

There is some merit to the City's position that Milwaukee should not be compared to suburban communities; that Milwaukee is unique among all of Wisconsin's cities; and that some of the national comparables in the Vernon 18 are significantly different from Milwaukee regarding the ability to raise revenues; population; wealth; diversity; distance; etc.

The City argued before Arbitrator Rice, however, that about 15-16 suburban comparables and 16 of the largest cities in the state supported its wage offer.

Having then relied on those suburban and state comparables, the City has not offered any persuasive explanation as to why it should not now be held to what it agreed to then. In addition,

the use of those past comparables is the only way to measure whether there has been any erosion in the bargaining unit's compensation over the last 20 years, as Arbitrator Vernon stated that it is necessary to ascertain whether there currently is an unacceptable level of compensation given the "historical position among the comparables . . .," which means going back to 1988 to determine the level of compensation at that time. Suburban and state comparables thus must be used to at least make that needed determination.

The MPSO also contends that the so-called "Chief Flynn comparables" must be used because the City relied upon them in setting Chief Flynn's salary – i.e. the 14 cities used by the City in determining what rate of pay should be paid for Chief Flynn upon his 2007 hire: Little Rock, Arkansas; St. Paul, Minnesota; Plano, Texas; Richmond, Virginia; Kansas City, Missouri; Tucson, Arizona; Seattle, Washington; Charlotte-Mecklenburg, North Carolina; Fort Worth, Texas; Columbus, Ohio; Baltimore, Maryland; San Jose, California; Montgomery County, Maryland; and Phoenix, Arizona (MPSO Exhibit 1).

The MPSO adds that the following so-called "Sam Steffan" comparables must be used because the City relied upon them in determining Steffan's salary – i.e. the cities used by the City in determining what rate of pay should be paid to Communications Manager Steffan, a bargaining unit member, upon his reclassification: Columbus, Ohio; Miami, Florida; Philadelphia, Pennsylvania, Phoenix, Arizona; and Portland, Oregon (MPSO Exhibit 1).

Neither of these two proposed sets of comparables has ever been used in any prior interest arbitration proceeding involving the City and its various unions, thereby establishing that there is no historical precedent for using them now. In addition, given the many other comparables in this matter which include some of these latter cities, there simply is no need to

adopt two more entire sets of comparables. Furthermore, the Chief Flynn comparables merely show that the City engaged in a nation-wide search before hiring Chief Flynn, which is something it ordinarily does not do when it fills the bargaining unit positions and which is why it is immaterial what the City pays its Chief of Police since he/she is not a valid comparable. Lastly, adoption of the MPSO's comparables would mean that external comparables can always be changed whenever the City engages in a nation-wide search for a Chief or other personnel, thereby destroying the stability and predictability that comes from following established external comparables. All this is why the Flynn and Steffan sets of comparables must be rejected.

Turning now to the comparables before Arbitrator Rice, the City told him that its base salary wage would place sergeants "second among the 16 largest police departments in Wisconsin and its lieutenants would rank first," and that its offer "would place its sergeants pay rate second among the 15 suburbs and sheriff's department in Milwaukee County, and its lieutenants would rank second in 1987 and first in 1988."

Responding to the MPSO's contention that the rankings for sergeants and lieutenants have seriously declined since then, the City relies upon certain data to support its claim that these rankings have not declined that much when "total direct compensation" is considered. (City Exhibit 41).

But as the MPSO correctly points out, this data understates the drop in rankings because the City's figures are predicated upon "total direct compensation" as opposed to the 1988

rankings which were based solely upon base wages. It therefore is necessary to look only at base wages to obtain an accurate comparison of where the bargaining unit now stands versus where it stood 20 years ago.

The City's ATB wage offer would place sergeants fifth and lieutenants fourth out of the state comparables, and the MPSO's proposal would place sergeants fifth and lieutenants third. Among the suburban jurisdictions, sergeants would rank nineteenth out of 28 or seventeenth out of 29 in 2006 depending upon whether the MPSO's survey or the City's survey is used, and lieutenants would rank tenth out of 25 in 2006.

Sergeants since 1988 thus will slip from second to fifth among the state comparables and from second to seventeenth or nineteenth among the suburban comparables, and lieutenants since 1988 will slip from first to fourth among the state comparables and from second to tenth among the suburban comparables.

The City argues that the MPSO itself has agreed to the "compensation levels it now complains of" over the course of seven voluntary settlements and that "those wage levels were fair at the time of the settlements, and that union members received enhanced benefits over the years not reflected in the data on base salary."

The fact that MPSO members considered them "fair" at that time has little to do with whether they now are "fair" based upon current data. In addition, any union's current leadership (and current membership) is entitled to question what has happened in the past and to rectify perceived wrongs. Furthermore, if the MPSO received special non-wage enhancements in the past, the City is free to point them out, just as it is entitled to point to the overall compensation and benefit level received by this bargaining unit.

Since no such enhancements have been identified, I find that these declines in rankings – particularly among the suburban comparables - represent a serious erosion to the base wages earned by sergeants and lieutenants over the last 20 years.

In addition to relying on these declining rankings, the MPSO maintains that parity must be broken because police work now is much more difficult and more demanding, and because "supervisors are paid more in the open marketplace than their counterparts in the fire service field because they are called upon to exert more discretionary decisions than firefighter supervisors as police supervisors have to intervene in situations involving a lot more human variables."

This record does establish that the police supervisors here exercise extraordinary discretion and responsibility and that they often are called in to help manage some of the most difficult human situations imaginable.

Furthermore, Chief Flynn stated that front line police supervisors should be paid more than front line firefighter supervisors because:

> Well, obviously speaking for the position of being a career police officer, I think that people in the police service are called upon to exert far more discretionary decision making than people in the fire service are, whether it's police officers compared to firefighters or police supervisors compared to fire supervisors, there is no question they both have work that can be dangerous, but the types of situations in which police officers are required to intervene which are human

> conduct circumstances with lots of variables, I think require a level of decision making ability that is beyond that of more technical requirements of a fire judgment.

He added that paying police supervisors the same as firefighter supervisors is "not something I would vote for, certainly."

Chief Flynn also explained that "Police circumstances are frequently much more fluid since they deal with the vagaries of human conduct, therefore, it's fair to say the judgments have to be more refined," and that while the supervisory ability of a police detective "is pretty much limited to crime scene management . . . a police sergeant has a responsibility to manage people."

Dale Belman, an expert witness called by the MPSO, testified that it is appropriate to use the top base salary at maximum seniority as was done here by the MPSO (as opposed to using the City's blended rates) because that had been done in the two prior interest arbitration proceedings between the City and the MPA in which he was involved and because:

> One of the problems of using anything else but top salary is that departments hire in at very different salaries and they advance their members at very different rates. In one department you may hit your maximum rate at 10 years. Another it may be 25, and as a result, if you try to find any intermediate position within here, you often end up comparing apples and oranges.

Russell Ormiston, an expert witness called by the MPSO, examined "the comparability of occupational characteristics between police supervisors and fire fighter supervisors and . . . the

wage and salary information regarding those two groups." He testified that 33% of first line police supervisors have a bachelor's degree or more, whereas that is only true for 17% of front line firefighter supervisors (MPSO Exhibit 26). He added that the Bureau of Labor Statistics - through its National Compensation Survey data for Illinois, Indiana, Ohio, Michigan and Wisconsin - reports that police supervisors in June 2005 earned about $4.00 an hour more than firefighter supervisors (MPSO Exhibit 27), and that other data showed there was about a $9,760 difference between the two groups in these four counties (MPSO Exhibit 29).

The data referenced by Professor Ormiston is meaningful only if it compares the wages paid to full-time, unionized personnel because the data otherwise can be tremendously skewed if it also includes part-time and/or non-unionized supervisors.

When asked the key question "do you know whether these rates of pay reflect just unionized workforce or a mixture?," Professor Ormiston replied: "It generally encompasses all union, nonunion, part-time, full time."

That being so, I find that this data cannot be relied to establish that the full-time, unionized police supervisors here are, in fact, paid substantially less than full-time unionized firefighter supervisors elsewhere and that parity therefore cannot be broken on this basis.

