

BEFORE THE ARBITRATOR

In The Matter Of The Petition Of

MILWAUKEE POLICE SUPERVISORS' ORGANIZATION

For Binding Arbitration Involving Supervisory
Law Enforcement Personnel in the Employ of

CITY OF MILWAUKEE

Case 605

No: 72002

MIA-3078

Decision No. 35076-B

Appearances:

William R. Rettko, Rettko Law Offices, S.C., 15460 West Capitol Drive, Suite 150, Brookfield, Wisconsin 53005-2621, for the Milwaukee Police Supervisors' Organization, which is referred to below as the MPSO.

Thomas J. Beamish, Assistant City Attorney, City of Milwaukee, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202, for the City of Milwaukee, which is referred to below as the City.

ARBITRATION AWARD

The procedural background to this matter is set forth by CITY OF MILWAUKEE, DEC. NO. 35076 (WERC, 8/14). In that decision, the Commission noted that its investigator, William C. Houlihan, determined the parties had reached an impasse on the subjects of base salary and pension. The Commission's decision certified that "the conditions precedent to the initiation of compulsory binding arbitration . . . have been met" and directed the parties to select an arbitrator from a roster of arbitrators. In CITY OF MILWAUKEE, DEC. NO. 35076-A (WERC, 9/14) the Commission confirmed my selection as Arbitrator by the parties, and ordered that hearing be conducted and a binding award be issued regarding the subjects in dispute as certified by DEC. NO. 35076. In an e-mail to the parties dated September 25, 2014, I confirmed agreement to conduct the hearing during the week of January 12, 2015.

In an e-mail dated December 11, 2014, the City stated it would revise its final offer. The MPSO objected in a December 15 e-mail. After discussions between the parties and a conference call on December 16, the City filed a revised final offer on December 17. The matter was further discussed, including a conference call on December 18. In a conference call on December 19, the parties affirmed that an agreed-upon revision process had been completed and that hearing would take place during the week of January 12, 2015.

Hearing was conducted in Milwaukee, Wisconsin on January 12, 13, 14 and 15. Christine Moran and Danielle Copeland of Brown & Jones Reporting, Inc., filed transcripts of each day of hearing. The parties filed their briefs and reply briefs by March 31, 2015.

THE FINAL OFFERS

The final offers are attached to this decision as Appendix A (MPSO) and Appendix B (City). They note the parties' understanding that the agreement at issue here will cover the 2013 and 2014 calendar years.

The final offers put Article 9 and Articles 14 and 15 at issue. "**ARTICLE 9**" of the 2010-2012 collective bargaining agreement is headed "***BASE SALARY***"; "**ARTICLE 14**" of the 2010-12 collective bargaining agreement is headed "***RETENTION OF PENSION AND ANNUITY RIGHTS***"; and "**ARTICLE 15**" of the 2010-12 collective bargaining agreement is headed "***PENSION BENEFITS***". The MPSO final offer states the following regarding Article 9, Base Salary:

1. Effective PP1, 2013, a 2.9% Across the Board (ATB) increase.
2. Effective PP1, 2014, a 2.9% ATB increase.

The City's final offer states the following regarding Article 9, Base Salary:

Effective 2013, PP1 – 2% across the board increase
Effective 2014, PP1 – 1% across the board increase; Effective 2014, PP14 – 1%
across the board increase; Effective 2014, PP25 – .5% across the board increase

The MPSO final offer does not propose any change for Articles 14 and 15, thus bringing them under the general reference of their final offer, which is headed "**This Proposal**", and which states that it:

- 2) contemplates all Articles not listed above as remaining unchanged (status quo) from the 2010-2012 agreement, notwithstanding any general housekeeping.

The City's final offer states the following under the heading "Articles 14 and 15 – Pension:"

3. Effective prospectively, upon ratification by both parties or issuance of arbitration award, increase retirement age to 52 with 25 years of service for those employees newly eligible for service credit as a "policeman" in ERS. (language previously submitted)

Although each final offer confirms agreement to changes to "ARTICLE 17", which is headed "HEALTH INSURANCE", and "ARTICLE 59", which is headed, "PROMOTIONAL PROGRAM", the parties maintained the list of agreements made during bargaining separate from their final offers.

THE GOVERNING STATUTE

Sec. 111.70(4), Stats.,

(jm) *Binding arbitration, first class cities.* This paragraph shall apply only to members of a police department employed by cities of the 1st class. If the representative of members of the police department, as determined under par. (d), and representatives of the city reach an impasse on the terms of the agreement, the dispute shall be resolved in the following manner:

4. In determining those terms of the agreement on which there is no mutual agreement and on which the parties have negotiated to impasse, as determined by the commission, the arbitrator, without restriction because of enumeration, shall have the power to:

- a. Set all items of compensation, including base wages, longevity pay, health, accident and disability insurance programs, pension programs, including amount of pension, relative contributions, and all eligibility conditions, the terms and conditions of overtime compensation and compensatory time, vacation pay, and vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance, uniform allowances and any other similar item of compensation.
- b. Determine regular hours of work, what activities shall constitute overtime work and all standards and criteria for the assignment and scheduling of work.
- c. Determine a seniority system, and how seniority shall affect wages, hours and working conditions.
- d. Determine a promotional program.
- e. Determine criteria for merit increases in compensation and the procedures for applying such criteria.
- f. Determine all work rules affecting the members of the police department, except those work rules created by law.
- g. Establish any educational program for the members of the police department deemed appropriate, together with a mechanism for financing the program.
- h. Establish a system for resolving all disputes under the agreement, including final and binding 3rd-party arbitration.
- i. Determine the duration of the agreement and the members of the department to which it shall apply.

j. Establish a system for administration of the collective bargaining agreement between the parties by an employee of the police department who is not directly accountable to the chief of police or the board of fire and police commissioners in matters relating to that administration.

k. Establish a system for conducting interrogations of members of the police department that is limited to the hours between 7 a.m. and 5 p.m. on working days, as defined in s. 227.01 (14), if the interrogations could lead to disciplinary action, demotion, or dismissal, but one that does not apply if the interrogation is part of a criminal investigation.

4w. In determining the proper compensation to be received by members of the police department under subd. 4., the arbitrator shall give greater weight to the economic conditions in the 1st class city than the arbitrator gives to the factors under subd. 5. The arbitrator shall give an accounting of the consideration of this factor in the arbitrator's decision.

5. In determining the proper compensation to be received by members of the police department under subd. 4., in addition to the factor under subd. 4w., the arbitrator shall utilize:

a. The most recently published U.S. bureau of labor statistics "Standards of Living Budgets for Urban Families, Moderate and Higher Level", as a guideline to determine the compensation necessary for members to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and

b. Increases in the cost of living as measured by the average annual increases in the U.S. bureau of labor statistics "Consumer Price Index" since the last adjustment in compensation for those members.

6. In determining all noncompensatory working conditions and relationships under subd. 4., including methods for resolving disputes under the labor agreement, the arbitrator shall consider the patterns of employee-employer relationships generally prevailing between technical and professional employees and their employers in both the private and public sectors of the economy where those relationships have been established by a labor agreement between the representative of those employees and their employer. . . .

THE RECORD

The record includes four interest arbitrations. Three involve the City and the MPSO: DEC. NO. 25223-B (RICE, 9/88); DEC. NO. 32301-A (GRECO, 11/08); and DEC. 32859-A (TOROSIAN, 7/10). The fourth award involves the City and the Milwaukee Police Association (MPA), DEC. NO. 26109-A (VERNON, 5/90). These decisions, if not cited by number, are referred to below as the Rice Award, the Greco Award, the Torosian Award and the Vernon Award. Given the impossibility of fully summarizing the record, but the desirability of giving it the focus it deserves, a rough overview of the record will be given to highlight significant themes posed by the evidence.

Thomas Klusman

Klusman is the MPSO's Labor Relations Manager. He participates in all phases of labor relations including collective bargaining and contract administration. He promoted from the MPA unit to Sergeant in February of 1993. He joined the MPSO Board in January of 2002 and was MPSO President when he retired from the City in April of 2010. In his view, this dispute manifests two dominant themes: the MPSO deserves catch-up pay increases; and the City can fund them.

The first theme is historical in a personal and in a bargaining sense. His personal experience as an officer and as a supervisor convinced him that the MPSO was underpaid when their work responsibilities were compared to neighboring jurisdictions. This led him to take a leadership position with the MPSO and that experience led him to conclude that the MPSO had slipped dramatically behind neighboring jurisdictions during the late 1980's through the 1990's. Researching the issue, he read the Rice Award to establish a baseline that eroded steadily through roughly 2000. Wage parity was, in his view, the prime reason for this erosion and had led to the effective elimination of a wage differential between MPSO supervisors and subordinate officers.

The MPSO set a bargaining goal of reversing the wage erosion and this effort led to the Greco Award, in which the parity relationship was broken. This sets the background to the 2013-14 labor agreement. Klusman's examination of relevant City budget documents and his observation of City development of its fiscal plans convinced him that the City had the creation of safe neighborhoods through the reduction of crime as a fundamental policy goal and that the City's budget contained the resources to fund it. In his view, City interest in its goals and the MPSO interest in catch-up should merge. Much of his testimony is the advocacy of that shared interest through criticism of the City's offer. Without belaboring the detail of that testimony, the MPSO views the 2015 City budget of \$19,300,000 for the Wages Supplement Fund (WSF) to contain ample funds for paying the MPSO offer. If this were not sufficient, the City maintains, among other funds, a Tax Stabilization Fund (TSF), which is "a type of a slush fund" (Tr. at 36) within the General Fund. From testimony of a City Comptroller during litigation in 2010, Klusman understood the balance appropriate to this fund should not exceed \$40 million and should be maintained in the mid-thirties. For 2014, that fund is budgeted at \$49,500,000.

Klusman made a detailed analysis of a number of City budget funds, which in his view could be used to fund the MPSO offer, even though he felt the WSF should be sufficient. He underscored the availability of other funds through the following table, from which he concluded the City has a consistent pattern of under-budgeting:

Year	Budgeted	Actual	Difference
2013	722,692,000	712,680,000	10,012,000
2012	618,061,000	596,222,000	21,839,000
2011	623,562,000	613,536,000	10,026,000

Year	Budgeted	Actual	Difference
2010	649,781,000	641,276,000	8,505,000
2009	625,495,000	607,224,000	18,271,000
2008	600,039,000	598,879,000	1,160,000
2007	586,505,000	583,300,000	3,205,000
2006	565,849,000	546,685,000	19,164,000
2005	558,185,00	548,303,000	9,882,000

The current round of bargaining was complicated generally by the pattern of wage erosion the MPSO seeks to redress but more specifically by the creation and implementation of Acts 10 and 32, which spawned litigation generally and a Declaratory Ruling proceeding related to the MPSO health insurance plan. Through the passage of time, City finances have improved and the City's 2013 budget is \$3,488,004 below its allowable tax levy limit. Beyond this, the City obtains significant relief in February of 2015, when general city employees are required to contribute 5.5% toward the cost of the employee share of the City of Milwaukee's Employee Retirement System (ERS).

However, the City not only failed to meet the MPSO offer, but implemented three furlough days for MPSO members in 2013 and in 2014. These furlough days are punitive in nature and will be used regarding the MPSO and the MPA in 2015.

David Ward

The MPSO retained Ward as an economist to cost the parties' offers. He earned a Ph.D. in Finance from the University of Wisconsin-Madison in 1972. He has extensive administrative and teaching experience in the UW system and has been a practicing economic consultant for 15 years. He has offered expert testimony at the state and the federal level.

He is no stranger to the process, having testified at the Greco and Torosian arbitrations. He cost the MPSO offer of 2.9% ATB effective 2013PP1 and 2014PP1 to yield a total cost to the City of \$2,473,025. To reach this figure, he started with a figure of \$23,463,189, referred to below as the 2012 Base, which he drew from a document provided him by the MPSO. That document was prepared by the City and presented to the MPSO as the unit's total wage cost for 2012. Ward applied the 2.9 % ATB increase for 2013 to the 2012 Base to yield an increase in wages for 2013 of \$680,374. This increase, which is payable both in 2013 and in 2014, added \$1,360,749 to the 2012 Base to yield a new Base for application of the 2.9% ATB increase for 2014. He separately added a Roll Up factor for each year of increase, which reflected a 20% adjustment to the wage increase for each year. The Roll Up factor reflected his experience in this unit and was designed to calculate the impact of "overtime, pension and medical" (Tr. at 117). From past experience, he understood "medical" to be the premium cost to the City of medical insurance coverage provided through a third party insurer. The Roll Up factor is designed to smooth out single year variations in such costs. The compounded, actual increase in base wages over the two years under the MPSO offer was 5.9%, and under the City offer was 3.06%. Ward also generated an adjustment for savings

traceable to the furlough days. That adjustment was 1.15%, generated by dividing 24 (3 work days expressed in hours) by 2,080 (a work year expressed in hours). The furlough adjusted 2-year cost for the MPSO offer was \$1,925,594.

Using the same methodology for the City's offer, he calculated the City's proposed increases of 2% 2013PP1 and 1% effective 2014PP1-13; 1% 2014PP14-26; and 0.5% 2014PP25-26 to yield a total cost of \$1,568,758. The furlough adjusted 2-year cost for the City offer was \$1,016,184.

Ward evaluated the offers against the CPI-U All Items Index, using an inflation rate of 1.5% for 2013 and 1.3% for 2014. For the period from 2010 through 2014, he calculated adoption of the MPSO offer would yield a cumulative inflation adjusted increase for the MPSO at 0.9%. Adoption of the City's offer over this period would yield a cumulative inflation adjusted increase for the MPSO of -1.362%.

Nicholas Kehrin

Kehrin, a 21 year veteran of the MPD, has been a sergeant since 1999, and joined the MPSO board about 8 years ago. He has had a wide variety of assignments in a number of the districts patrolled by the MPD. He has, among other assignments, served as a trainer for major incident response, as well as for defensive and arrest tactics. Unlike neighboring departments, the City trains its officers in-house and provides training to other departments. Supervisors perform much of this training and are responsible for in-house personnel investigations regarding misconduct. Over his tenure, the pace of change in law enforcement has quickened, particularly regarding weapons, monitoring equipment and migration of record keeping to electronic formats. Such changes do not coincide with the collective bargaining process, and many precede the negotiation of this one.

Going into the bargaining for a 2013-14 agreement, the MPSO was concerned to "make up for the years that we were underpaid" and to rise "against our peers back to what had been our historical place" (Tr. at 144). The CPI, the improving economy and the average wage increases in the area concerned the unit as did the City's use of furlough days.

The membership had no understanding of the need for the pension change and had adverse past experience with City assurances that benefit changes would be applied to all protective service employees. In the 2010-12 labor agreement, the MPSO agreed to change vacation selection from a calendar year to a fiscal year on the assurance that the change would be department-wide. The MPA did not, however, agree to the change and this led to considerable friction between MPSO members and subordinate officers. Beyond this, the City demonstrated no need for the change and offered no *quid pro quo* to get it. It would also create a disincentive for officers to seek a promotion.

Alan Johnson

Johnson retired from the MPD as a Lieutenant in August of 2013. He became a Sergeant in 1996, and was elected to the MPSO board in 1999. He obtained a Bachelor Degree in Criminal Justice from Marquette University in 1999 and a law degree from Marquette in 2004. He presently serves as Marian University's Director of Criminal Justice.

His duties as a police officer were wide-ranging. As a Lieutenant, he worked in Districts 1, 2 and 4, serving in communications, the jail, logistics and the training academy. He served as Commanding Officer at the MPD research and development center. While at the academy, he was second-in-command, and served when needed in command positions.

As an MPSO officer, he became involved in the bargaining process, developing, from 2003 onward, wage studies of comparable jurisdictions for use in bargaining and in arbitration. He now serves as a consultant to the MPSO. In his view, the MPSO entered the process with little preparation, but grew in sophistication, basing their wage analyses from the Rice Award on. He determined that the MPSO had three major comparable groups: the Metropolitan Milwaukee Group, which included 30 cities located in and around Milwaukee County (Bayside, Brookfield, Brown Deer, Cudahy, Elm Grove, Fox Point, Franklin, Germantown, Glendale, Grafton, Greendale, Greenfield, Hales Corners, Hartland, Menomonee Falls, Mequon, Milwaukee County Sheriff's Department, Muskego, New Berlin, Oak Creek, River Hills, Shorewood, South Milwaukee, St. Francis, Waukesha, Wauwatosa, West Allis, West Milwaukee, and Whitefish Bay); the Wisconsin Largest Cities Group (Appleton, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, La Crosse, Madison, Milwaukee, New Berlin, Oshkosh, Racine, Sheboygan, Waukesha, Wauwatosa, West Allis); and the Vernon 18, which dates from the Vernon Award where the arbitrator, faced with a dispute over the comparability of 100 national cities, utilized the nine cities above and the nine cities below Milwaukee in population based on U.S. census data (Austin, Baltimore, Boston, Charlotte-Mecklenburg, Columbus, Denver, Detroit, El Paso, Fort Worth, Indianapolis, Jacksonville, Memphis, Nashville, Portland, San Francisco, San Jose, Seattle and Washington, D.C.). As of the 2010 census, the Vernon 18 would include: Albuquerque; Baltimore; Boston; Denver; El Paso; Fresno; Kansas City, Las Vegas; Long Beach; Louisville; Memphis; Nashville; Oklahoma City; Portland; Sacramento; Seattle; Tucson and Washington, D.C.

As Johnson became more involved in bargaining, he became convinced that the parity relationship maintained between certain ranks of the protective services units had caused deterioration in the ranking of MPSO wages against comparables. More specifically, MPSO Sergeants are the largest portion of their unit, and had their wages tied to MPA represented Detectives and Local 215 represented Fire Lieutenants. In his view, parity was good for Detectives and Fire Lieutenants, who consistently stayed within the top three of their comparables, but bad for the Sergeants who lost wage ranking against comparables. In his view, rate compression between MPSO Sergeants and their MPA-represented subordinates discouraged promotions.

Johnson prepared exhibits to document this pattern for the years from 1992 to 2014. The following table distills that data by rank for his view of the Metropolitan Milwaukee Group:

	1991	1992	1995	1998	2001	2004	2007	2010	2012
Sergeant	3	6	13	18	17	17	14	20	10
Lieutenant	3	5	8	8	10	11	6	9	6
Captain	3	4	5	7	5	6	6	8	5

For part or all of the period covered, Brookfield, Germantown and Hartland did not have a Sergeant rank. For part or all of the period covered, Elm Grove, Fox Point, Franklin, Germantown, Grafton, Greenfield, Mequon, Milwaukee County Sheriff's, St. Francis, and West Milwaukee did not have a Lieutenant rank. For part or all of the period covered, Cudahy, Elm Grove, Franklin, Grafton, Greendale, Greenfield, Hales Corners, Hartland, Mequon, Milwaukee County Sheriff's, River Hills, Shorewood, West Milwaukee, and Whitefish Bay did not have a Captain rank. The rankings show the City's place in the comparable group updated from the 2010 census, based on the top-step base wage as of the end of the year stated.

Acceptance of the City's final offer would place Sergeants at 10 in 2013 and at 9 in 2014; and would place Lieutenants and Captains at 6 in 2013 and 2014. The MPSO's final offer would place Sergeants at 8 in 2013 and at 7 in 2014; would place Lieutenants at 6 in 2013 and in 2014; and would place Captains at 5 in 2013 and in 2014. Each of the rankings stated in this paragraph is for the Milwaukee Metropolitan Comparable Group.

The following table distills that data by rank for the Wisconsin Largest Cities Group:

	1991	1992	1995	1998	2001	2004	2007	2010	2012
Sergeant	3	4	6	5	6	6	6	7	4
Lieutenant	2	3	5	6	5	4	5	5	4
Captain	2	3	4	4	4	4	4	5	4

For part or all of the period covered, Fond du Lac, Green Bay, Madison, New Berlin, Oshkosh, Waukesha, West Allis, and Wauwatosa, either did not have a Sergeant rank or lacked records regarding their pay. For part of the period covered, Green Bay, New Berlin and Wauwatosa did not have a Lieutenant rank. For part of the period covered, Janesville and Racine did not have a Captain rank. The rankings show the City's place in the comparable group updated from the 2010 census, based on the top-step base wage as of the end of the year stated.

For the Wisconsin Largest Cities Group, the City's final offer would place Sergeants at 4 in 2013 and at 3 in 2014; and would place Lieutenants and Captains at 4 in 2013 and in 2014. The MPSO's final offer would place Sergeants at 3 in 2013 and in 2014; and would place Lieutenants and Captains at 4 in 2013 and in 2014.

The following table distills that data by rank for the Vernon 18, updated by the 2010 census:

	1991	1992	1995	1998	2001	2004	2007	2010	2012
Sergeant	1	2	8	8	11	11	13	12	12
Lieutenant	2	2	6	8	9	9	10	13	13
Captain	1	2	6	8	11	11	12	14	13

For this group, the City's final offer would place Sergeants at 11 in 2013 and 2014; would place Lieutenants at 13 for 2013 and at 14 in 2014; and would place Captains at 13 in 2013 and in 2014. The MPSO's final offer would place Sergeants at 11 in 2013 and in 2014; would place Lieutenants at 13 in 2013 and in 2014; and would place Captains at 13 in 2013 and in 2014.

The following table distills that data by rank for the Vernon 18, based on the 2000 census:

	1991	1992	1995	1998	2001	2004	2007	2010	2012
Sergeant	3	5	13	12	15	16	15	14	13
Lieutenant	3	5	9	12	13	13	13	13	13
Captain	3	4	10	12	15	15	15	14	13

As the other tables, the Vernon 18 tables reflect the City's rank based on the top-step base wage as of the end of the year stated. The City's final offer would place Sergeants at 12 in 2013 and in 2014; would place Lieutenants at 12 for 2013 and at 13 for 2014; and would place Captains at 13 in 2013 and at 12 in 2014. The MPSO's final offer would place Sergeants and Lieutenants at 12 in 2013 and in 2014; and would place Captains at 13 in 2013 and at 12 in 2014.

Johnson generated a "real rate" which is based on the cost of the furlough days in 2013 and 2014, as detailed in the summary of Ward's testimony. That rate for the City's final offer for Sergeants would yield a rank of 11 in 2013 and of 13 in 2014. For Lieutenants, the rank would be at 6 in 2013 and in 2014. For Captains, the rank would be at 6 in 2013 and at 7 in 2014. That rate for the MPSO's final offer for Sergeants would yield a rank of 11 in 2013 and of 9 in 2014. For Lieutenants, the rank would be at 6 in 2013 and in 2014. For Captains, the rank would be at 6 in 2013 and in 2014. Each rank in this paragraph refers to the Metropolitan Milwaukee Group.

For the Largest Wisconsin Cities Group, the real rates for Sergeants, under the City's final offer, would result in a rank of 5 in 2013 and of 6 in 2014. For Lieutenants and for Captains, the City's final offer would result in a rank of 4 in 2013 and in 2014. The real rates for Sergeants under the MPSO's final offer would result in a rank of 4 in 2013 and of 3 in 2014. For Lieutenants and for Captains, the MPSO's final offer would result in a rank of 4 in 2013 and in 2014.

Adjusted for furloughs, the rank under the City's final offer against the original Vernon 18 would be, for Sergeants, at 13 in 2013 and at 12 in 2014. For Lieutenants, the rank would be at 13 in 2013 and in 2014. For Captains, the rank would be at 13 in 2013 and at 12 in 2014. Under the MPSO's final offer, the Sergeants rank would be at 12 in 2013 and in 2014. For Lieutenants, the rank would be at 12 in 2013 and at 13 in 2014. For Captains, the rank would be at 13 in 2013 and at 12 in 2014. Under the updated Vernon 18, the City's final offer would result in a rank of 13 in 2013 and of 12 in 2014, for Sergeants. For Lieutenants, the rank would be at 14 in 2013 and in 2014. For Captains, the rank would be at 13 in 2013 and in 2014. Under the MPSO's final offer, the rank for Sergeants would be at 12 in 2013 and at 11 in 2014. For Lieutenants, the rank would be 13 in 2013 and 14 in 2014. For Captains, the rank would be 13 in 2013 and in 2014. Johnson was not aware of any other department in the three comparable groups that imposed furloughs.

Johnson also surveyed the three comparable groups to determine monetary benefits that every unit member was eligible to receive. The most common benefits were uniform allowance; longevity pay and holiday pay. Other such benefits vary from jurisdiction to jurisdiction, but where a monetary benefit, such as "Public Safety Pay" or "Gun Allowance" was available across the board to unit members, Johnson added it to base wages to create a figure for "total compensation." He was not able to determine whether any employee(s) actually took the benefit. A summary of the total compensation figures he used together with his rankings can be put thus:

<i>Total Compensation In Dollars</i>					
	2012 Actual	2013 MPSO Offer	2013 City Offer	2014 MPSO Offer	2014 City Offer
Sergeant	\$79,276	\$81,566	\$80,855	\$83,923	\$82,885
Lieutenant	\$89,075	\$91,650	\$90,850	\$94,298	\$93,133
Captain	\$98,756	\$101,611	\$100,726	\$104,549	\$103,255
<i>Total Compensation Ranking: Metro Milwaukee Group</i>					
	2012 Actual	2013 MPSO Offer	2013 City Offer	2014 MPSO Offer	2014 City Offer
Sergeant	13	12	15	12	14
Lieutenant	9	6	9	6	9
Captain	8	7	7	6	8
<i>Total Compensation Ranking: Largest Wisconsin Cities Group</i>					
Sergeant	4	4	4	5	5
Lieutenant	4	4	4	4	4
Captain	6	4	5	5	6
<i>Total Compensation Ranking: Vernon 18 Original & (2010 Census)</i>					
Sergeant	12 (12)	12 (12)	12 (12)	12 (11)	12 (11)
Lieutenant	13 (14)	13 (14)	13 (14)	13 (14)	13 (14)
Captain	13 (14)	13 (14)	13 (14)	12 (13)	12 (13)

Johnson underscored the MPSO desire to return to the rank it held at the time of the Rice Award and stated that the City "had partnered with us fairly well in understanding that" (Tr. At 194) in the 2010-12 labor agreement, in which the parties coupled pay freezes with some catch-up raises.