But since there has been a serious decline in the relative wage standings for sergeants and lieutenants over the past 20 years, and since Arbitrator Vernon ruled that parity could be broken where there has been "significant erosion," I conclude that wage parity should be broken and that

the MPSO's ATB wage proposal for 3.2% in 2004, 3.4% in 2005, and 3.3% in 2006 should be adopted over the City's proposal because that will help rectify the decline in rankings which has occurred since 1988.

In so finding, I am aware of the City's concern "that it is critical that the arbitrator recognize the real world of collective bargaining consequences of this arbitration proceeding" if the MPSO breaks parity and gets more than other unions because that "will trigger significant and long term problems which will significantly impede the City and its bargaining units from achieving voluntary agreements" which is "a result to be avoided at all costs."

Given the City's bargaining history with the MPA and Local 215 in particular, it is entirely possible, if not dead certain, that those unions will try to match or better what the MPSO obtains here and that the City will be put in a very difficult position as it attempts to hold the line on such higher wage proposals.

That is why parity is so important and that is why arbitrators often have embraced it. But that does not mean that parity automatically trumps all other considerations and that a union is not entitled to bargain for itself when, as here, parity over 20 years has resulted in a significant erosion of a bargaining unit's wages. That is why all of the arbitrators mentioned above who have addressed parity have stressed that parity can be broken under special circumstances.

The City also points to a plethora of evidence showing that the City is economically disadvantaged and it relies upon the testimony of City Assessor Mary Peavy, City Budget Director Mark Nicolini, and its expert witness Professor Merton Finkler to establish that the City has limited financial resources; heavy financial obligations; limited tax revenues; a high poverty

level; a declining population; and low per capita income – all of which, in the City's words, have caused the City to "rank at the bottom of the various comparisons involving the City and the suburban and larger cities throughout Wisconsin."

The City certainly does face significant financial difficulties, which is why those difficulties must be considered in determining what level of wages the City can afford over the 2004-2006 agreement.

The record also shows, however, that the City has a special fund to cover certain collective bargaining obligations and that that fund currently has about $23,000,000 which can cover the MPSO's ATB wage proposal.

The City also argues that a party seeking changes in the status quo must offer a quid pro quo and that the MPSO's failure to do so here must result in the rejection of its demands, citing Washington County (Social Services), Decision No. 29363-A (Torosian, 1998); Salem School District (Teachers), Decision No. 27479-A (Krinsky, 1993).

The status quo doctrine generally does require a quid pro quo. But that is the general rule since there are exceptional circumstances where no quid pro quo is required. One such exception relates to a party's need to "catch up." For as I have stated elsewhere:

. . .

> The policy expressed in Section 111.77(6)d. makes it clear that employees are to be compared with other employees to help determine whether the wages, hours and conditions of employment of the employees in dispute should be raised to those found elsewhere. That cannot be done if employees are required to offer a quid pro quo which lowers their own wages and/or benefits in order to obtain what is found elsewhere.

. . .

Arbitrator Herman Torosian has stated:

. . .

> There is no set answer as to what constitutes a sufficient quid pro quo. It is, in the opinion of the Arbitrator, directly related, inversely, to the need for the change. Thus, the quid pro quo need not be of equivalent value or generate an equivalent cost savings as the change sought. Generally, greater the need, lesser the quid pro quo.
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> . . .

Hence, if there is a great need to catch up with the external comparables because of declining rankings in base wages which is the situation here, there is no need to offer a quid pro quo.

The City adds that the City's wage offer of 9.27% exceeds the CPI which totaled 9.2% between January 1, 2004 - December 31, 2006; that the MPSO has miscalculated the CPI; and that thus is no need to award the added pay sought by the MPSO. The MPSO asserts that the CPI between December 2003 – December 2006 was 9.5% and that the City's wage offer thus is less than the CPI.

These small differences are not that important. Much more important is the fact that an employer's total package costs must be compared to the CPI. Here, as the City rightly points out, the City's total final offer costs 12.90% over the 3 years of the agreement which is well in excess of the CPI (City Exhibit 121). Ordinarily, an employer's total package costs which exceed the CPI by this margin would be a determinative factor in an employer's favor.

The MPSO correctly states, however, that the CPI is inadequate when, as here, employees are being underpaid as measured by a decline in their overall wage rankings. I therefore find that the CPI is not a determinative factor in this proceeding. That also is why little

weight can be given to the City's data showing the percentage wage increases granted in other jurisdictions (City Exhibit 124), as such wage increases are not sufficient to rectify the decline in wage rankings found here.

Turning now to whether a new seventh step should be created for sergeants who have 15 years service and 5 years in rank, the MPSO requests a seventh step which would pay sergeants $63,038 in 2004; $65,181 in 2005; and $67,332 in 2006.

The MPSO maintains that "tying sergeants pay to detective pay" is inequitable because detectives are not supervisors and because sergeants outrank detectives. It also points to the testimony of Richard Olivia, the Police Chief for the City of Franklin and a retired captain in the Milwaukee Police Department, who stated that his department sees no reason to pay detectives the same as sergeants because the other suburban departments do not do so.

The MPSO also argues that high crime statistics establish that the supervisors here have more work and more stress than suburban and state comparables; that sergeants, unlike detectives, are responsible for a crime scene; and that sergeants have far greater responsibilities and accountability than they did in 1988.

A number of witnesses testified on this subject including Captain Christopher Domagalski, who heads the Criminal Investigation Bureau. He stated that sergeants at the scene

of a crime are ultimately responsible for how a preliminary investigation is conducted; that sergeants issue orders to police officers; that "It's the sergeant's responsibility in most circumstances to control the resources at the scene"; that detectives never issue any orders to sergeants; and that while sergeants could "be in charge of doing administrative tasks over a detective, but they wouldn't be in charge of directing investigations over a detective." Lieutenant Rick Burmeister also testified about some of the changes over the years which involved going from typewriters to computers; being familiar with DNA and various drugs; preparing more reports; needing to know many more Police Department rules and general orders; etc.

The MPSO also argues that awarding the seventh step will help retain more senior sergeants, and that the City has been hurt by the departure of so many veteran sergeants over the past few years.

There no doubt have been instances of where sergeants have left for higher pay, and the record does establish that the Police Department is better off with veteran sergeants. However, it is difficult to know exactly how many have left for higher pay, as the City points to recent data showing that there has not been a marked departure of sergeants between 2000 – 2006 (City Exhibit 79). Given the wage disparity which now exists between what the City pays and what the suburban comparables pay, I find that paying sergeants more in all probability will aid retention.

The MPSO has presented extensive data relating to where sergeants stand among the comparables when their base salary, uniform allowance, longevity pay, holiday pay, EMT pay, residency pay, hazardous duty pay, other pay and certification pay are calculated (MPSO Exhibit 5).

That data does not include the City's 7% pension contribution or where the sergeants here stand versus their peers if pension benefits are included within overall compensation.

Hence, if a bargaining unit member here is paid $60,000, the additional 7% paid by the City as a pension contribution means that net pay will remain at $60,000. If a supervisor among the national comparables is paid $60,000 and has 7% of that deducted as a pension contribution, net pay will be about $55,800 – i.e. the $60,000 minus the $4,200 deducted for the pension. The difference in net pay between a supervisor here and a supervisor there thus will be about $4,200, a figure which is not reflected in any of the MPSO's data. The City thus correctly points out that the higher pay levels in some of these jurisdictions "do not equate to higher net pay for police supervisors."

Pension contributions therefore must be considered in determining the overall level of compensation. That was done by Arbitrator Kerkman who considered City data showing "the amount of take home pay resulting from direct compensation after pension contributions have been withheld from employees' pay" and the ensuing rankings "for direct compensation after employee contributions were reduced."

The MPSO objects to the consideration of such employee pension contributions and argues that "the City makes no effort to detail how much pension the comparable employees get versus the pension paid to Milwaukee employees," and that the City's data does not include all deductions, thereby making it impossible to determine total net pay.