Throughout his data, Johnson used the top rate for a Sergeant with a Bachelor's degree. Employees at this step constitute the majority of the unit. Use of a lower level of education could, the MPSO feared, be seen as "lowballing" unit wages for comparison purposes. Use of a Master's degree would cover fewer people and unduly raise unit wages for comparison purposes. Few cities in the comparables include the educational steps of the MPSO contract. Johnson used whatever the highest base was for a given rank in collecting his survey data. Given that sergeants, lieutenants and captains are often not included in a bargaining unit, it was difficult to obtain data for the different ranks, where those pay rates were not collected in a labor agreement. He acknowledged that his data on base wages did not include any amounts paid toward pension. All of the non-ERS covered employees in Wisconsin are covered by the WRS. In 2013, full payment of the employee portion of the WRS contribution was 6.65%. That changed to 7% in 2014. He acknowledged that many of the police supervisors among Wisconsin comparables paid in part or in full for the employee share of the WRS and that the trend is toward higher payments of that share.

Lawrence Mueller

Mueller has served the MPD for almost 25 years, the last 9 as a Sergeant. He has had a number of assignments and currently serves in the Communications Division. He is required to monitor Telecommunicators and Dispatchers. Telecommunicators speak directly to callers. Dispatchers determine, under departmental protocol, whether to pass a call to an officer. Mueller oversees their work. Dispatchers often seek his advice. As he monitors calls, he is responsible for determining whether to respond to a call with a squad or a limited-duty differential response officer. If a call reports a serious event, he is responsible for notifying roughly 100 people, including relevant command staff and other officials. The severity of a call is governed by departmental rules, which separate the highest priority calls (those involving life threatening situations), from lesser priority calls starting with calls that could escalate to life threatening situations. Support personnel can ask when and whether to change the priority of a call. Priority one calls demand a five minute response time, which may demand the dispatch of one of the three Sergeants or the reshuffling of the duties of other shift personnel. Stress levels are high.

He is directly responsible for the roughly thirty employees who ordinarily staff a shift. Typically, 1 Lieutenant and 3 Sergeants are assigned per shift.

Joseph Seitz

Seitz, now a Lieutenant, became a Sergeant in July of 2000 and started with the MPD in 1991. He has been an MPSO Board Member since January of 2007. He served in a number of assignments as Sergeant, but serves in District 4 in his present rank, as supervisor of 51 officers, 7 Sergeants and 3 civilians. District 4, on the City's northwest side, covers roughly 29 square miles and contains 70,000 residents. It is larger than many Wisconsin municipalities. The District averages 100 assignments per day. The District's authorized strength is 154, and it operated, at the

time of hearing, with 122 personnel. He affirmed Kehrin's testimony regarding the pace of change and focused on record keeping which is increasing in detail and in number and which is reflective of the greater reach of policy directives over officer conduct. The number of severe crimes (Part One under FBI statistics) taking place in District 4 dwarfs the incidence in surrounding communities. The MPD creates districts based on crime levels. District 4 "is probably in the middle as far as crime goes throughout the City" (Tr. At 261).

Mark Wroblewski

Wroblewski became a Sergeant in November of 2002 and became a Lieutenant in May of 2009. He has served on the late shift in District 7 as a Sergeant and as a Lieutenant, where he was responsible for 45 officers. As a Lieutenant, he oversees officer performance of assigned duties and is responsible for functioning as acting Captain or as acting Night Watch Commander, if required. He has filled a number of different assignments on various shifts and currently works day shift in District 4. In that role, he supervises 5 Sergeants, and 27 officers and a number of civilian staff. District 4 has experienced the largest increase in violent crime over the past year in the City. From 2009 through 2013, the City responded to, roughly, 250,000 calls annually. These calls did not include traffic stops or self-initiated stops. Surrounding jurisdictions typically include these in their statistics. As a comparison, South Milwaukee, in 2013, recorded 48,495 stops. Brown Deer recorded 8,174 and Glendale recorded 9,162. Greenfield, from 2009 through 2012, recorded roughly 30,000 annually. From budget documents, he determined that departmental average sworn strength has fallen since 2008 while the violent crime rate has risen over that period. He personally experiences this by the number of Sergeants he must use to respond to calls.

FBI maintained statistics for priority one crimes show no municipality in the City's metropolitan area comes close to the City regarding the incidence of violent crime. In 2012, the City recorded 7,759 such incidents. The closest municipality to that number was West Allis at 191. Of the 24 other municipalities covered, 21 had less than 50. The City recorded 30,228 instances of property crime in that year. The closest to this number was West Allis at 2,918. Of the remaining 24 other municipalities covered, 19 had under 1,000.

Carmello Patti

Patti started with the MPD in 1997, became a Sergeant roughly six years ago and has been on the MPSO Board since April of 2010. He has served as an elected employee representative to the ERS Board for the past two years, and is a member of several of its committees, including the investment committee. At present, the ERS is fully funded and is one of the best funded pension plans in the nation.

Patti analyzed the WSF to determine the MPSO portion of the fund. Using the Ward's 2012 Base and comparable figures for the MPA and Local 215, he calculated that the MPSO Base represents 12.492981% of the budgeted WSF or \$2,411,145. Adjusted for furlough days, this figure exceeds the two year total cost of the MPSO offer. Patti understood that the protective service units are the only units are without a contract since 2012, and the only units funded by the WSF.

Thomas Klusman

On recall, Klusman testified that a review of City health care costs demonstrates that they have remained stable from 2012 to 2015. He offered a table detailing a decrease in City costs from 2012 to 2013 followed by two years of modest increases. This is further documented in a graph from the Mayor's 2015 proposed budget, which indicates that in 2012 the City's health care expenditures dropped to roughly 2008 levels. That same document states the following regarding the WSF:

This account funds anticipated wage and fringe benefit increases for city employees, including increases resulting from collective bargaining agreements. The account is increased to \$19.3 million in 2015. This amount is needed to fund anticipated compensation increases for city employees in 2015.

He believed, from comments made during budget deliberations which he observed, that the 3.9% increase afforded general employees in 2015 was already part of departmental budgets and he believed that general employees are no longer eligible for step increases. Thus, there are no sizeable claims on the WSF outside of the unsettled protective service units. Beyond this, he noted the City share of ERS payments has been constant and the employee share has been 7% for an extended period. When recalled as the MPSO final rebuttal witness, Klusman submitted documentation showing that the number of Sergeants who submit and qualify for promotion has grown steadily over the last four promotion cycles, reflecting the incentive that increased pay for Sergeants has created. The same general pattern holds for those seeking to become Lieutenants. In his view, this traces to the break in parity between MPSO Sergeant and MPA Detective, which is traceable to the Greco Award.

Mark Nicolini

Nicolini has worked for the City since May of 1989, when he served as the City Common Council's Fiscal Research Supervisor. In 1998, he moved to a budget and planning position with the Milwaukee Metropolitan Sewerage District. Since August of 2004, he has been the City's Budget Management Director, and in that position is responsible for the development of the Mayor's annual executive budget proposal. Broadly speaking, two components set the City's economic condition. The first focuses on the City as a corporate entity, operating under home rule authority but subject to State regulation and funding. The second focuses on the property tax base and on those who pay it.

Regarding the first, the State has declared local government finance a statewide concern, and has regulated its contribution toward local government expenditures. Historically, the State's Shared Revenue Program (SSRP) was a means to provide unrestricted state aid to localities, which equalized "fiscal capacity" so "that those who spent at the same rate should be able to tax at the same rate" (Tr. at 342). From the mid 1990's, with increasing momentum through the past 12 years, SSRP funding has departed from the equalizing principle, with the result that SSRP funds have been frozen or have declined. The Expenditure Restraint Aid Program (ERP) has also acted to assure a real (i.e. inflation-adjusted) decline in City corporate funding. Originally a carve-out of the SSRP,

the ERP acts to reward municipalities who hold their budget increases within a State-set formula. Nicolini put that real decline at “almost a 12% reduction in the purchasing power” (Tr. at 343) of State aid programs. The City relies heavily on State aid. In 2013, roughly 26% of the City’s revenues were provided through SSRP funds. For 2004, excluding ERP related funds, SSRP funds exceeded the MPD budget by roughly \$51 million. For 2014, the MPD budget exceeded those SSRP funds by roughly \$25 million.

The second component focuses on the property tax, which is the City’s main authorized source of revenue, dwarfing the user fees the City can impose. City assessed value has declined 18.1% from 2009 through the 2014 budget year. The City’s equalized tax base per capita (for the 2013 budget) was \$42,780. The average of the 19 largest local governments within Milwaukee County was \$99,456. The average for the 16 largest Wisconsin cities is \$66,352. The end result is that, combined with declining SSRP funding, City tax rates grow much faster than its expenditures. Since 2009, City expenditure growth was 6.5%, while its tax rate growth was 30.8%.

The City has responded to this dilemma with an ongoing financial restructuring. Since 2009, it has reduced Full Time Equivalent (FTE) positions by roughly 500. More specifically related to this proceeding, the City now self-funds its employee health insurance and has adopted a Stable Contribution Policy to address the almost \$2 billion market value drop of its asset base in the ERS traceable to the 2008 financial crisis. In a single year ERS funding levels dropped from 131.2% to 99.1%. In the 2010 budget, the City contributed roughly \$50 million. It had not contributed since 1995. The City responded in 2013 through adoption of the Stable Contribution Policy, set in the City charter, which divides employees into police, fire and general employees. The Policy requires an actuary to set contribution rates as a percent of payroll and demands stable contribution over a five-year period without regard to market returns. City contributions over this period total 22.63% for law enforcement employees. MPSO members are responsible for a \$1 annual payment toward the employee portion of the ERS contribution. The WRS employee share of the pension requirement for 2013 was 6.65% and was 7% for 2014 for law enforcement employees not participating in Social Security. The 2014 ERS employee contribution is 7%. City law enforcement employees do not participate in Social Security.

Beyond this, the City faces ongoing budget pressures traceable to tax foreclosures. Though the City has improved since the 2008 financial crisis, there were still roughly 4,600 vacant properties in the City in 2014. Foreclosed properties which fall into City hands, roughly 1100 in 2014, represent lost tax revenue coupled with fiscal demands to maintain and remediate them. As with the foreclosure rate, the unemployment rate (7.3% in November of 2014) is declining, but remains high. Total employment in the City has declined over the past decade, while the percentage of households living in poverty has risen.

The budget carries protective services wages at 2012 rates. The WSF must cover increases related to bargaining with these units and with the three to four smaller bargaining units still in existence. There may be roughly 300 employees in those smaller units. It must also cover council action regarding general employees, whose wages are carried at 2013 rates. The WSF thus must cover increases in bargaining for 2013 through 2015; a 1% wage increase for general employees in 2014, and a 3.9% increase for general employees in 2015PP4. This increase will be coupled with

general employee payment of 5.5% of the employee share of the ERS, starting 2015PP1, for those employees hired before January 1, 2010. Broadly speaking, employee payment into the ERS, as offset by the 3.9% wage increase yields a positive number for the budget of somewhere between \$3.0 and \$3.5 million. Nicolini testified that the City, unlike the MPSO, does not apportion a share of the WSF to the protective services units or to any other employee group. Rather, the budget assumed roughly 2% wage increases for each protective service unit for each year.

Nicolini, as Klusman, discussed City budget funds. The TSF is designed to stabilize ongoing tax levies and service levels. In his view, the appropriate level for a fund of this type should range between 5% and 10% of the operating budget. In 2013, the fund stood at \$51.8 million, which was 6.9% of the adopted City budget. No bond rating agency has found this excessive. He believes a balance of less than the “mid thirties” would raise concern with such agencies. City exposure to varying levels of SSRP funds makes this fund’s balance critical to City planning and operation.

The “under-budgeting” detailed by Klusman ignores that most of the years covered show less than a 2% difference between actual and budgeted expenditures. This difference reflects “prudent budgeting” rather than “excessive balances” (Tr. at 369). The higher unexpended balances in 2009 and in 2012 represent exceptional circumstances. The 2009 difference reflects a policy decision by the City to implement a budget management plan which demanded a return to City ERS contributions. This demanded higher TSF funding levels, which had fallen to under \$26 million. Job cuts, furlough days and other reductions made this possible, without resorting to layoffs. The 2012 difference relates significantly to the City’s implementation of a self-insured health plan coupled with plan design changes. That plan, Nicolini noted, leaves the City bearing “all the risk” (Tr. at 434). Broadly speaking the MPSO’s view of various budget funds ignores that the vast bulk of such funds are restricted by purpose and cannot be diverted to operating expenses.

The MPSO has also oversimplified the availability of funds accessible by reaching State set levy limits. An examination of the City expenditure increases against the percentages allowed under the ERP formula highlights the point:

Year	% Allowable Under ERP Formula	% Actual City Expenditure Increase
2015	2.3	2.27
2014	2.3	2.29
2013	2.8	1.92
2012	3.1	-0.4
2011	3.4	0.26
2010	5.6	3.13

Nicolini noted some uncertainty, but did not think that if the City had spent up to its levy limit, the expenditure would necessarily have put the City over its ERP formula limit. The City has attempted,

throughout this period, “to . . . keep that levy at least at or below the rate of inflation” (Tr. at 380-381). He affirmed that with the exception of “a one notch down grade” (Tr. at 404) from Moody’s, the City’s bond ratings are all high quality. The City had been on a negative watch in 2010, but currently has a stable outlook.