While it is true that the City has not provided the exact dollar amounts for these pensions, City Exhibits 47 - 48 show what percentage of an employee's salary is paid out as a pension, along with information relating to eligibility requirements; benefit formula; retirement benefit cap; escalator; etc. Furthermore, the City's pension is very generous since officers here can

retire at 47 years of age if they have 25 years of service which is unheard of in almost all of the national comparables.

Furthermore, while the City's data does not include all deductions and thus it may not exactly reflect the total net pay in all the comparables, it nevertheless represents a much more meaningful measure of overall compensation than the MPSO's data which fails to account for the very large employee pension contributions which in some cases amount to 11% of an employee's base wages.

The MPSO adds that the City's own data establishes that it costs the Vernon national cities "more to employ their supervisors than it does the City of Milwaukee because those comparable cities have to make much higher employer contributions, and pay a higher wage base so the employees' contributions can be made."

That, though, is immaterial because the inquiry here centers on an employee's overall compensation rather than on an employer's total package costs.

Turning now to those pension contributions, the record establishes that employees among the Vernon 18 contributed significantly more towards their pensions during 2004 – 2006 than did the sergeants here.

In Austin, Texas, they contributed 9% for almost all that time; in Baltimore, Maryland, they contributed 6%; in Boston, Massachusetts, they contributed between 5% - 11%, depending upon when they were hired; in Charlotte, North Carolina, they contributed 6%; in Columbus, Ohio, they contributed between 3% - 3½%; in Denver, Colorado, they contributed 8%; in El Paso, Texas, they contributed 11.89%; in Fort Worth, Texas, they contributed 8.73%; in Jacksonville, Florida, they contributed 7%; in Las Vegas, Nevada, they contributed nothing; in Louisville, Kentucky, they contributed 8%; in Memphis, Tennessee, they contributed between

6.25% - 7.83% depending upon when they were hired; in Nashville, Tennessee, they contributed nothing; in Oklahoma City, Oklahoma, they contributed 8%; in Portland, Oregon, they contributed nothing; in San Francisco, California, they contributed 7.5%; in San Jose, California, they contributed between 11.16% - 11.67%; in Seattle, Washington, they contributed between 5.05% - 7.85%; and in Washington, D.C. they contributed between 7% - 8% (City Exhibit 46).

The City's proposed midwest comparables show that employees in Cincinnati paid 10% towards their pension in 2004 – 2006; that employees in Cleveland paid 10% in 2004 – 2006; that employees in Columbus paid 3.5% in 2004 -2006; that employees in Detroit paid 5% in 2004 – 2006; that employees in Indianapolis paid $1,447.44, $1,537.26 and $1,537 in 2004, 2005 and 2006, respectively; that employees in Kansas City paid 10.55% in 2004 – 2006; that employees in Minneapolis paid 6.2% in 2004 and 2005, and 7.0% in 2006; that employees in

Omaha paid a little over 13% in 2004 – 2006; that employees in St. Louis paid 7% in 2004 – 2006; and that employees in St. Paul paid 6.2% in 2004 and 2005 and 7.0% in 2006 (City Exhibit 45).

The employees here therefore receive an outstanding pension benefit because they do not contribute anything to their City pension except for a one dollar contribution, thereby saving anywhere between the 5% - 11% pension contributions found in most of the national comparables.

Hence, when total compensation accounts for employee pension contributions, the sergeants here would rank tenth nationwide out of the Vernon 18 in 2004 and ninth in 2005 – 2006 after being granted the additional ATB wage increase above (City Exhibit 49). Among the City's midwest comparables, the sergeants here would rank second in 2004 – 2006 after being granted the added ATB wage proposal (City Exhibit 50).

Since the work performed here usually is more difficult and demanding than the work performed elsewhere by any other law enforcement personnel in the State of Wisconsin, and since the sergeants here are supervisors and detectives are not, sergeants should be paid more than detectives and their ranking vis-à-vis their suburban counterparts should be improved.

Here, though, the MPSO wants to break parity again by establishing a new seventh step, one that is not supported by any suburban or internal comparables.

Creating such an extra step would create a new bone of contention for the MPA and Local 215 who, if history is any guide, would do everything possible to obtain that added

step for their own members, thereby guaranteeing years of labor turmoil. That is why the current step structure must be maintained if at all possible and why a simple ATB wage increase without adding a new step is much more preferable.

There are several other problems with the MPSO's proposal. The MPSO, and not the City, proposed the current step differential before Arbitrator Rice. Hence, the MPSO is responsible for the current step discrepancy. This step discrepancy also has resulted in paying lieutenants the same top wage rate as fire captains for about the last 20 years, thereby showing that the MPSO has received the fruits of its bargain over that time frame. In addition, awarding the seventh step would result in a 16.6% wage increase for the sergeants over the three years of the agreement which I find excessive given the City's financial difficulties. In addition, it would place sergeants second in overall compensation among the midwest comparables which is unwarranted when sergeants in 1988 ranked sixteenth among the top 31 cities in the nation.

I therefore conclude that the MPSO's request for a seventh sergeants step cannot be awarded.

2. ARTICLE 10 – SPECIAL DUTY PAY

The expired agreement did not provide for added pay when lieutenants fill in for captains.

The MPSO proposes the following language:

ARTICLE 10

SPECIAL DUTY PAY

1. An employee in Pay Range 831 shall receive an amount equal to one (1) percent of his/her base salary in lieu of any other compensation for time spent underfilling authorized positions at the direction of the employee's commanding officer. This additional amount shall be termed "Special Duty Pay."

2. Special Duty payments made under the provisions of this Article shall be construed as part of the employee's base pay solely for the purpose of computing pension benefits or payments. Special Duty Pay shall not be included in the determination of any other benefits or compensation provided by the City.

The MPSO requests changing Article 10 of the agreement to include special duty pay for lieutenants so each receives an annual lump sum payment of 1% of their base salary for filling in and for assuming the additional duties and responsibilities of a captain.

The MPSO asserts that its proposal - which comes out to about $756.48 for each lieutenant who has been in rank for three years - allows lieutenants to be treated the same as police officers and sergeants who receive extra compensation for the additional duties and responsibilities they incur when they are placed in a position of higher authority. It also adds that lieutenants should receive such pay because fire captains, their internal comparables for parity purposes, receive an extra $17 per work shift for underfilling a battalion chief. The MPSO points out that Lieutenant Keith Balash filled in for his captain 158 days in 2004, 183 days in 2005, and 183 days in 2006 without any added compensation; that each lieutenant averages about 70-75 days a year filling in for his/her captain without any added compensation; and that its requested compensation is "minimal" when compared to the amount of extra work and responsibility they perform.

The MPSO also argues "Captains make sure that all lieutenants whether they be day shift, early shift or late shift, fill in for them when they are gone"; that there is no merit to the City's claim that a quid pro quo must be offered because the City repeatedly has stressed the need for parity which on this issue shows that fire captains receive an extra $17 per shift for underfilling for battalion chiefs; because sergeants already receive a 1% lump sum for filling in for

lieutenants; and because police officers receive the sergeant's wage for each hour they fill in for a sergeant. The MPSO thus contends that "lieutenants are not being treated the same as their internal counterparts" and that "the general exception to requiring a quid pro quo has been met."

The City argues that such additional pay is unwarranted because "This is not a new development" and has been around for about 35 years; that not all lieutenants have this responsibility since it depends upon the shift to which they are assigned; and that sergeants received this payment through a voluntary agreement, unlike here where the MPSO has not offered any quid pro quo. It also contends that captains on Monday through Friday never work in the district stations on the early and late shifts; that lieutenants always have filled in for captains as part of their job description; and that lieutenants already receive time and a half when they work overtime filling in for captains.

The City adds that "the union greatly overstates the magnitude of the 'absence' of a captain relative to the resulting workload of a lieutenant" and that the MPSO "seeks a very expensive additional benefit from the City amounting to nearly $166,000 for nothing in return" (City Exhibit 121). The City points out that fire captains and police officers who underfill are paid dollar amounts unlike here, and that sergeants receive a flat percentage increase because that was negotiated between the parties, again unlike here. The City also claims that its lieutenants "are relatively well-compensated compared to the true external comparable jurisdictions"; that Arbitrator Rice previously found that the "wage negotiated for lieutenants already included the duty of underfilling for Captains" and that he rejected a similar proposal; and that the MPSO has not offered the required quid pro quo "for this costly enhancement."

DISCUSSION

When asked what a lieutenant does when filling in for a captain, Lieutenant Balash replied:

> Well, the duties are obviously far greater. You are responsible for additional things that a lieutenant of detective (sic) wouldn't normally contend with. Those duties include attending command staff meetings, crime analysis meetings. You are responsible for briefing the deputy chief on a given morning, informing him about the crimes that occurred during the previous 24 hours. All of these responsibilities obviously are in addition to what you would have to perform as a lieutenant of detectives or a lieutenant of police.

He added that a lieutenant in the Detective Bureau can spend up to 7 out of 8 hours performing a captain's duties and that the reports normally performed by a lieutenant thus do not get done, and that filling in for a captain involves "Obviously less, far less" time to perform a lieutenant's duties.

Lieutenant Keith Eccher, who works on the day shift, filled in for a captain 24 days between September 23, 2007, to the end of 2007, and he filled in for him 22 days in 2008 exclusive of weekends. He added "I'm a slave to the telephone" because he always must be ready to answer his telephone and to report to duty on weekends.

Since police officers represented by the MPA and sergeants represented by the MPSO already receive special duty pay whenever they underfill, and since fire captains receive an extra $17 per shift for underfilling a battalion chief, equity requires that police lieutenants be treated the same way when they, too, underfill for captains and assume the higher responsibilities and duties of a captain.

The City nevertheless claims that this is the way it has been for some time and that sergeants now receive special duty pay only because the parties agreed to it in negotiations.

The passage of time and the City's refusal to voluntarily grant this benefit in negotiations, however, has little bearing upon whether it now is inequitable to grant special duty pay to only some employees who underfill and not to others, when all of these employees assume the higher duties and responsibilities of a higher ranking officer. The City's failure to grant special duty pay to its lieutenants also runs counter to the City's parity argument that police lieutenants should not be paid more than fire captions, their internal comparable.

This added compensation also is warranted because the lieutenants who are on call on weekends to fill in for captains are required to remain at home and to be ready to immediately report to work after normal work hours. They therefore should be paid for this considerable inconvenience to their personal lives.

The City argues that since captains normally only work the 8:00 a.m. – 4:00 p.m. day shift, the Patrol Bureau lieutenants who serve as the shift commanders on the 4:00 p.m. – midnight and midnight to 8:00 a.m. shifts, Monday – Friday, "are never placed in the position of 'filling in' for an absent captain."

In fact, lieutenants on night shifts sometimes do fill in for captains on the day shift. But even if they do not, that does not overcome what really is important here: Lieutenants who fill in for captains are performing the higher paid duties of a captain and lieutenants are being treated differently than fire captains who receive additional pay when they perform their higher duties.

The MPSO is not required to offer a quid pro quo for its proposal since it is simply asking for similar pay for equal work, an equitable principle which represents an exception to the quid pro quo doctrine.

The City points out that Arbitrator Rice in 1988 rejected a proposal calling for special duty pay of a dollar an hour by ruling:

. . .

> The arbitrator finds the rationale behind the Union's proposal to be flawed. It proposes extra compensation for some lieutenants who perform the very duties that they are required to perform by their job description while not compensating other lieutenants who perform those same duties as part of their regular duties. Lieutenants who act as shift commanders on weekends and during night shifts would not receive the extra pay nor would lieutenants who are in charge of a shift wile a captain is in some scheduled meeting or having lunch. Keeping track of the times when a lieutenant would be compensated for underfilling a captain and when he or she would not be compensated for underfilling a captain as well as the domino effect of underfilling would be an administrative nightmare. The parties have negotiated a wage for the positions of detective lieutenant and lieutenant of police. The duties of those positions include taking command of a shift and exercising the authority and performing the duties of the captain in the absence of the captain. Its proposal is unfair to those lieutenants who function as shift commanders as part of their regular duties and there is no valid rationale that would support it. Lieutenants of police and detective lieutenants are expected to perform as shift commanders in the absence of the captains and to exercise their authority and perform their duties. That is a duty and responsibility given to the position of lieutenant and is reflected in the rate of pay that has been negotiated for lieutenants of police and detective lieutenants by the Employer and the Union in several collective bargaining agreements.

. . .

But here, the MPSO has heeded Arbitrator Rice's ruling by proposing a flat 1% wage increase for all police lieutenants, thereby obviating Arbitrator Rice's concerns about awarding such pay to only some lieutenants and the difficulty in keeping track of the precise times lieutenants underfill for their captains, which he stated would be an "administrative nightmare."

It is true that not all police lieutenants perform the same amount of underfilling and that granting them a flat amount will treat some lieutenants better than others. But that apparently cannot be avoided given Arbitrator Rice's comments about the difficulty in keeping track of the time each lieutenant spends on underfilling. In addition, sergeants now receive the same 1%

lump sum sought here, thereby showing that the City already pays this amount regardless of how many hours sergeants actually underfill for lieutenants.

Furthermore, Arbitrator Rice ruled the way he did when police lieutenants ranked first among the state comparables and second among the suburban comparables, thereby lessening the need to award them added compensation. Hence, when Arbitrator Rice stated that "The parties have negotiated a wage for the positions of detective lieutenant and lieutenant of police" and that the police lieutenants' job description provides for such underfilling, he did not face the situation found here showing that the police lieutenants over time have experienced a significant erosion in their wages vis-à-vis these external comparables.

In addition, since there is no mention of it in his decision, Arbitrator Rice apparently did not have to consider the fact that fire captains now receive an additional $17 per shift when they underfill for battalion shifts, which may not have been the case in 1988 when Arbitrator Rice issued his decision.

Given this changed situation and the MPSO's proposal which avoids the "administrative nightmare" mentioned by Arbitrator Rice, I conclude that I cannot defer to his prior determination on this issue and that the MPSO's proposal should be adopted.

3. ARTICLE 15 – DUTY DISABILITY

The City proposes that the following new language be added to Article 15 of the agreement:

> 6. Effective for employees hired by the City after June 28, 2005, when a retirement application is filed by an employee covered by this Agreement who seeks a Duty Disability Retirement Allowance based upon a mental injury, the application shall be referred to the Medical Council established under s. 36-15-12 of the Milwaukee City Charger, in lieu of the Medical Panel, which medical Council shall determine and certify whether the

> applicant is permanently and totally incapacitated for duty as a result of such mental injury in accordance with the requirements of Chapter 36 of the Milwaukee City Charter. In any reexamination authorized by Chapter 36 of the Milwaukee City Charter of such retired beneficiary, the beneficiary shall be referred to the Medical Council, in lieu of the medical Panel, for reexamination and such Medical Council shall make the determination and certification required under the provisions of Chapter 36 of the Milwaukee City Charter for reexaminations.

The City states that the MPA and Local 215 have agreed to its proposal and there is a need to have "uniform application" of how duty disability applications for retirement predicated upon mental stress claims should be processed. It argues that the Medical Council will do a better job than the current Medical Panel because the latter represents an ad hoc temporary body of three doctors – one chosen by the MPSO, one by the City, and the other by both doctors – whereas the Medical Council consists of three doctors appointed by the City's Employees Retirement System, herein "ERS," who serve for fixed periods. The City adds that the MPSO's

fears about the City's proposal are unwarranted because the ERS is a trust with a board equally composed of employer, employee, and retiree representatives and that Medical Council doctors "are appointed by the ERS – they are not employees of the City."

The City also states that the MPSO's criticisms of its proposal are "belied" by the MPA and Local 215 "having agreed to the change" and that it has fully explained the details of its proposal contrary to the MPSO's claim. It also argues that both the MPA and Local 215 considered the same ATB wage increases offered here as a quid pro quo and that the City in any event is not required to offer a quid pro quo.

The MPSO claims that the proposal represents an "unfair system"; that the City has not proven the need for it; and that the City has not explained how Medical Council doctors will be chosen. It also claims that it is wrong "to force any union to take what was negotiated with other unions because those unions are pattern setting without better reason undermines the collective bargaining process" and that the City has not offered any quid pro quo.