Nicolini affirmed that the City used actual expenditures from 2013 and 2014, obtained from payroll documents, to cost the MPSO and the City offer. Straight time wages, cash payment for overtime, and special duty pay, broken into their pensionable and non-pensionable components, went into the wage component while pension and Medicare payments went into the benefit component. The City also costed for the comp time generated in lieu of cash payment for overtime in each year, i.e. time earned but not yet taken. This methodology was applied to both offers for both years and yielded a difference between the two offers (MPSO-\$2,974,751; City-\$1,886,541) over the two years of \$1,088,210. Furlough days were not separately calculated by the City, except that pay excluded as a result of furlough was treated as compensation for the ERS calculation of pension accrual benefits. The City’s actual cost figures are based on a payment system and did not generate a “savings” component for the furlough days. He estimated that if the MPSO offer was applied to each protective service unit the two year cost would be roughly \$7.5 million.

Merton Finkler

Finkler is a Ph.D. in Economics specializing in local governmental finance and healthcare. He teaches at Lawrence University and has done consulting work in healthcare for over 30 years. He has given expert testimony in a number of forums and has testified in three to four prior arbitrations between the City and its unions. He noted that the surveys and analyses he has performed contain considerable detail, but all underscore the broad theme that the City is a comparatively poor and comparatively higher taxed municipality when viewed against any group of similar cities.

His demographic surveys use data pulled from the U.S. Census Bureau’s 2013 American Community Survey to supplement data from the 2010 census. That data show the City, viewed against major cities in the Midwest (Cleveland, Cincinnati, Columbus, Detroit, Indianapolis, Kansas City, Minneapolis, Omaha, St. Louis and St. Paul), has had a declining population since 1980, but appears to be stabilizing and now is growing slightly. Viewed between 1980 and 2010, the City’s share of population aged 65 or older has steadily declined. Regarding the period between 1980 and 2013, the City’s “Median Household Income” has risen, but its rank among the major cities has fallen from 4th to 7th. Its “Per Capita Income” within that group has fallen over that period from 6th to 9th. Its “Percentage of Population Below Poverty Line” has risen from 6th to 4th (i.e. its portion of those in poverty has grown). Its share of the “Adult Population 25 and Older with a Bachelor’s Degree or Higher” has fallen in rank from 8 to 9 (with 11 as lowest) measured against the comparable group noted above.

Viewed against the 15 largest Wisconsin cities during the period 1980 through 2010, the City currently ranks at second highest, up from fourth in 1980, regarding its “Share of Population under age 5” and currently ranks 15th (lowest), from 7th in 1980, regarding its “Share of Population age 65 and older”. For the period between 1980 and 2013 regarding this group of cities, it currently

ranks last, from 12th in 1980, in "Median Household Income"; ranks lowest, from 11th in 1980 in "Per Capita Income"; currently ranks 1st (highest), from 2nd in 1980, regarding "Percentage of Population Below the Poverty Line"; and currently ranks at 8th highest, up from 12th in 1980, regarding "Share of Adult Population 25 and Older with a Bachelor's Degree or Higher".

In 2000, the City ranked last among the 15 Largest Wisconsin Cities (Appleton, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, La Crosse, Madison, Oshkosh, Racine, Sheboygan, Waukesha, Wauwatosa, and West Allis) regarding "Full Property Value per Capita", ceding that rank to Racine in 2013, to become 14th of 15. The City's "Effective Property Tax Rate" in 2000 ranked it tied at 2nd of 15, and in 2013 ranked it tied at 3rd of 15. Merton highlighted the impact of these two metrics by noting,

If Milwaukee wanted to raise the same amount of property tax revenue per capita as Madison, it would have to increase its tax rate by 81 percent. If it wanted to raise the same amount of property tax revenue per capita as Wauwatosa, it would have to increase its property tax rate by 106 percent (Tr. at 466-467).

He surveyed the City against the "Milwaukee Suburbs", which differs from the Metropolitan Milwaukee Metropolitan Area group noted at 8 above, by his inclusion of Cedarburg and of Milwaukee County viewed as a whole. Viewed against the Milwaukee Suburbs, the City had, in 2010, the largest "Share of Population Under 5", and the lowest "Share of Population 65 and Older". Between 1980 and 2013, the City had the lowest level of median household income and the lowest per capita income for this group. Its growth in income per capita since 2000 was not the lowest, as it rose slightly more than Brown Deer and West Allis. The City had the highest "Percentage of Population Below the Poverty Line" for the entire period between 1980 and 2013. Its "Share of the Adult Population 25 and Older with a Bachelor's Degree or Higher" has been well below the average of this area. The City's 2013 full value per capita, \$43,715, is the lowest in this group. South Milwaukee is the next lowest, at \$53,638.

Viewing the City against the Vernon 18 (2010 census), it ranked second regarding population under age 5; last in population age 65 or older; last in median household income (through 2013); last in income per capita (through 2013); seventeenth in its percentage of adult population age 25 and older with a Bachelor's Degree or higher (through 2010 census); and first (i.e. highest percentage) in its percentage of the population living below the poverty line (through 2013).

Pamela Roberts

Officers who wish to become Sergeants, and Sergeants who wish to become Lieutenants, must pass an examination process to be placed on an eligible list for each rank which remains in effect for two years. The 2013-15 list for Sergeants includes 244 eligibles and that for Lieutenants includes 132 eligibles.

Roberts is a Human Resources Specialist for the City's Human Resources Division. The City maintained a table covering the time period between 2000 and 2010, which was used in prior arbitrations, and which broke out the number of MPSO separations from active service due to

resignations; terminations; retirements and deaths. Resignations were split into those which are voluntary and those which occur with charges pending. It broke those resignations further into those occurring on or off of a promotional probation period. Roberts was responsible for updating that table through 2014. For each year from 2010, the department totaled 1 resignation except for 2012, when two individuals resigned, with charges pending, after a dismissal. The single resignation in 2011 came with charges pending. For this time period there were no terminations. For the years 2010 through 2014 the retirement numbers were, respectively: 10; 20; 11; 13 and 10.

Nicole Fleck

Fleck, the City's Labor Relations Officer, has served the City for roughly eight years. She received a Bachelor of Science Degree from UW-Stevens Point with a double major in Political Science and Public Administration. She earned a Master's Degree in Public Administration from UW-Milwaukee. The size of the MPA and Local 215 units, viewed against total City employment can be summarized thus:

Payroll Period	Employees Represented MPA	Employees Represented Local 215	Total Number Of City Employees
2013PP1	1615	828	6888
2013PP14	1575	807	6771
2014PP1	1570	805	6583
2014PP2	1584	783	6833

Officers and detectives are the largest ranks the MPA represents.

The number and educational level of MPSO represented employees can be summarized thus:

MPSO Represented Employee Educational Level 2013PP1; 2013PP14; 2014PP1; 2014PP14					
Job Title	Associates Degree	Bachelors Degree	Masters Degree	No Added Degree	Total By Row
Admin. Lt. (H&S; Police)	0 <u>0</u> 0 0	1 <u>0</u> 0 0	0 <u>0</u> 0 0	1 <u>1</u> 1 1	2 <u>1</u> 1 1
Captain (Police)	3 <u>3</u> 3 3	7 <u>10</u> 10 11	6 <u>7</u> 7 7	3 <u>2</u> 2 2	19 <u>22</u> 22 23

MPSO Represented Employee Educational Level 2013PP1; 2013PP14; 2014PP1; 2014PP14					
Job Title	Associates Degree	Bachelors Degree	Masters Degree	No Added Degree	Total By Row
Deputy Inspector (Police)	0	2	1	0	3
	<u>0</u>	<u>1</u>	<u>1</u>	<u>2</u>	<u>4</u>
	0	0	1	2	3
	0	0	2	1	3
Supervisor (Police ID)	0	2	0	2	4
	<u>0</u>	<u>2</u>	<u>0</u>	<u>2</u>	<u>4</u>
	0	2	0	2	4
	0	1	0	2	3
Lieutenant (Police)	5	25	14	9	53
	<u>13</u>	<u>31</u>	<u>14</u>	<u>13</u>	<u>71</u>
	15	31	13	11	70
	14	33	14	11	72
Sergeant (Police)	49	78	10	49	186
	<u>43</u>	<u>72</u>	<u>9</u>	<u>45</u>	<u>169</u>
	38	70	12	44	164
	46	85	13	53	197
Total By Column	57	115	31	64	267
	<u>59</u>	<u>116</u>	<u>31</u>	<u>65</u>	<u>271</u>
	56	113	33	62	264
	63	130	36	70	299

Fleck reviewed demographic data underlying City exhibits regarding Midwest cities viewed comparable to Milwaukee by the City. She added data regarding the CPI between 2011 and 2014 standing alone and as viewed against MPSO wage increases. More specifically, she noted that the CPI-U for 2012 increased 2.1%; for 2013 increased 1.5%; and, as averaged for the months of January through November of 2014, increased 1.7%. In 2012PP1 Sergeants received an increase of 3.5% while the remaining ranks received a 2.0% increase. In 2012PP14, Sergeants received a 1.25% increase, while the remaining ranks received a 1.0% increase. In 2010 and 2011 all ranks received no ATB wage increase, but the parties agreed to fold certain non-pensionable payments into base wages in 2011PP1 and in 2012PP1. General City employees received a 1.5% wage increase in 2013PP14, and those employees who reside in the City received a non-pensionable lump sum payment of 1.5% for 2013PP2 through 2013PP13. In 2014, general City employees received a 1% increase on 2014PP14, and those employees who reside in the City received a non-pensionable lump sum payment of 1% for 2014PP2 through PP13.

Fleck evaluated the parties' wage offers on a July-June year basis dating from the last wage increase, which the City views as the appropriate measure under Sec. 111.70(4)(j)m)5b, Stats., thus:

Year (July to June)	CPI %	City Offer	MPSO Offer
2012	1.7	3.25/3.0	4.15/3.9
2013	1.6	1.0	2.9
2014	1.7	1.5	0.0
Total	5.0	5.75/5.5	7.05/6.8

Her table reflects the increases based on rank, and treats a year to run from July 1 through the following June 30, thus moving PP14 increases from the middle of a normal calendar to the start of the July/June year. Her table is based on the lift in salaries, without regard to in-year cost.

Fleck surveyed the Metropolitan Milwaukee Group regarding their ATB increases for Sergeants and Lieutenants for 2013-14 on base salary. Her data can be summarized thus:

Metropolitan Milwaukee Group: ATB % Increase				
Sergeants				
<i>Lieutenants</i>				
Jurisdiction	1/1/2013 (unless otherwise noted)	7/1/13 (unless otherwise noted)	1/1/2014 (unless otherwise noted)	7/1/2014 (unless otherwise noted)
Bayside	2.00 2.20		2.00 1.50	
Brookfield		2.50 2.50		2.50 2.50
Brown Deer	2.50 2.50		2.50 2.50	
Cudahy	2.00 2.00		2.00 2.00	
Elm Grove	2.00 2.00		2.00 (4/14)	2.00 1.20
Fox Point	3.01 NA	NA	2.00 NA	NA
Franklin	1.00 NA	1.00 NA	3.00 NA	NA
Germantown	NA 0.00	NA	NA 2.00	NA
Glendale	2.00 2.00		2.00 2.00	

Metropolitan Milwaukee Group: ATB % Increase
Sergeants
Lieutenants

Grafton	2.60 NA	NA	1.50 NA	NA
Greendale	3.00 3.00		1.80 1.80	
Greenfield	1.50 NA	1.50 NA	1.50 (12/31/13) NA	2.00 (4/7/14) NA
Hales Corners	1.00 1.00	1.00 1.00	0.75 0.75	
Hartland	NA 2.70	NA	NA 1.66	NA
Menomonee Falls	2.00 2.00		2.00 2.00	
Mequon	2.00 NA	2.00 NA	3.00 NA	NA
Milwaukee City Offer	2.00 2.00		1.00 (7/1/14) 1.00 (7/1/14)	0.50 (11/23/14) 0.50 (11/23/14)
Milwaukee MPSO Offer	2.90 2.90		2.90 2.90	
Milwaukee County	1.50 (5/12/13) NA	1.50 (10/27/13) NA	1.25 (1/5/14) NA	1.25 (5/11/14) NA
Muskego	1.00 1.00		≤ 7.69 (perf. based) ≤ 5.06 (perf. based)	
New Berlin	1.50 NA		1.50 NA	
Oak Creek	3.00 3.00		2.00 2.00	
River Hills	2.00 2.00		1.00 1.00	1.00 1.00
St. Francis	3.00 3.00		2.25 2.25	
Shorewood	1.50 1.50		2.00 2.00	
South Milwaukee	2.00 3.00	1.00	3.00 3.00	

Metropolitan Milwaukee Group: ATB % Increase				
Sergeants				
Lieutenants				
Waukesha	2.00 (5/11/13) 2.00 (5/11/13)		2.00 2.00	1.50 1.50
Wauwatosa	3.00 3.00		1.00 1.00	1.00 1.00
West Allis	2.00 (4/1/13) 2.00 (4/1/13)		2.00 2.00	
West Milwaukee	1.00 1.00	1.00 1.00	2.00 2.00	1.00 1.00
Whitefish Bay	2.33 2.30		3.00 3.00	

Fleck also surveyed pension contributions among the Metropolitan Milwaukee Group. In 2013, seven of the group required no WRS contribution from its Sergeants and Lieutenants, and in 2014 that number dropped to 3. In 2013, 9 of this group required the full contribution from Sergeants and Lieutenants, and in 2014, 12 did so.