The MPSO also argues that there is no merit to the City's claim that duty disability benefits must be uniform; that "The MPSO's ability to negotiate and to require the City to offer a quid pro quo for changes in its CBA must be kept intact"; and that doing otherwise would only "reinforce the City's unbending pattern bargaining and parity process . . . even if that is inequitable to the MPSO membership."

DISCUSSION

All other City employees hired after June 28, 2005, are covered by the procedure proposed here, one which enables doctors permanently selected by the Medical Council to determine whether applicants are permanently and totally incapacitated. Now, bargaining unit

member applying for mental stress disability are first examined by their own doctors; then by City appointed doctors; and then by third doctors chosen by the first two doctors if they disagree, who in effect is the "tie breaker."

This issue therefore turns upon whether MPSO members should continue to stand alone in not being subjected to the same procedure which covers all other similarly situated City employees and whether the City has proven the need for changing the status quo.

There is a need for this change because it is far more efficient to have the same, permanently selected doctors to make the necessary determinations and because such a permanent cadre of doctors also will be able to provide greater uniformity in making their determinations.

Furthermore, there is no merit to the MPSO's claim that the proposal is "unfair" since the MPSO has not spelled out exactly what is wrong with it and since fairness, in fact, will be guaranteed by having the doctors appointed by the ERS, which is equally comprised of employee representatives, City representatives, and retiree representatives.

The MPSO also claims that the City has not explained how the members of the Medical Council will be selected.

But Thomas E. Hayes, a now-retired and former Deputy City Attorney who formerly represented the Chief of Police and was counsel for the City's Employees Retirement System for about 25 years, testified the Medical Council "has been there as long as the system has been there . . .," and that it "consists of three doctors who are appointed by the pension board . . ." and who have indefinite employment contracts. Hence, we do know how Medical Council doctors are appointed.

Also without merit is the MPSO's assertion that adopting the City's proposal will "swallow the MPSO's CBA and render it meaningless." To the contrary, adopting the City's proposal simply recognizes that an interest-arbitration proceeding represents the culmination of the collective bargaining process and that the reasonable proposal made by a party should be adopted when, as here, there is no justifiable basis for rejecting it.

Lastly, the City is not required to offer a quid pro quo in exchange for its proposal because it is difficult to see what kind of quid pro quo could be offered for such an innocuous proposal, one which should not adversely affect bargaining unit members.

I therefore conclude that the City's proposal should be adopted.

4. ARTICLE 49 – VARIABLE SHIFT ASSIGNMENT PAY

The expired agreement provided for $250 in variable shift assignment pay, or VSAP, for members with at least 20 years service which was not pensionable – i.e., not credited towards a member's pension.

The MPSO wants that $250 pensionable, which the City opposes.

The MPSO states that it is necessary to credit this amount to a member's income and pension "because of their declining ranking in pensionable and base salary in comparison to their respective external comparable units," and because its proposal "is reasonable and has little affect on the City's payroll." It also argues that the "small change sought" does not require a quid pro quo and that the need for catch-up "requires the breaking of parity."

The City asserts that the pensionable salary has not dropped for 60% of the members who are sergeants and who now have 100% of their VSAP pensionable, and that it also is not true

based upon the external comparables. It further contends that the MPSO has not offered a quid pro quo and that the proposal will cost the City additional money because "there's no free lunch."

It also points out that sergeants in 2006 had a higher dollar amount of their compensation pensionable that either detectives or fire lieutenants "with whom they share maximum step base pay parity," and that the lieutenants here in 2006 "had a greater amount of their compensation pensionable than the fire captains with whom they share a maximum step base parity relationship." The City also maintains that MPSO members already receive "a generous pension relative to any group of supervisors" among the external comparables, thereby showing no need for this proposal and that the cost of this proposal is more than the $17.50 claimed by the MPSO because its actual cost is about three times higher.

DISCUSSION

A major problem with this proposal is that sergeants in 2006 already had a higher degree of their compensation pensionable than detectives and fire lieutenants, and that police lieutenants in 2006 had a higher degree of their compensation pensionable than the fire captains. There also are no external comparables to support this proposal.

In addition, and as related above, MPSO members receive a generous pension which can kick in after 25 years of service, and the City makes all of the required pension contributions towards that pension except for a one dollar payment, unlike many of the comparables where some law enforcement personnel must contribute up to 11% of their wages for retirement. Furthermore, the estimated cost of this benefit is higher than what the MPSO claims and the MPSO has not provided any total calculation of what its proposal will cost over the life of the agreement.

Given the further fact that the MPSO has not offered a quid pro quo, I find that the MPSO's proposal should be rejected.

5. ARTICLE 58 – CERTIFICATION PAY

The expired agreement provided for $600 per year to all members for being certified and maintaining their certification as a sworn law enforcement officer by the State of Wisconsin.

The MPSO proposes to increase that certification pay by $400 for 2004, another $100 for 2005, and another $160 for 2006, thereby increasing certification pay to $1,260 for 2006, and it also proposes to make $1,000 of that pensionable.

The MPSO maintains that such increases are needed because MPA members receive $1,260 per year for having that same certification and because "uniform benefits among employees of the same employer should be paid because of fairness." It also asserts that there is no merit to the City's claim that it was required to raise the prior certification pay for MPA members to maintain parity because the City was under no legal obligation to do so and because Arbitrator Kerkman earlier decided that the MPA does not have package parity. The MPSO adds that its proposal "must be accepted because uniform administration of certification pay benefits must be maintained for morale purposes and as a basic tenet of labor relations," and that the MPSO "merely requests the same pay as their subordinates receive for the same certification."

The City counters that the proposal is "pretextual" and "unwarranted" because it would cost the City about $500,000 over the three year life of the agreement, and that the MPSO "already received the equivalent of these dollars in its 2001-2003 labor agreement" when sergeants received an additional $1,200 for variable shift assignments, $400 of which was pensionable. The City adds that its supervisors do not attend any additional training to earn this

certification, and that the MPSO in the prior 2001-2002 negotiations agreed that only sergeants would get $1,200 while all of its other members did not receive any increase in their then $600 - $610 VSAP, thereby showing that the MPSO was not really committed to full equality and that its demand for equality now is nothing more than a "fig leaf." It adds that even though it does not have any legal obligation to offer the same benefit to the MPA and Local 215, awarding this benefit would create a "whipsawing effect" with these other unions.

DISCUSSION

Ordinarily, an employer should provide uniform benefits to all of its employees out of simple fairness, a point made by Arbitrator Sherwood Malamud who stated: "Consistency in the level of benefits among employee groups is a widely accepted tenet in labor relations."

But here, this proposal does not involve the granting of health benefits, vacation or holiday pay, sick leave, etc., where uniform benefits are expected. It, instead, really represents an ATB wage increase since the officers here are required to maintain this certification as a pre-condition to maintaining their jobs under §165.85, Wis. Stats.

Furthermore, City Labor Negotiator Troy Hamblin detailed how the $1,200 certification pay was obtained by the MPA and how training pay was obtained by Local 215 for the term of their 2004–2006 agreements as a means of getting the equivalent of the VSAP the MPSO got it in 2001 -2003, thereby leading him to say: "this particular Union [i.e. the MPSO] is now attempting to get what the MPA and 215 got because this Union got it in 2001/2003."

That accurately describes this situation, which is why the MPSO cannot now piggy-back on the MPA and Local 215's piggy-back of what the MPSO did in the past. In addition, this proposal is very costly because it would cost the City about $500,000 over three years.

I therefore conclude that absent a quid pro quo, such a costly ATB wage increase is unwarranted and that the MPSO's proposal must be rejected.

6. ARTICLE 61 – PROMOTIONAL PROGRAM

The expired contract did not provide for any mechanism whereby members who were not promoted could review and/or challenge such actions.

The MPSO seeks to provide for such review and/or challenges by proposing that the following Article 61 as an entirely new provision in the agreement:

ARTICLE 61

PROMOTIONAL PROGRAM

1. RECOGNITION

The parties recognize that in order to establish and maintain public trust in the professional management and supervision of the Milwaukee Police Department, an open and transparent promotional process is necessary.

2. POSTING OF EXAMINATIONS

Not less than sixty (60) days prior to the commencement of an examination process, a department-wide posting shall be distributed by the Milwaukee Police and Fire Commission (PFC). Each posting shall include:

a. The place, time, and date on which the first component shall be administered.

b. The due-date by which all candidate applications must be submitted to the PFC. Due-dates may be no less than twenty-one (21) calendar days following the date of the posting.

3. ELIGIBLE LISTS

If the Chief of Police determines there is cause to pass-over a candidate on any promotional eligibility list that the FPC establishes or whenever the Chief recommends a promotion directly to the FPC, the passed-over candidate (if an PFC list is being used) or any unsuccessful candidate upon

request (if the Chief is directly recommending the promotion to the FPC) shall be provided copies of all materials sent by the Chief, to the PFC explaining the Chief's decision and reason for it. At the meeting of the PFC wherein the matter is discussed, the affected member shall be given the opportunity to be heard if he/she so desires. A representative of the MPSO may also appear and be heard on behalf of the member, if the employee so requests, and/or on behalf of the MPSO. Disputes involving the PFC's final determination in this regard shall be subject to the Contract Enforcement Article of this Agreement.

4. **BARGAINING UNIT INFORMATION**

a. In the context of an existing grievance, a representative designated by the MPSO shall be allowed to review all graded components as allowed in Section 103.13(6)(c) Wisc. Stats., which the PFC used to compile each cumulative score.

b. In the event the MPSO files a grievance under the contract enforcement procedure of this agreement, the City shall provide the MPSO, before responding to the grievance, information and access to information, to include all assessor/evaluator training materials, notes, and comments generated by assessors and/or evaluators in the scoring process of all graded components of the affecting promotional examination that are relevant and reasonably necessary to processing the promotion grievance.

The MPSO contends that its proposal is needed because the City's Police Department's "promotional process has degenerated to a point whereby 17 white male lieutenants proved they were intentionally discriminated against by . . ." former police Chief Arthur Jones and by all of the then-members of the City's Fire and Police Commission, herein "FPC." It thus asserts that

the City Attorney's office in that litigation questioned those lieutenants why their collective bargaining agreement did not provide for some relief in the promotional process, and that its proposal is aimed at doing just that by providing needed transparency and review. It also argues that the $2.65 million dollars paid out by the City in the legal settlement in that matter "far exceeds the granting of every MPSO proposal being litigated . . ." here; that the City since then has operated under a "business as usual" approach; and that "the City ignores the problems created by the lack of a transparent promotional process." It adds that "As it currently stands, no person participating in a promotional exam in the MPD is allowed to review their test, the test questions, or the answers to those questions . . .," and that the current system "has resulted in a largespread loss of confidence in the integrity of the promotional process," particularly by those members who formerly ranked very high on earlier tests, but whose rankings dramatically dropped on the next test without any explanation.

The MPSO also states that it is immaterial that the MPA does not have similar promotional language in its agreement with the City; that arbitrators routinely make the kind of determinations being sought here, and that Chief Flynn testified that he would "like to see a promotional process in which the exam materials . . ." are reviewable so some type of feedback regarding the exam could be given. It further states that other jurisdictions have some form of promotional process and that there is no merit to the City's claim that a quid pro quo must be offered when, as here, "there is a need to correct a problem . . . because something must be done and because there simply is nothing that can be offered sufficient enough for the relief sought."

The City claims that "Statutory and FPC provisions governing current promotional procedures are adequate"; that the proposal's "cause" requirement is "unwarranted and

unworkable"; and that the proposal "regarding any promotion the Chief recommends directly to the FPC is particularly detrimental because it would compromise the integrity of the testing process and because it would force the City to engage in the "unnecessary, time consuming, and expensive proposition to completely revise each battery of tests . . ." It adds that the Chief "should be afforded the freedom to carry out his own enhancement of the department's promotional process . . ." without being handcuffed by the MPSO's ambiguous proposal which raises the "prospect of arbitrators determining who to promote to critical ranks in the department." It also contends that the MPSO has failed to establish there is a "current, compelling need" for its proposal since the prior discrimination occurred over 5 years ago under a different police chief, and that the MPSO's proposed intrusion on the promotional process "is unmatched in any of the jurisdictions for which there is evidence in the record."

The City also asserts that it would be inappropriate to refine the language of the MPSO's proposal; that the City's current policy is in accord with state law; and that there are valid reasons why the same person subsequently may receive a different test score. It also claims that the MPSO's proposal is unworkable because it allows any unsuccessful candidate to challenge the promotional process, thereby allowing all unsuccessful candidates to proceed to a "standardness arbitration procedure" if they so desire, and that Chief Flynn "has embarked upon creating a substantive process to improve the promotional process . . ."

DISCUSSION

MPSO members certainly have a reasonable basis for not trusting the City's past promotional process given the prior litigation which determined that the City, acting through former Police Chief Jones and the members of the then-FPC, deliberately discriminated against 17 white lieutenants who were passed over for promotion because of their race.

Such discrimination against white applicants is just as odious and pernicious as discrimination against any group of minorities. The fact that it occurred is a strong indictment of the City's then-promotional process.

The MPSO also complains that no discipline was ever levied against the individuals who participated in that discrimination and that two current FPC members remain on the FPC even though they engaged in an illegal discriminatory process which cost Milwaukee taxpayers about $2,650,000, a large sum of money which exceeds the monetary difference between the parties in this proceeding.

Given this history, I find that the MPSO has established the need to have a more transparent promotional process because it is imperative for all MPSO members to believe they are being treated fairly in that process and because the record establishes that more transparency is warranted.

It therefore is immaterial that the MPA does not have a more transparent promotional process for its members in its contract with the City since MPA members (and Local 215 members) were never found to be the victims of racial discrimination, which is the situation here. It therefore is entirely appropriate to have a special contractual provisions here which does not exist in those other agreements.

There thus is no merit to the City's claim that the MPSO's proposal must be rejected because the MPSO has not offered a quid pro quo since it is not always necessary to insist upon a quid pro quo when a party lacks the needed "quid" for the requested "quo." That is the very situation here because it is difficult to see what the MPSO could offer in exchange for a proposal which seeks to prevent the kind of racial discrimination experienced in the past and which seeks to re-establish needed confidence in the City's promotional process.

But despite its laudable objective of trying to establish a more transparent and fairer process, the MPSO's proposal suffers from a crippling – nay, fatal – defect. The cause standard in this proposal requires an arbitrator to apply the so-called "seven tests" of just cause propounded by Arbitrator Carroll Dougherty and all unsuccessful candidates, including those who do not make the promotional list, could challenge the promotional process.

Since the "seven tests" only cover disciplinary matters, it is impossible to see how that conceptual framework can possibly cover promotional matters.

Furthermore, if four applicants are passed over under the MPSO's proposal, all four can then ask four different arbitrators to rule in their favor. That can result in having different arbitrators awarding the same position to different applicants, which means that chaos can reign supreme with no meaningful way out of such a mess.

All this is why the MPSO's proposal relating to grievance arbitration is simply unworkable and why, as written, it must be rejected.

The MPSO goes on to argue, however, that if I find it necessary to do so, it "encourages any tweaking you might provide because the City simply will not take steps to correct the stigma of unfairness attached to its promotional process which is far too secretive and lacks integrity."

The City opposes any such "tweaking" by stating that it does "not request or encourage the arbitrator to modify the language of the MPSO proposal in order to refine it" (Emphasis in original). The City thus quotes Arbitrator Fleischli who earlier stated:

. . .

> The arbitrator recognizes that, under the statute, he has the authority to "refine" the parties' proposals in the course of determining the terms of the agreement. However, the arguments of the parties disclose the risks inherent in attempting to do so, based upon a formal record, such as that presented here, as opposed to the insights gained through mediation or other forms of actual participation in the

> negotiating process. For this reason, such authority has been exercised with great restraint.
>
> . . .

I agree that "great restraint" must be exercised here. But the MPSO's proposal is a matter of great importance, one which may well arise again in the future if it is not now addressed. In order to spare the parties from the additional time and expense over a matter that has been litigated fully here, I conclude that the proposal should be considered even if that means modifying it.