Fleck analyzed the ranking of City Sergeants against the Metropolitan Milwaukee Group, including an entry reflecting the impact of adopting either the MPSO or the City final offer. On salary only for Sergeants, assuming adoption of the MPSO final offer, Fleck put the City at a rank of 11 in 2013 and of 9 in 2014. Assuming adoption of the City offer, she put the City at a rank of 11 in 2013 and of 12 in 2014. On salary only for Lieutenants, under adoption of either offer, she put the City at a rank of 5 in 2013 and in 2014.

Fleck also surveyed pension contributions required of police officers in this comparable group, and calculated the impact of those pensions on the City's ranking within the Metropolitan Milwaukee Group. For Sergeants, and assuming adoption of the MPSO offer, she put the City at a rank of 4 in 2013 and of 5 in 2014. Assuming adoption of the City offer, she put Sergeants at a rank of 6 in 2013 and of 5 in 2014. After adjusting for pension contributions under either offer, she put Lieutenants at a rank of 4 in 2013 and in 2014.

Fleck also calculated Total Compensation for Sergeants and Lieutenants in the Metropolitan Milwaukee Group. She did not include in that calculation any payment for a benefit unless the benefit was paid to each individual in the rank. Adding this figure to the base salary, she calculated that under the MPSO offer, total compensation for Sergeants in the Metropolitan Milwaukee Group was at 10 in 2013 and at 8 in 2014. Under the City offer, the ranking would be at 12 in 2013 and at 11 in 2014. Adjusted for pension contributions, and assuming adoption of the MPSO offer, the ranking among these comparables for Sergeants changed to 5 in 2013 and to 4 in 2014. Thus adjusted but assuming adoption of the City offer, the rank changed to 7 in 2013 and to 6 in 2014.

She ranked total compensation for Lieutenants in the Metropolitan Milwaukee Group, under adoption of either party's final offer, at 5 in 2013 and in 2014. Adjusted for pension contributions, she ranked Lieutenants at 4 in 2013 and at 5 in 2014 under adoption of either offer. She did not include the fiscal impact of furloughs in the data summarized above.

Deborah Ford

Ford has served as the City's Labor Negotiator for the past two years. She surveyed the Wisconsin Largest Cities Group. Her survey on ATB increases can be summarized thus:

Wisconsin Largest Cities Group: ATB%				
Sergeants				
Lieutenants				
Jurisdiction	1/1/2013 (unless otherwise noted)	7/1/13 (unless otherwise noted)	1/1/2014 (unless otherwise noted)	7/1/2014 (unless otherwise noted)
Appleton	4.00 0.00		3.00 2.00	
Eau Claire	2.00 2.00		2.00 2.00	
Fond du Lac	NA 2.00	NA	NA 3.00	NA
Green Bay	NA NA	NA NA	NA NA	NA NA
Janesville	2.00 2.00		2.00 2.00	
Kenosha	2.00 2.00		3.50 3.50	
La Crosse	3.00 3.00		3.00 3.00	2.05 2.05
Madison	3.00 3.00		3.00 3.00	
Oshkosh	2.50 2.50		2.50 2.50	
Racine	1.00 1.00		2.00 2.00	
Sheboygan	1.00 1.00	1.50 1.50	2.50 2.50	

The data does not include cities in the Metropolitan Milwaukee Group (Brookfield; Milwaukee; New Berlin; Waukesha; Wauwatosa and West Allis). Ford included those cities (with the exception of New Berlin) in her survey and thus they are included in the rankings which follow.

For ranking the Wisconsin Largest Cities Group, Ford used the maximum wage for the rank involved regarding base salary. For that factor, accepting the MPSO offer would put Sergeants at a rank of 3 in 2013 and the City offer would put them at 4. In 2014, acceptance of either offer would put the City at 3. On base salary, accepting the MPSO offer would put Lieutenants at a rank of 3 in 2013, while accepting the City offer would put them at 4. For 2014, awarding either offer would put Lieutenants at 3. Because of the higher lift generated by the MPSO offer, any of these rankings would be, in dollar terms, closer to the next higher rank under the MPSO.

Ford also surveyed the pension contributions made by employers in the Largest Wisconsin Cities Group. In 2013, of the cities covered by the WRS, which had the rank in their chain of command, 5 contributed the entire employee share for Sergeants and 6 for Lieutenants. Of that group, 3 required their Sergeants and Lieutenants to contribute the full employee share. In 2014, only two of the group covered by the WRS contributed the full employee share for their Sergeants and Lieutenants. Six of that group required employees to contribute the full employee share. The smallest employee contribution among the WRS covered cities who required an employee contribution in 2013 was 2.0% for Sergeants and for Lieutenants. In 2014 the smallest employee contribution among WRS covered cities who required an employee contribution was 3.0% for Sergeants and 2.75% for Lieutenants.

Ford calculated an adjustment for the Wisconsin Largest Cities Group to account for pension contributions. Thus adjusted, she concluded that accepting either the MPSO or the City offer would place Sergeants at 2 in 2013 and in 2014. For Lieutenants, acceptance of the MPSO offer would place Lieutenants at 3 in 2013 and in 2014. Acceptance of the City offer would place Lieutenants at 4 in 2013 and at 3 in 2014.

Like Fleck, Ford made a total compensation survey, which included cash payments to officers beyond base salary for the Wisconsin Largest Cities Group. As Fleck, she included only payments provided to all members of the unit, thus excluding payments based on employee choice. Using total compensation thus calculated, she concluded acceptance of either offer put Sergeants and Lieutenants at 5 in 2013 and in 2014. Taking pension contributions into account, Ford concluded that accepting the MPSO offer would place Sergeants at 2 in 2013 and in 2014 while accepting the City's offer would place them at 3 in 2013 and at 2 in 2014. Adjusted for pensions, accepting either offer would place Lieutenants at 4 in 2013 and in 2014. She did not factor the impact of furlough days in her calculations regarding rank.

Ford also provided data for 10 selected Midwest cities (Indianapolis, Columbus, Detroit, Kansas City, Omaha, Minneapolis, Cleveland, St. Louis, Cincinnati and St. Paul). Of this group, she calculated the median ATB for Sergeants was 1.75% in 2013 and 2.45% in 2014. The average was 0.45% in 2013 and 2.13% in 2014. For Lieutenants, the median increases were 1.0% in 2013 and 2.95% in 2014; while the average was -0.17% in 2013 and 2.32% in 2014. All of the officers in these municipalities paid into their pension plans. The lowest payment required, outside of the City's, was 6.00%, with the highest set at 14.50%. The City did not view the Vernon 18 to be a reliable comparable group, involving coastal cities and others at vast distances from the Midwest, which had few similarities with the City. She viewed Chicago as too big to be compared to the City. She understood that the Vernon 18 and the Wisconsin Largest Cities Group can vary with census

data. She did not read the Greco or Torosian Awards to entitle the MPSO to a catch up increase, and felt the City's proposal was reasonable, reflecting the choice of policy makers on what the City should pay within prudent budget parameters.

She noted that the City has advanced and will continue to advance pension proposals to all three of the protective services units. Uniformity is a significant need of the pension plan, and the proposal will enhance the solidity of the ERS over time both by reducing costs and by increasing the number of years a retiree will fund the pension. She did not think MPSO acceptance of the proposal would create a disincentive to promotion, believing that employee choice to promote is driven by factors other than retirement. She acknowledged that the reason the ERS has an early out for protective service members is that "there's a recognition that the work that police officers and firefighters do wears them down earlier than other general City employees." (Tr. at 577) The 2.5% second year proposal offered a *quid pro quo* for MPSO acceptance of the change, which applies prospectively and will not affect any MPSO member for years.

Peter Weissenfluh

Weissenfluh worked for the City Assessor's office for 42 years prior to his retirement, as Chief Assessor, in October of 2013. He is certified by the State to serve as an assessor to any class of Wisconsin municipality. The City hired him to compare its economic condition to those of the villages and cities within Milwaukee County and with Wisconsin's 15 largest cities. His studies rely on equalized, rather than assessed, values. The City, unlike other taxing jurisdictions, is on an annual revaluation cycle which attempts to keep the full assessed value at 100% of market value. Equalization of assessed values across Wisconsin taxing jurisdictions is done by the State's Department of Revenue (DOR). Where necessary, he expressed values as per capita to provide an "apples to apples" comparison between jurisdictions with different total populations.

His comparative property tax data regarding Milwaukee County municipalities for 2013 can be summarized thus:

Weissenfluh 2013 Property Tax Comparative Study: Milwaukee Suburbs					
Tax District (Population 1/1/13)	Full Value	Total Property Tax	Full Value Per Capita & (Rank)	Local Share of Total Property Tax	Effective Tax Rate & (Rank)
City of Milwaukee (596,500)	\$26,075,512,700	\$815,295,907	\$43,714 (19)	\$245,267,263	0.02937 (3)
West Allis (60,300)	\$3,701,354,200	\$111,417,638	\$61,382 (16)	\$39,167,004	0.02841 (6)
Wauwatosa (46,705)	\$4,932,992,500	\$131,585,281	\$105,620 (6)	\$37,949,568	0.02525 (17)

Weissenfluh 2013 Property Tax Comparative Study: Milwaukee Suburbs

Tax District (Population 1/1/13)	Full Value	Total Property Tax	Full Value Per Capita & (Rank)	Local Share of Total Property Tax	Effective Tax Rate & (Rank)
Greenfield (36,770)	\$2,740,861,700	\$78,169,089	\$74,541 (14)	\$22,185,204	0.02662 (13)
Franklin (35,810)	\$3,414,276,600	\$93,498,096	\$95,344 (8)	\$20,509,000	0.02556 (15)
Oak Creek (34,695)	\$2,921,983,900	\$73,459,530	\$84,219 (12)	\$19,201,555	0.02366 (19)
South Milwaukee (21,127)	\$1,133,201,200	\$34,348,922	\$53,638 (18)	\$10,536,942	0.02828 (7)
Cudahy (18,227)	\$1,177,403,800	\$34,134,894	\$64,597 (15)	\$8,059,714	0.02747 (10)
Greendale (14,165)	\$1,251,328,900	\$37,090,207	\$88,339 (9)	\$9,246,585	0.02764 (8)
Whitefish Bay (14,126)	\$1,916,308,300	\$49,443,191	\$135,658 (4)	\$10,617,051	0.02403 (18)
Shorewood (13,189)	\$1,330,875,300	\$41,289,714	\$100,908 (7)	\$10,630,754	0.02884 (5)
Glendale (12,845)	\$2,049,274,200	\$58,264,622	\$159,539 (2)	\$12,160,993	0.02697 (12)
Brown Deer (12,086)	\$927,162,600	\$30,597,190	\$76,714 (13)	\$7,796,422	0.03071 (2)
St. Francis (9,642)	\$571,772,700	\$17,876,132	\$60,428 (17)	\$5,724,538	0.02933 (4)
Hales Corners (7,691)	\$634,679,400	\$17,284,113	\$82,522 (11)	\$5,044,871	0.02563 (15)
Fox Point (6,630)	\$989,814,600	\$28,861,201	\$149,293 (3)	\$7,010,682	0.02709 (11)
Bayside (4,290)	\$545,904,600	\$16,154,208	\$127,250 (5)	\$4,192,909	0.02754 (9)
West Milwaukee (4,205)	\$358,278,000	\$11,543,075	\$85,203 (12)	\$3,681,906	0.03080 (1)
River Hills (1,587)	\$454,539,200	\$12,821,156	\$286,414 (1)	\$3,016,766	0.02623 (14)

Weissenfluh 2013 Property Tax Comparative Study: Milwaukee Suburbs					
Tax District (Population 1/1/13)	Full Value	Total Property Tax	Full Value Per Capita & (Rank)	Local Share of Total Property Tax	Effective Tax Rate & (Rank)
Milwaukee County Total (950,410)	\$57,127,524,400	\$1,693,134,166	\$60,108	\$481,999,727	0.02783

From 2009 through 2013, the City has had the lowest full value per capita of this group. Its effective tax rate rank has varied over that period from the seventh highest (2010) to third (2013). Milwaukee and Madison are the Wisconsin jurisdictions having the highest percentage of property tax exemptions.