Numerous MPSO witnesses testified about the need for this proposal including Lieutenant John Hagen, one of the 17 white male lieutenants who were discriminated against in the above-referenced federal litigation, who stated:

> I think the Milwaukee Police Department is best served by having a fair, transparent process to promote the best qualified person, and that in the development of those people that aren't selected, that if you score a 75, you know where your 25 percent that needs improvement so you can improve as a current supervisor and hopefully take future promotional tests or processes and be promoted.

The record establishes that Chief Flynn is, in fact, trying to implement a fairer and more transparent promotion process to replace the one previously used by former Chief Jones.

Chief Flynn testified that for unsuccessful applicants "let us give them feedback that says here's how you did" because "that's something that people can reasonably expect if they compete for a promotion." He also stated that there are certain "testing instruments that have been validated for relevance and adverse impact that provide measures of certain skill sets" which could be "shared because they're fairly objective feedback as to demonstrated capabilities" and because "there are components here that would be very helpful to people."

He cautioned that some testing materials might be proprietary and thus could not be shared and that there is a difference between telling a large group of unsuccessful applicants how they can improve their "objective assets" versus telling a much smaller group "who I think is the best fit," which is largely based upon much more subjective factors. He also wants the ability to determine what level of feedback is appropriate in any given situation and he said that he and others were able to review test questions and answers when he formerly worked in New Jersey.

Chief Flynn opposes the MPSO's proposal regarding arbitration for passed-over candidates because he in the past has seen how such a process can lead to bad feelings, employee fractions, and grudges; how it can delay the permanent filling of positions and thus create provisional promotions; and how it can undermine the authority of those who are awarded the positions when those positions are being challenged. He also said that as Chief, "Probably the most important abilities you have to have are the ability to assign personnel, the ability to discipline personnel and the ability to promote people."

He stated that he needs the authority to promote because:

> When you get near the top of the organization and get to senior policy making positions, it's important if you're going to have an impact on an organization to have some capability to influence those senior policy makers. There is a very small finite number of promotions available at those senior levels. During the time that a chief has in their office, depending on the state whether it's term or a contract or what have you, particularly when a chief is brought in from outside, there's an expectation of change. It's important to be able to have some capacity to promote other change agents who are sympathetic to the policy direction of the police chief. You know, obviously if they bring some of their own independent capabilities to the table, but within the line of highly qualified people, that there be the discretion to promote those that are most in line with the chief's vision for the organization.
>
> . . .
>
> there is a question about the direction that the department is going and how people that demonstrate their core competencies and abilities, how they align themselves

> with that vision. It's fair to say that from the ranks of captain and above represent less than 1 percent of the police department. In any given four-year term of a police chief, you know, far less than half those jobs will come open.
>
> . . .
>
> So the challenge is over a great short window of opportunity, I have a very small number of promotions over which I have some influence in which I can recommend somebody based not only on their demonstrated competencies but also on how those competencies and those abilities that were my vision for the police department. It's critical that police chiefs not be the only accountable official in a 2000 member organization. It's important that they have people that not only have the ability to carry out their vision but also the desire to, and given that fact, I think it's a critical leadership tool to be able to recommend qualified people for promotion.

Chief Flynn's testimony makes a great deal of sense, thereby raising the question of how it squares with the MPSO's proposal.

Since he agrees that feedback is needed to reveal "here's how you did," the agreement should contain a provision to that effect because such feedback will serve the department's own institutional interests and the interests of applicants who have a right to know why they have been passed over and what they must do to improve. Such communications also should cover how well applicants have done on the tests referenced by Chief Flynn which measure "certain skill sets" because that can be objectively measured. Such feedback, though, should be oral because it can be more open than written communications and because the MPSO is free at a later date to seek written communications if it can establish that oral communications have been inadequate.

There also is great merit to Chief Flynn's view that it is necessary for the Police Chief - consistent with the FPC rules and applicable law - to have wide discretion in nominating the relatively few command slots and "change agents" which come open and which must be filled in such a way to carry out a Chief's policy and to establish real accountability. He thus explained

why a grievance/arbitration procedure for unsuccessful applicants would be detrimental to achieving that goal and why it could create serious internal problems.

Since his comments are so persuasive, I find that unsuccessful applicants for promotion should not be given the right to grieve and/or arbitrate their failure to be promoted. Hence, there is no need for Section 3 above in the MPSO's proposal entitled "Eligible Lists" or Section 4 above entitled "Bargaining Unit Information," which primarily relate to the filing of a grievance and the MPSO's role in doing so.

In so finding, I am aware of the MPSO's concerns that several of its members have received lower test scores and rankings on their subsequent tests and that that raises the suspicion that they have not been graded fairly.

But Chief Flynn explained:

> I'm also saying I'm familiar with a system where if you didn't make it on this test and you took the next test, it wasn't unusual for your scores or rankings to drop just because new people were taking the test, things changed in your life, studying for promotion is a pain in the neck. That dropping didn't necessarily raise suspicions, but at least you have a chance to see what the right answers were and see if your score sheet was scored correctly.

Absent any proof that applicants have been treated unfairly following former Chief Jones' departure, I find that the differences in test scores and rankings for some retesters are not enough to warrant the creation of the grievance/arbitration process the MPSO requests for passed-over candidates.

As for the other information referenced in Paragraph 4 of the MPSO's proposal, Chief Flynn stated that an assessor/evaluator's comments must be kept confidential because to do otherwise might create a "chilling effect" if assessors/evaluators know they might be required to return to Milwaukee to explain their comments at an arbitration hearing.

This concern should be alleviated since unsuccessful applicants will be unable to either grieve or arbitrate over their failure to be promoted. Hence, there is no valid reason for not making such comments available.

Chief Flynn added that some testing information might be considered non-proprietary and that "My goal is to have some product that can be shared with [applicants]," and that "we have conveyed to the consultant that we would like a process in which someone who participated in it would get some feedback."

I therefore find that unsuccessful applicants are entitled to review non-proprietary materials prepared by assessors/evaluators or consultants because that will provide needed

transparency and help restore confidence in the City's promotional process, and because that will provide needed feedback which will better enable applicants to know what more they must do in order to be promoted.

While the majority of metropolitan, state and national comparables do not provide for reviewing testing materials, some of them do (City Exhibits 64A-D, 65C-D). Furthermore, the City has not claimed that the latter jurisdictions have experienced any difficulties in providing those materials. When that is combined with Chief Flynn's belief that certain materials can be shared, I conclude that that should be done here when the Chief of Police in his/her sole discretion determines to do so.

It is necessary to codify such requirements in the agreement rather than to simply rely upon Chief Flynn's good intentions because he acknowledged that any subsequent Chief of Police can undo what he puts in place.

Sally McAttee, the head of the staffing for the City's Department of Employee Relations, opposes letting applicants view their tests. She added, however, that nothing would be wrong in breaking down an applicant's overall assessment score to reveal how he/she did on the oral interview or on the "in basket" exercise, etc., and that it would not be a problem to break down all of a test's components in a similar fashion and to give applicants the scores for each component. She added that postings do not identify or break down the scoring for assessment exercises and that she did not know when the individual weights for each part of an exam are established.

Since breaking down test scores in this fashion will foster transparency and help restore confidence in the City's testing process, I find that test scores should be broken down and be given to all applicants because both successful and unsuccessful applicants may want to know

how well they did on each part of the test. In addition, all postings must identify all components of a test and what weights are to be given to each component, and such weights, when once established for a particular test, cannot be subsequently changed for that test.

In addition, all applicants upon request are entitled to receive copies of the materials referring to his/her individual application (but not to anyone else's application) which are sent by the Chief of Police to the FPC and which set forth the Chief of Police's reasons for promoting or not promoting that applicant. Furthermore, all applicants should be given the opportunity to be heard before the FPC when that person's application is discussed because that, too, will provide greater transparency and hopefully will help restore a needed confidence in the promotional process.

I therefore find that the agreement should contain the following language:

ARTICLE 61

PROMOTIONAL PROGRAM

1. RECOGNITION

The parties recognize that in order to establish and maintain public trust in the professional management and supervision of the Milwaukee Police Department, an open and transparent promotional process is necessary.