The comparative data for Wisconsin's Largest Cities for 2013 can be summarized thus:

Weissenfluh 2013 Property Tax Comparative Study: Wisconsin's Largest Cities					
Tax District (Population 1/1/13)	Full Value	Total Property Tax	Full Value Per Capita & (Rank)	Local Share of Total Property Tax	Effective Tax Rate & (Rank)
City of Milwaukee (596,500)	\$26,075,512,700	\$815,295,907	\$43,714 (14)	\$245,267,263	0.02937 (3)
Madison (238,000)	\$21,853,251,100	\$569,136,142	\$91,820 (2)	\$198,443,797	0.02427 (12)
Green Bay (104,300)	\$5,786,473,700	\$148,239,325	\$55,479 (11)	\$52,158,129	0.02404 (13)
Kenosha (99,700)	\$5,358,064,600	\$166,679,161	\$53,742 (12)	\$58,985,151	0.02928 (4)
Racine (78,700)	\$3,265,953,100	\$103,746,786	\$41,499 (15)	\$51,066,795	0.03016 (1)
Appleton (73,150)	\$4,622,312,200	\$114,499,875	\$63,190 (5)	\$37,971,270	0.02490 (9)
Waukesha (70,900)	\$5,389,651,300	\$123,564,263	\$76,018 (3)	\$53,098,824	0.02139 (15)
Oshkosh (66,300)	\$3,759,269,500	\$98,368,509	\$56,701 (10)	\$32,028,925	0.02489 (10)
Eau Claire (64,500)	\$4,163,778,400	\$99,530,433	\$64,555 (4)	\$35,747,656	0.02235 (14)

Weissenfluh 2013 Property Tax Comparative Study: Wisconsin's Largest Cities					
Tax District (Population 1/1/13)	Full Value	Total Property Tax	Full Value Per Capita & (Rank)	Local Share of Total Property Tax	Effective Tax Rate & (Rank)
Janesville (63,600)	\$3,793,359,600	\$103,137,924	\$59,644 (8)	\$30,454,906	0.02564 (7)
West Allis (60,300)	\$3,701,354,200	\$111,417,638	\$61,382 (6)	\$39,167,004	0.02841 (5)
La Crosse (51,600)	\$3,103,160,000	\$97,385,147	\$60,139 (7)	\$34,683,599	0.02959 (2)
Sheboygan (48,965)	\$2,447,794,200	\$69,010,922	\$49,991 (13)	\$21,677,094	0.02635 (6)
Wauwatosa (46,705)	\$4,932,992,500	\$131,585,281	\$105,620 (1)	\$37,949,568	0.02525 (8)
Fond du Lac (43,100)	\$2,565,745,100	\$67,082,997	\$59,530 (9)	\$21,500,630	0.02462 (11)

In 2009 and 2010, Racine was the only City in this group which ranked lower than the City in full value per capita. In 2011 and 2012, the City ranked lowest in that metric. From 2009 through 2013, the City ranked either second or third highest in its effective tax rate, ranked higher over that period by La Crosse, Racine or West Allis. Weissenfluh affirmed that the City had added roughly \$291.3 million in real estate value to its tax base. To the extent such value is located in Tax Incremental Finance (TIF) districts, however, it would not be included in the City's effective tax rate, due to statutory limitations placed on the City's power to tax such districts. The Mayor's 2015 budget highlights the improvements in the City's tax base as well roughly \$600 million of net new construction growth.

THE PARTIES' ARGUMENTS

The MPSO's Initial Brief Regarding The Pension Issue Of Articles 14 and 15

The City's proposal, now under discussion with the MPA and with Local 215, "must be rejected." Any City attempt at consistency across the units cannot guarantee success. If unsuccessful, imposition of the proposal "would create a disincentive for promotion" because non-supervisory officers "could elect to retire early." The danger to the MPSO is more than hypothetical, since "the City on prior occasions has intended to get changes through negotiation for consistency sake and has failed." In the bargaining for a 2010-12 labor agreement, the City secured from the MPSO a change from a calendar year vacation selection to a fiscal year, on the assurance that the change would be made with all units. The assurance did not materialize and the scheduling change created havoc between MPSO members and their subordinates.

Beyond this, the City has not demonstrated any need for its proposal, which would do no more than “require persons to pay into the already healthy pension fund for a longer period of time.” There has been no showing of why the City selected age 52 or what the impact on the pension fund would be if it received contributions over a longer period. There is no reason to start this proposal with the MPSO. It takes four to five years for an officer subject to the proposal to acquire the qualifications to promote to sergeant. Thus, the proposal affects the MPA and should start there.

As a matter of arbitration process, the City bears a burden to prove the need for this proposal as well as a *quid pro quo* for getting it. That the proposal will be implemented prospectively establishes neither a need for it nor an inducement for its adoption. The absence of a demonstrated need is telling and warrants rejection of the proposal. To make a major change in contract language through the interest arbitration process flies in the face of precedent such as COLUMBIA COUNTY (COUNTY HOME NON-PROFESSIONALS), DEC. NO. 28960-A (KESSLER, 8/97).

The City’s Initial Brief Regarding The Pension Issue Of Articles 14 and 15

Acknowledging that “the parties devoted the bulk of . . . their respective cases to the issue regarding base salaries”, the City notes that the “essence of the proposal” is to raise “the minimum age required to obtain a service retirement” without affect on “the current membership of the MPSO”. All other police supervisors in the state of Wisconsin are WRS members and are not eligible for an unreduced retirement benefit “until reaching age 53, with 25 years of service.”

The existing retirement benefit afforded MPSO members is “25 years of service and out”, thus making the age of hire the only effective minimum age requirement. Under the existing system, an officer hired at age 21 can retire with a full benefit at age 46. Given the employer contribution for police, “set at the rate of 22.63% of police pay”, the pension benefit consumes “an enormous amount” of the City’s budget. The City has limited the proposal to prospective members of the MPSO and has made the proposal to all of its public safety employees. The “change is necessary” to “maintain a healthy pension fund that will continue to support substantial benefits for qualifying members of the MPSO, as well as the City’s other public safety employees, and the entire City workforce.”

MPSO concern that the other units will not accept the proposal is “speculative.” The proposal is reasonable; will continue to provide a benefit superior to that provided any other law enforcement supervisor in the state; will not adversely affect existing MPSO members; and is in the financial interest of both the City and the MPSO.

The MPSO’s Reply Brief Regarding The Pension Issue Of Articles 14 and 15

The City presents “absolutely no need for this major policy change”. Consistency with the WRS, with the MPA and with Local 215 is a speculative goal, as is the benefit of longer member participation. Neither justifies the proposed change. That the City is in ongoing negotiations with the MPA and Local 215 means no more than that they can get no voluntary agreements on so substantial a change without an appropriate *quid pro quo*. Since it is a “well-established principle” that “benefits are determinative on internal comparables”, whatever pension external comparables

have is of no persuasive value in this proceeding. Against this background, the City has failed to meet its burden to prove a need for changing the status quo, and its proposal must be rejected.

The City's Reply Brief Regarding The Pension Issue Of Articles 14 and 15

The City contends that, "the Union offers nothing but a disingenuous claim, and delay, regarding the City's reasonable proposal to implement a modest modification of the pension provision". The proposed change turns on the modest increase in the "age at which the union's future members would be eligible to receive a normal service retirement." The assertion that the MPSO does not understand the need for the provision is disingenuous.

Any implication the City has been unclear on the proposal is contradicted by its presentation of the proposal to each public safety unit. It did so with the MPSO at the start of negotiations. The MPSO unit is the first to face it in arbitration because it is the furthest advanced in the process. MPSO assertion of confusion on the need for the proposal is disingenuous. That the asset base of the ERS fell roughly two billion dollars in a single year of the great recession and that this demanded large City outlays to fill the funding gap is no secret to anyone. The MPSO has two officers on the ERS Board and regularly follows City deliberative processes. It cannot credibly claim it is surprised by the proposal.

The record shows the City has demonstrated "a great need" for the proposal. The evidence shows City contribution to the fund exceeded \$61 million dollars, enough to provide over 1,200 "high paying City jobs." MPSO officers are fully aware that of the three employee groups covered by the ERS, police officers constitute 31.14%, but account for over 50% of the required contributions to the fund. The MPSO ignores these "backbreaking" costs, "their disproportionately large share in generating these crushing costs, and how "totally out-of-line" City contributions are with comparable employers. The nominal \$1.00 annual contribution by MPSO members has no bearing on the need posed by the proposal, which is rooted in maintaining the fund's solvency.

Remaining MPSO contentions on the point lack merit. The assertion that the City's consistency in asserting the proposal across public safety units is of no persuasive value flies in the face of the MPSO claim that it would be inequitable to impose the requirement on it alone. No more persuasive is the MPSO attempt to ignore that the public safety units pose the costliest component of City pension expenses.

The assertion that age 52 was selected without evident basis is belied by the evidence. The record establishes that the age brings the ERS more in line with the WRS, while still providing the MPSO an earlier age than comparably situated supervisors covered by the WRS. The record also establishes that the change fits within the City's "long view of the pension" and its ongoing health. The contention that the change must be secured with the MPA first ignores that for the good of the fund, the change must be uniform, which is in keeping with the interest of the MPSO and MPA as employees as well as with the larger public interest. MPSO assertion that the change is of a magnitude demanding a significant *quid pro quo* is unpersuasive even within the precedent cited by the MPSO to justify it. Prior awards emphasize that demonstration of great need undercuts the need for a sizable *quid pro quo*. The evidence establishes the reasonableness of a City offer of 2.0%

annually against the comparables, but City provision of an extra 0.5% in the second year for a proposal which does not provide it any measurable relief in that year establishes ample basis for finding it the more reasonable of the conflicting final offers.

The MPSO also exaggerates the applicability of Arbitrator Torosian's consideration of an MPSO proposal to abolish a residency requirement. The pension proposal posed here is well within the authority granted an arbitrator under Sec. 111.70(4)(jm), Stats., and should be awarded in the form stated in the City's final offer.

The MPSO's Initial Brief Regarding The Article 9 Base Salary Issue

That the City imposed three furlough days on the MPSO in 2010, 2011, 2013 and 2014 establishes the reasonableness of the MPSO wage proposal. The three days amount to "a 1.15% annual pay reduction." The reduction has no support in any comparable. Beyond this, the City budgeted roughly 2.0% wage increases for 2013 and 2014. With the savings realized from furloughs, the City's wage proposals amount to 0.85% in 2013 and 0.39% in 2014. The savings bring the Union's wage proposals under "the suburban comparable wage increase in 2014 of 2.85%" and well within the budgeted 2.0% for 2013.

Beyond this, taking the furloughs into account operates to drop the "top step sergeant with a Bachelor's degree" from eleventh to thirteenth over the two-year agreement. It also reduces the rank of that position against "the state comparable rankings". Unlike the City's, the MPSO's proposal raises that ranking to "within the top quarter which meets the public's best interest" and makes a reasonable step to halt "the significant erosion that previously occurred."

The MPSO's wage proposal "is absolutely required to get the MPSO membership slightly ahead of the CPI inflation rate." The City's proposal would put MPSO wages -1.362% behind the CPI inflation rate from 2010-11, while the Union's would put those wages 0.9% ahead of that rate. Factoring the financial impact of furlough days over the period would clearly put the MPSO well below the CPI inflation rate over that four year period. Focusing on 2013-14 alone, the City's proposal would put MPSO rates over 1.5% beneath inflation, while the MPSO's would move those rates just ".7% ahead of inflation."

The parties' conflicting calculations of the Base Salary increases generated by the offers can be summarized thus:

	Ward Calculation	Nicolini Calculation
MPSO Total Increase	\$2,473,025	\$2,974,751
City Total Increase	\$1,568,758	\$1,886,541
Difference	\$904,267	\$1,088,210

Crucial to evaluating this difference is the impact of the six furlough days, which the City's costing ignores. The impact of the furloughs should put the cost of the MPSO wage proposal within the City's 2.0% budget allowance. Past that, the City's proposal only spends 3.54% of the 4.0% budgeted for wage increases. It necessarily follows that "there is at least another \$245,144 in the \$19.3 Million Wages Supplemental Fund meant for the MPSO." Other City employees received a 3.9% wage increase, which the City afforded in recognition of those existing City employees who had to absorb a 5.5% pension increase effective on the first payroll period of 2015. On balance, even with the wage increase, the City has received a significantly higher benefit (from \$3.0 to \$3.5 million) from the reduced pension payments. Thus, the \$19.3 Million Wages Supplemental Fund should be viewed as understating the funds available to pay MPSO, MPA and Local 215 wages.

Even if the City had to pay the MPSO proposal from sources beyond the Wages Supplemental Fund, it could. Since the Torosian Award, the City's financial status has improved, as demonstrated by the fact that it "is no longer on a negative watch from bond rating companies, and continues to maintain high credit ratings." Unemployment is down and the Mayor has viewed the City's financial condition as "strong." Examination of the MPD's budget indicates SSRP funds can cover 90% of it. More specifically, even beyond the increased employee contributions to the pension fund, the City could fund the MPSO proposal from excesses within the TSF. Under the view of a prior City Comptroller, that fund is in significant surplus. Even accepting Nicolini's more conservative view that the fund should be at least 5% of total budget shows the fund in significant surplus. Beyond this, the City has "never run a budget deficit" and this means its \$5.0 million Contingency Fund is available to fund the MPSO offer. Even assuming roughly one-half of the City's Parking Fund is encumbered, roughly \$15 to \$17 million dollars "could be used to offset expenditures in the General Fund."

In sum, the worst case scenario requires the City to fund \$1,088,210 outside of the WSF to meet the MPSO offer. This ignores the savings traceable to the furlough days and ignores there is ample space in other City funds to pay for the MPSO offer. The City is strong financially and has an avowed priority of maintaining safe neighborhoods. Against this background, and because "it is in the public's best interest to keep Milwaukee officers in the top one-quarter of their State comparables" it follows that the MPSO proposal is "the most reasonable and must be selected."

A series of "intangibles" further support this conclusion. City desire to decrease crime is based on its goal to improve its standing among cities of comparable size. This dovetails neatly with MPSO desire to maintain a competitive wage and benefit package to assure the "superior talent" required to address the State's most difficult law enforcement setting.

More specifically, the MPD "trains itself and it is not uncommon to train officers from other departments." This contrasts starkly to suburban departments. Unlike other departments, "supervisors are responsible for maintaining discipline as all rule violation investigations are performed by sergeants at a district level and sergeants and/or lieutenants at the Internal Affairs level." Due to technology and the "the high amount of crime", law enforcement duties in the City are changing at a rate not known at comparable departments. Increased documentation requirements fall heavily on supervisors. Since the "sworn police force" is declining in numbers, City supervisors

must "do more work with a smaller force." For example, "it is not uncommon for a sergeant in Communications to supervise up to 30 persons in a given shift." To meet departmental response times with a smaller sworn force, Sergeants increasingly respond to calls. To further exemplify the dilemma, Lieutenants are expected to be in charge of City districts that are larger and more populated than many suburban municipalities overseen by a police chief. Calls for service within City districts dwarf those of surrounding suburbs and the City currently staffs at a fraction of authorized strength. FBI crime statistics confirm that "no suburban comparable has anywhere near the amount of work as a Milwaukee officer". That furloughs have "become a permanent feature for MPSO members" only exacerbates the difficulties noted above. These "intangibles", which are a daily fact of an MPSO member's professional life highlight the reasonableness of the MPSO offer.

A consideration of total compensation "favors the MPSO proposal." The City's two year proposal drops the "top step sergeant with Bachelor degree" from "its current #13 total compensation" to "#14 by 2014." The MPSO proposal more reasonably moves that position to twelfth. Each proposal drops that position from the top one-quarter of statewide comparables, but the MPSO proposal more reasonably puts the position closer to the top one-quarter. The City's proposal drops Lieutenants from their "#9 suburban ranking through 2014." The MPSO proposal "causes a modest jump from #9 in 2012 to #6 in 2014." Notably, accounting for pay lost due to furloughs exacerbates the harshness of the City proposal.

The MPSO concludes, "Simply put, comparable wage rankings make it critical to award the MPSO's proposal. The Greco and Torosian Awards establish that "the MPSO is due catch up." Beyond this, "the City's financial condition makes it appropriate for this catch up to be renewed." A contrary conclusion "would be the first award issued by an arbitrator to allow the MPSO wage rankings to erode."

The City's Initial Brief Regarding The Article 9 Base Salary Issue

No analysis of the final offers can be meaningful without recognizing that "Milwaukee is no longer the city it once was." Formerly the home of a "robust private sector with numerous large manufacturers", the City lost more than 60% of manufacturing jobs between 1980 and 2010. Over that same period the City's population "steadily dropped", and those remaining have grown, on average, steadily poorer. While this has taken place, its suburban neighbors have grown in population and wealth. This situation has aggravated, and continues to aggravate, the City's "fiscal constraints." Over this time the City has become increasingly dependent on the SSRP, while its wealthier neighbors have become increasingly less so. Over the past decade, SSRP dollars have remained flat or declined, thus exposing the City to a declining revenue base when regarded in real terms. The decline in the value of residential real estate only complicates the City's ability to fund its services.

The statutory backdrop to this dispute also requires background. Sec. 111.70(4)(jm), Stats., governs the dispute, with subsections 4w through 6 specifying the analysis. Subsection 4w "was added to the statute by virtue of Section 2408 cv of 2011 Wis. Act 32, published June 30, 2011." This "greater weight" provision was accompanied by "a similar provision inserted in the law governing binding interest arbitration applicable to *all* fire departments and *all* other law

enforcement agencies across the state . . . [See Section 2409 iv. of 2011 Wis. Act 32, creating Wis. Stat. Sec. 111.77(6)(am)].” Beyond this, as reflected by CITY OF MILWAUKEE, DEC. NO. 24936-B (KERKMAN, 11/88), Subsection 5a is no longer operative since the BLS no longer maintains “Standards of Living Budgets for Urban Families, Moderate and Higher Level.” These general considerations should not obscure that the statute creates a “wide open” form of arbitration which will inevitably impact the larger MPA and Local 215 bargaining units.

Turning to the final offers, the City urges that the issues of furloughs and of employee pension deductions place its “final offer in context and demonstrate the reasonableness of that offer.” More specifically, the City argues that its use of furloughs “is necessary and lawful.” Though unpalatable to affected employees, the furloughs were preferable to layoff and avoided service cuts. Although the Union asserts City use of furloughs is without parallel, neither party offers reliable data to support it and a survey of arbitrations indicates New Berlin used a furlough in 2009. Beyond this, the City has the contractual right to furlough, as affirmed by arbitral and judicial precedent. City use of furloughs is directly tied to its budget, and not to a particular group of employees as underscored by its exemption of the MPA and MPSO from the 2009 furloughs and its ability to avoid furloughs for the MPSO in 2012.

Significantly, the MPSO “ignores the substantial impact deductions for pension contributions have on the compensation of police supervisors elsewhere, except in Milwaukee.” After a review of the legal considerations that surround the issuance of “*Madison Teachers, Inc. v Walker*, 2014 WI 99, 358 Wis. 2d 1, 851 N.W. 2d 337 (2014)”, the City concludes that “two results are of record.” The first is that “all general City employees” who had yet to be required to make a pension contribution, “will pay 5.5% of their salary as a pension contribution in accordance with Wis. Stat. Sec. 62.623.” Such employees “will receive a 3.9% pay adjustment” to offset “to some degree” that contribution. They are not subject to furlough in 2015. MPSO arguments regarding furloughs ignore that its officers pay nothing more for their pension and “will receive through this proceeding, under either party’s final offer, a healthy increase in their compensation.” The MPSO ignores that general employees will receive less in wages for 2015 than in 2014, even with the pay increase.

The second impact of the litigation is that the City could have, but chose not to attempt to make retroactive any pension contributions by the protective service employees. This cannot be held against the City through MPSO arguments that only base salary counts regarding the reasonableness of the parties’ wage proposals. Their ignoring of the contributions paid by other police supervisors bears directly on the reasonableness of its proposals.

Subsection 4w sets the predominant consideration within the statute applicable to this proceeding, and given “the relatively high level of taxation and fees already borne by residents of Milwaukee, a wage proposal that would cost some \$1.1 million dollars beyond the cost of the City’s reasonable final offer . . . cannot be favored by the arbitrator under this statutory criteria.” The reasonableness of the City’s offer is rooted in the “pressing financial challenges facing” the City. A “structural gap” is created by ongoing expenses viewed against revenue predictions. The City seeks to achieve “\$65-\$75 million of structural improvement by the end of 2016.” To do so, the City has eliminated “funded positions” and “reduced department operating costs.” This contrasts starkly to the picture of financial soundness projected by MPSO witnesses. City contribution of

“tens of millions of dollars each year” to the ERS reflects the problems ongoing from the financial collapse of 2008 and highlights a major component of the structural gap. Actuarially determined City contributions for police personnel over the next five years run at 22.63% of police compensation. Its contribution rate for general employees will run at 8.48% over that time period.

MPSO arguments regarding City finances ignore that “the foreclosure crisis” still burdens its budget. Lender-foreclosed property which ends up as City property not only results in a loss of revenue, but additional costs to maintain the property. Certain post-retirement benefits are funded on a “pay as you go” basis and are rising in cost. Against this, City dependence on the declining (in real terms) funding through SSRP funds must be considered. State use of levy limits and the ERP similarly pose ongoing jeopardy to City funding. Witness testimony establishes that City ability to fund rests on its equalized value per capita. Whether viewed against the “16 largest cities in the state” or against its suburban neighbors, the City’s tax base is weak and has been steadily eroding over time. Ominously, but not surprisingly, its “effective tax rate” has been steadily rising against that of “the suburbs within Milwaukee County.” MPSO assertion that the City has improved its tax base over the last two years ignores that City use of TIF districts to bring this about does not necessarily produce funds available for ongoing expenditures unrelated to the TIF infrastructure.

No evaluation of the competing offers can ignore the “circumstances of those who will foot the bill, now and in the future.” Finkler’s testimony graphically underscores how City median household income has been dropping for years as compared to state averages. As measured against “the suburban communities in southeast Wisconsin”, the disparity “was even more pronounced.” Only five suburbs “had a median household income that was not at least 150% of that in the City.” The same metric (or income per capita) yields no better comparison for the City against “both the Midwest cities and the Vernon 18 national cities.” Using “the percentage of its residents living below poverty level” shows a similar erosion in the wealth available for funding services.

MPSO arguments ignore the City’s “true financial condition.” The MPSO uncritically points to comments from the Mayor trumpeting the City’s finances, while ignoring comments pointing to how hard the process of improvement has been or how fragile its continuation will be. No more critical is MPSO examination of the budget. The WSF must cover represented and non-represented employees; has been budgeted without increases beyond 2012 wage rates for protective service employees; and must cover the 3.9% increase for general employees as well as “a small adjustment for eligible City employees approved in 2014”. Regarding the TSF, the current 6.9% funding level is not necessarily a surplus, and falls well within the 5.0% to 15% levels recommended by the Government Finance Officers Association. No bond rating agency has viewed the budget level as excessive. General Fund balances “were assigned for specific purposes” with the remainder available for the TSF. The General Obligation Debt Service fund and Public Debt Amortization fund are restricted for creditors. The Capital Projects fund is unavailable for operational expenses, as is the Parking Fund for non-parking facility expenses.

The MPSO treats any monies available in the budget as available for it, but the City should not be punished “for following sound financial practices and attempting to maintain prudent fund balances.” In any event, as Arbitrator Torosian noted, the issue is not whether the City has money to fund the MPSO offer, but whether that offer is more reasonable than the City’s “when all

(statutory) factors are considered.” The MPSO offer is more reasonable only if viewed with “tunnel vision” that only MPSO members have a reasonable claim on City finances. Regard for the City’s overall financial condition is necessary, as is the awareness that larger protective service units will place demands larger than the MPSO on City finances.

Unlike the MPSO, the City’s final offer recognizes the total compensation made available to non-City police supervisors. More specifically, ATB increases made available by other jurisdictions are present in the City’s documentation, but not the MPSO’s. Under arbitral precedent, wage level changes should be preferred over “relative wage levels.” The City has provided a competitive ATB increase even without “taking into account . . . mandatory deductions from base salary for police supervisors’ pension contributions in other jurisdictions.”

Standing alone, the City’s proposed ATB base salary increases are reasonable. The median increase “in the Milwaukee suburban municipalities in 2013 and 2014” was 2.0%. The “mean ATB increase was 2.42% in 2013 and 2.5% in 2014”. The mean reflects some higher payments in jurisdictions seeking to offset pension contributions. Viewing ATB base salary increases for sergeants in larger cities statewide, the median was 2.5% in both years, while the mean was 2.42% in 2013 and 2.73% in 2014. The higher mean again reflected many offsets for pension contributions. For lieutenants, the suburban median increase was 2% in 2013 and 2014, while the mean was 2.17% in 2013 and 2.16% in 2014. Viewed statewide, the median was 2.0% in 2013 and 2.5% in 2014. The mean was 2.11% in 2013 and 2.71% in 2014. Acknowledging the City smoothed its 2014 increases with split increases, the City notes this practice was common in the comparables. On balance, the City’s wage offer is reasonable.

The offer becomes more reasonable “when police supervisors’ pension contributions are evaluated.” Of 27 suburban jurisdictions employing sergeants, “all but six . . . required their sergeants to make pension contributions in 2013.” Eight of those requiring contributions demanded full employee payment of the employee share. By 2014, only two suburban communities (Brookfield and Menomonee Falls) did not require any sergeant contribution. Full contributions rose from “eight of 21 in 2013 to eleven of 25 in 2014.” Among the “13 other large cities in the state employing sergeants . . . all but five . . . required” pension contributions. Three of these required full payment. By 2014, only two municipalities did not require a pension contribution, and six moved to full payment. Statewide, sergeant contributions to pensions increased, and in 2013 and 2014 City Sergeants rank second “relative to their peers among the larger cities in the state under the City’s proposal.

Sergeants and Lieutenants in the City pay only \$1.00 per year to the ERS. Of 22 suburban jurisdictions employing lieutenants, all but six required a percentage contribution toward pension in 2013. Seven of those required full payment. By 2014 only three did not require a contribution, and nine required a full payment. Statewide, 6 of 14 jurisdictions employing lieutenants did not require a pension contribution in 2013. By 2014, this fell to 2 of 14. In 2013, 3 of the 8 jurisdictions that required a contribution demanded full payment. By 2014, this became 5 of 8. Taking these payments into account, City Lieutenants rise from fourth to third among the statewide comparables.

The City contends its offer is more reasonable in light of comparable non-Wisconsin jurisdictions. Cautioning arbitral precedent manifests constant disagreement between the parties over comparables, the City asserts it is necessary to afford those comparables "an appropriate weight." As in past cases, the City has offered data "on 10 Midwestern cities that have characteristics more in line with the City's than do Milwaukee's suburbs." Each of these cities deduct pension contributions from their supervisors' paychecks, ranging from 6% to 14.5%.

Beyond this, the City asserts the "Vernon 18 have extremely marginal value." Vernon selected the nine cities above and below Milwaukee in population to create a manageable pool of similarly sized cities for comparison purposes. Of this pool, which was based on 2010 census data, eight no longer belong. For the Torosian Award, eight cities then included on the list no longer belong. Apart from the turnover in the list, it is not clear what insight is gained by comparison to more affluent coastal cities. If the list has use, it shows a significant number require pension contributions in a significant amount.

This prefaces the point that by omitting employee pension contributions from its case, the MPSO "renders its final offer unreasonable." As preface to its analysis of the MPSO evidence, the City notes that prior arbitrations have focused on the Sergeants and Lieutenants. That pattern continues in this proceeding. Beyond this, the MPSO misinterprets the Rice Award through its assertion that among 30 suburban comparables, MPSO Sergeants and Lieutenants ranked second. A more careful review indicates Arbitrator Rice placed Sergeants "second among the 15 suburbs and sheriffs department in Milwaukee County." Vernon, in an award governing the MPA unit, expanded that pool beyond the County. Beyond this, the impact of the number of supervisors must be considered in comparing the City to smaller jurisdictions. A significant increase to a small number of supervisors has little impact on a departmental budget. This is not the case for a department as large as the City's. In addition, Klusman understated the significance of the advances made by the MPSO in the 2010-12 labor agreement. By moving certain payments onto the base salary, any rank eligible for overtime or for Special Duty Pay benefits from the higher base. Because base wage payment is pensionable, every MPSO member benefitted from this agreement.