2. POSTING OF EXAMINATIONS

Not less than sixty (60) days prior to the commencement of an examination process, a department-wide posting shall be distributed by the Milwaukee Police and Fire Commission (PFC). Each posting shall include:

a. The place, time, and date on which the first component shall be administered.

b. The due-date by which all candidate applications must be submitted to the PFC. Due-dates may be no less than twenty-one (21) calendar days following the date of the posting.

c. The specific weight given to each component of a test.

3. **PROMOTIONAL INFORMATION**

a. The Chief of Police, upon request, shall provide an unsuccessful applicant for promotion with oral feedback explaining why the applicant has not been promoted and what must be done to improve his/her promotional opportunities, along with how the applicant performed on tests which measure certain skill sets.

b. The Chief of Police, upon request, shall provide an unsuccessful applicant with written copies of all comments made by assessors/evaluators and/or consultants, and the Chief of Police may provide an unsuccessful applicant with any non-proprietary testing materials which the Chief of Police, in his/her sole discretion, determines should be provided.

c. The Chief of Police, upon request, shall provide all applicants with their final exam scores, along with a breakdown of those scores showing the separate scores for each part of a test including, but not limited to, the written examination, the oral interview, and the in basket exercise which are graded.

d. The Chief of Police, upon the request of an individual applicant, shall provide that applicant with copies of all materials the Chief of Police has submitted to the FPC regarding that applicant. All applicants have the right to personally appear and speak before the FPC when that person's application for promotion is discussed.

I therefore conclude that the MPSO's proposal should be adopted as modified above.

7. ARTICLE 64 – RESIDENCY

The City now requires all bargaining unit members (along with almost all other City employees) to reside within the City of Milwaukee (MPSO Exhibit 54 A).

The MPSO requests that members with over 20 years of service be exempted from the City's residency requirement and it proposes the following new language:

ARTICLE 64

RESIDENCY

1. Employees covered by this agreement shall reside in the City of Milwaukee until completion of twenty (20) years of active service as a law enforcement officer in the Milwaukee Police Department.

2. Employees covered by this agreement with at least twenty (20) years of active service as a law enforcement officer in the Milwaukee Police Department shall not be required to reside in the City of Milwaukee.

The MPSO states that its proposal will help retain veteran supervisors and aid recruitment; that some of its members do not want to live within the City because of "quality of life" issues; and that its proposal only affects about 40 employees and that 'there will be no huge tax loss to the City for allowing this exemption." It also argues that the City economically benefits from its residency rule because its property tax is increased by about $880 million dollars and because its property tax rate is lowered by $1.31 per thousand, and that the City "does not pay its police supervisors a competitive wage" in spite of "this extreme financial benefit . . ."

The City counters that the internal comparables do not support the MPSO's proposal; that residency requirements "are common among larger public sector employers in southeastern Wisconsin"; that the external comparables are "mixed" and hence "should not be the basis for granting . . ." the proposal; that the MPSO has failed to provide a quid pro quo for such a significant change; and that "The public interest is not advanced by the MPSO's proposal."

The City adds that there "has been no inordinate" number of MPSO members who have retired in recent years because of the residency requirement; that the MPSO's contrary evidence is based on "anecdotal, hearsay testimony," thereby failing to establish that there is a need to change the requirement; and that the MPSO "has offered no rationale as to why any of its members, alone among City employees, should be excepted from the . . . requirement." The City

also points out that the MPSO "has not cited a single award . . ." of where an arbitrator under similar circumstances has struck down a residency requirement, thereby showing that there is "broad arbitral authority establishing that major changes of this type should not be imposed through interest arbitration . . ."

DISCUSSION

There is considerable testimony in the record about the residency rule and its effect on recruitment and retention.

Sergeant Richard Kelly, who works in the recruiting unit, testified that its "very difficult" for the City to compete against local police departments in the Milwaukee area because "we're a little bit behind the eight ball because we don't have a lot of bells and whistles . . .," and that residency is "an issue as well." Sergeant Craig Henry, a Field Training Officer, stated "we have a problem retaining the recruits after we have trained them" in part because they do not want to live within the City. Sergeant Thomas Lund, a Field Training Officer, also stated that the City was having difficulty in retaining recruits because of quality of life issues.

City of Franklin Chief of Police Olivia testified that he retired in part because of the City's residency rule, and that six members of the City of Franklin's Police Department left the Milwaukee Police Department in part because of the City's residency rule. Other witnesses also stated that retirees left the department for a number of reasons, one of which centered on the City's residency rule.

The fact that the residency rule has some effect on recruitment and retention must be weighed alongside the fact that recruitment has held constant between 1994 when 1,773 individuals applied for employment and when there were 620 individuals on the eligible list, to 2005 when 1,887 individuals applied for employment and when there were 1,146 individuals on

the eligible list (City Exhibit 111). Furthermore, while the MPSO points out that only 58% of all retirees since 2001 still live in the City (MPSO Exhibit 75), it is not necessarily true that this represents a serious "retention problem" since retirees regularly retire and move for all kinds of reasons – e.g., better weather; to get another job; to be closer to relatives and grandchildren, etc.

But even if the residency rule seriously impedes recruitment and/or retention, there are several countervailing factors as to why the rule must be retained.

For starters, the MPSO has not offered a quid pro quo in exchange for its proposal which would be a great benefit to some of its members. For while MPSO President Klusman testified that the MPSO moderated its wage demands and agreed to pay higher health insurance costs in negotiations as a quid pro quo for this proposal, I find that did not represent a sufficient quid pro quo. Furthermore, Lieutenant Konrad Ellenberger, MPSO's current secretary and former president, stated that the MPSO never offered any express quid pro quo in negotiations because it expected the City might "come back with what they believe to be a proper quid pro quo . . .," but that the City never did so.

Secondly, the MPSO has not presented any compelling reason why some of its members should receive special treatment by exempting them from the City's residency requirement. For if it is true, as the poet John Donne once wrote, that "No man is an island, entire of itself" and that each is "a piece of the continent, a part of the main," it also is true that a residency rule must cover all of an employer's employees when, as here, there is no valid basis for doing otherwise.

It therefore would be incongruous to modify the City's residency rule - which has been in effect since 1938 and which covers about 7,314 City employees (City Exhibits 57-58) - for only one union when other employees are covered by it.

Furthermore, there is an added reason for having a residency rule for law enforcement personnel in large metropolitan areas as Chief Flynn explained:

> We have an ongoing struggle as every urban police department does to maintain our credibility in all the communities we police. I think we've got to be careful not to create this climate or notion that we are outsiders invading neighborhoods and then going off to our safe retreats with no empathy for those whom we're policing.
>
> To the extent that we share boundaries of the city with them lends a certain credibility . . . based on the fact that at some base level the reason we have a police system in the country we have, which is so much more fragmented than any other countries is because of the strong sense that people want to be policed by their own.

Based upon all of these latter considerations, I conclude that the MPSO's proposal must be rejected.

In light of the above, I therefore issue the following

AWARD

1. The MPSO's across-the-board wage increases of 3.2% for 2004; 3.4% for 2005; and 3.3% for 2006 shall be included within the new agreement.

2. The MPSO's proposal to add a seventh sergeant's step shall not be included within the new agreement.

3. The MPSO's proposal relating to Article 10, Special Duty Pay, shall be included within the new agreement.

4. The MPSO's proposal relating to Article 15, Pension Benefits, shall not be included within the new agreement.

5. The MPSO's proposal relating to Article 49, Variable Shift Assignment Pay, shall not be included within the new agreement.

6. The MPSO's proposal relating to Article 58, Certification Pay, shall not be included within the new agreement.

7. The MPSO's proposal relating to Article 61, Promotional Program, as modified herein on pages 57-58 above, shall be included within the new agreement.

8. The MPSO's proposal relating to Article 64, Residency, shall not be included within the new agreement.

9. The agreed-upon items referenced in the parties' June 10, 2008, letter shall be included within the new agreement.

Dated at Madison, Wisconsin, this 28th day of November, 2008.

Amedeo Greco /s/

Amedeo Greco, Arbitrator