While not unconditionally accepting every wage figure contained in MPSO exhibits, the City contends that those exhibits demonstrate the reasonableness of its offer. More specifically, the exhibits document a rise of Sergeants from 20th to 10th among the suburban ring between 2010 and 2012. The City's offer raises them to 8th. A similar pattern occurs regarding statewide comparables. The City's offer maintains the lieutenants at 9th among suburban comparables and maintains them at 4th regarding statewide comparables. The reasonableness of the City's offer is reflected by the fact that it accomplishes this with a significantly weaker tax base than the comparables.

Certain MPSO exhibits imply that the higher incidence of crime present in the City warrants a greater wage increase. Acknowledging that FBI statistics show the incidence of crime in Milwaukee dwarfs that of the suburbs, the City notes that lacking from this is any documentation of crime rates in larger cities, such as Racine, Kenosha, Green Bay or Madison. In the absence of such documentation, there is no reason to conclude that any comparable sets officer pay on crime rates rather than its ability to fund the pay. It is evident that wealthy suburbs with lower crime rates

do not pay their officers less. It is no less evident that higher crime rate, larger population cities do not pay their officers more than less populated, but wealthier communities. These conclusions are as valid regarding Lieutenants as for Sergeants. Similar considerations apply to MPSO exhibits regarding "dispatched assignments." The City's numbers dwarf those of the suburbs, as presumably any larger metropolitan area would. Nevertheless, officer pay tracks municipal ability to pay more reliably than demand for police dispatch. Detailed scrutiny of a series of MPSO exhibits regarding the demand for service in the City cannot support the asserted link between demand for service and the pay rates contained in the MPSO final offer.

Examination of the evidence demands the conclusion that only the City has produced reliable data on the true difference in cost between the final offers. Nicolini's calculations draw on actual costs for 2013 and 2014. A detailed review of his calculations establishes the accuracy of his methodology and thus the accuracy of his statement of a \$1,088,210 difference between the final offers. This figure will inevitably prove low, because the remaining protective service units will try to equal or exceed the MPSO offer.

Unlike this, the MPSO's costing "drastically understates the true costs of the parties' proposals." Ward's calculations rest on debatable assumptions. He based his calculations on "a single figure from a single document prepared in August, 2011." His figures lack actual cost data and have no persuasive force. He applied the MPSO's proposed wage increases to this figure and added "a 20% 'roll-up' factor to the increased salary costs as he had calculated the." This roll-up reflected "overtime, pension and medical." The roll-up has been consistent with his testimony in past arbitrations, but has no footing in actual costs. Regarding the pension contributions necessitated by the 2008 market crash, the "smoothing" affect of his assumptions masks significant actual costs. Similarly, Ward's "rubric" for stating roll-up costs was based on insurance premium payments made over roughly eight years. There is no indication he was aware of or considered the impact of the City's move from a third party insurer to self-funding.

The MPSO's arguments mask fundamental risks posed by its wage demands. As noted earlier, the Local 215 and MPA units will view adoption of the MPSO position as a base for their own demands. The "tunnel vision" this represents obscures the bind the City would be placed in. The City has to maintain equity between all of its employees, to say nothing of protecting the fragile financial condition of its body politic. Significantly, Sec. 111.70(4)(jm)5b, Stats., supports the reasonableness of the City's offer. The statute directs consideration a CPI increase "since the last adjustment in compensation", which for this unit "was mid-year 2012." The Kerkman (DEC. NO. 24936-B AT 15) award addressed application of this subsection. Over the relevant period, as documented by Fleck, the City's final offer "exceeds the CPI during this period" thus making it preferable to that of the MPSO.

The MPSO Reply Brief Regarding The Article 9 Base Salary Issue

City assertion that "it is no longer the City it once was" represents no more than an attempt "to paint the bleakest picture possible" and "is contradicted in the City's very own 2014 budget." Budget documents paint a picture of a city with sound financial footing facing a promising future. This is consistent with past City arguments "crying wolf" while shepherding budget surpluses.

City attempts to rationalize the furloughs “distorts reality.” The MPSO does not challenge the legality of the furloughs, “but has an issue with the City’s continued use of them without having a specific economic need, together with City failure to recognize these pay cuts when ranking the MPSO base wages.” There is no evidence to support the assertion that the City was in fiscal need in 2013 or 2014, much less 2015, when furloughs will affect only sworn personnel. There is no evidence that the City faces an economic crisis not faced by its comparables. Nor is there any reliable evidence that any comparable used furloughs at any time relevant here. The City has failed to rebut the MPSO proof that the furloughs amount to a 1.15% pay cut.

City implication that the MPSO has disingenuously failed to include pension contributions in its analysis of wage rankings must be rejected. Solid arbitral precedent establishes that a wage-only analysis is appropriate on this point. Beyond this, the applicability of Milwaukee’s suburbs coupled with the sixteen largest Wisconsin cities establish the baseline for determining a “catch-up situation.” Deduction of the furlough days is appropriate because employees never received their wages. That the City received Madison Teachers late in the bargaining process has no relevance here. It had no employees who were required to contribute to their pension prior to February 1, 2015. In contrast to this, the City’s comparables had to bargain regarding Sec. 62.623, Stats. None of this bears on the public interest in making the supervisors, with the “toughest job in the state”, the highest paid in the state.

City arguments of structural imbalances cannot hide that it can fund the MPSO offer. Its arguments obscure that the imbalance has been reduced significantly; that the City has never run a deficit; that its finances are on “an upward trend since 2008”; and that the ERS is fully funded. Beyond this, City arguments of low equalized value per capita and low property tax revenue per capita ignore that Milwaukee’s large population pushes the ratios down. The fact remains that the City is \$3.48 million below its levy limit. SSRP funds cover far more of the City’s budgets than its comparables, which is an advantage to the City. City assertion of decreasing property value ignores that the full value of the City is and has consistently been 45.6% of the total value of the County between 2009 and 2013, a period of time where property values declined nationally. The record establishes the City can afford to pay the MPSO offer, but is unwilling to do so.

City use of median household income fails to establish the City has an impoverished tax base. The addition of non-income producers distorts the picture and its use of a median rather than mean household income deflates the amount of income available to fund City services. The assertion that the City’s prudent fiscal management would be discouraged by adopting the MPSO offer lacks evidentiary support and obscures MPSO assistance with reducing costs. City analysis of the WSF obscures that it budgeted for 2.0% increases, but its offer states wage increases which free up at least \$245,144 for the MPSO. Detailed scrutiny of City exhibits reveals errors, significant overstating of comp time costs and a misrepresentation of the flexibility of drawing on various budget sources to fund the MPSO offer.

Awarding the MPSO offer will not generate larger costs based on MPA and Local 215 action. Wage parity “has long since been broken”. Whether the MPA or Local 215 can equal or better the MPSO rests not with the MPSO but with the City’s standing against other municipalities.

The MPSO offer provides only modest catch-up increases, which the City distorts by trying to bring pension contributions into an analysis of base salary. The Greco Award confirms "an established practice" that "catch-up" reflects a wage-only analysis. Beyond this, City assertion that ATB increases need to be factored into a catch-up analysis "also contradicts well-established practices created by past arbitrators." This includes the principle that a need for catch-up demands no *quid pro quo*. In any event, City's arguments on its 2014 ATB increase ignore the fiscal impact of the split increases and the furloughs. City assertion of ten Midwest cities as relevant comparables "goes nowhere". It lacks historical data; provides no rationale for the ten cities selected or the rejection of Chicago as a comparable; fails to provide wage data for two of the alleged comparable cities; and "fails to account for total compensation." The inconsistencies manifested in City use of these comparables preclude granting credence for the City's asserted rankings within those comparables. By contrast MPSO rankings are consistent, persuasive and reliable. In any event, "the MPSO is nowhere near the #1 position it deserves and the need for catch-up is apparent."

City assertions that the MPSO "omitted critical factors in recent arbitrations is a transmogrification of the record." Contrary to the City, MPSO citation of data for Captains was appropriate and warrants arbitral analysis. City concern with the Rice Award ignores that Rice did not specify the comparables he used and, in any event, the assertion of 15 suburbs in Milwaukee County ignores that there are, in fact, 18. The Vernon, Torosian and Greco Awards are consistent in their use of 29 suburban comparables, including the Milwaukee County Sheriff's Department. City failure to recognize the comparables denies the "predictability, stability, and guidance" they provide for the parties' negotiations. This failure "confirm(s) why the parties have had to go to arbitration 4 out of the last 5 contracts as the City fails to consider the MPSO's need for catch-up . . . doesn't accept the identified comparables . . . and presents no need for why furloughs are instituted other than a way of saving money."

City assertion that the size of its police force undercuts the reliability of wage comparisons with smaller units must be rejected. The argument ignores that those comparables, unlike the City, must pay its officers with lesser amounts from the SSRP and that none of the comparables used furloughs. No more persuasive are City characterizations of Klusman's testimony; its treatment of general employees since Act 10; the comparability of general employees to sworn officers; or the significance of bargaining in the 2010-12 agreement that led to making a number of benefits pensionable. Detailed analysis of the City's critique of MPSO exhibits does no more than establish the reliability of their ranking of officers against relevant comparables. City assertions of the wealth of its suburbs are undocumented. Its inclusion of its analysis of MPSO exhibits is irrelevant and an unreliable reading of Madison Teachers.

The City's attempt to undercut the relationship between higher crime rates and higher pay is unpersuasive. MPSO officers endure levels of stress unknown to their suburban counterparts. That the suburbs are willing to pay higher rates for needed protection sets a market rate that the City must pay to retain a competent workforce: "Simply put, it is in the City's and the public's best interest to pay its supervisors #1 or at least in the State's top quarter to attract and retain highly trained and professional supervisors."

Detailed analysis of the City's costing methodology will not support the assertion that the City offers actual cost data where Ward offered only assumptions. The City's "actual costs" somehow manage to ignore nine furlough days and other cost savings. Nor will the City's CPI analysis withstand scrutiny. It fails to state a CPI for that portion of 2012 which it finds relevant here. Beyond this, the CPI analysis is not determinative regarding a catch-up situation. In any event, even if the City's assertion of a 6.45% CPI increase over the relevant period is accepted, it ignores the impact of furloughs as well as the delayed implementation of the City's proposal. To the extent a CPI analysis is necessary, it favors the MPSO's offer.

Viewed as a whole, the record establishes City "past pattern and practices from the 1990's that disguise an unwillingness to pay stance with an inability to pay posture" which "never changes." Arbitrators have consistently improved MPSO wage rankings because "they are underpaid and it is in the public's best interest to do so."

The City's Reply Brief Regarding The Article 9 Base Salary Issue

After a brief introduction, the City contends that its final offer on Base Salary is more reasonable than the MPSO's, and that the MPSO "attempts to evade a proper application of the statutory factor entitled to the most weight." Nicolini's, Finkler's and Weissenfluh's testimony stand as the sole reliable evidence on that factor and, more significantly, stand un rebutted. The only argument posed by the MPSO regarding the application of Sec. 111.70(4)(jm)4w, Stats., is that the City has sufficient funds in its budget to cover the MPSO offer. The argument ignores that "the City's population has declined for years"; that "the remaining residents of the City are now far poorer"; that SSRP funds occupy an increasingly large proportion of the City's ability to fund its operations; and that the City's tax base is increasingly strained.

MPSO claims of ongoing wage erosion dwells disproportionately on furlough days and unpersuasively ignores pension contributions of comparables. That the City ERS contributions are far larger than furlough costs undermines "any facade of reasonableness in the union's offer". MPSO failure to recognize pension contributions means its arguments fail to establish the "real" pay that other supervisors received. In fact, what MPSO exhibits show as pay increases can mask the fact that total pay fell once pension contributions are taken into account. MPSO use of wage-only data similarly distorts its documentation of "the ranking of the largest cities of the state." The City more accurately portrays the total real compensation of supervisors in Appendix A of its brief, which takes data directly from MPSO Exhibit 26. This more accurate portrayal should guide the application of the statute. Beyond this, MPSO data is neither "complete" nor "current" and its assertion that no other comparable furloughed its officers is undocumented.

MPSO contention that it agreed to wage freezes in 2010-11, then was "blind-sided" by furloughs, is misleading. When the parties agreed to the 2010-11 labor agreement, "the MPSO already knew its members were to be furloughed and the union had lost its challenge to the City's authority to furlough at the circuit court level." Nor are furloughs "pay cuts." No officer took a wage cut and no officer went unpaid for hours worked. Rather, they received no wages for hours furloughed. Even though three furlough days amount to 1.15% of pay, it does not follow that the imposition of three furlough days demands that 1.15% be taken off of the City's offer for costing

purposes. Any retroactive pay due the MPSO will not include a 1.15% deduction; and special or premium pay based on hourly rates will not be subject to a 1.15% deduction under either offer.

Beyond this, MPSO reading of past arbitration awards misrepresents their thrust regarding City rankings. MPSO assertion that those awards demand that it be placed first among suburban comparables or in the top quarter of statewide comparables will not withstand scrutiny. More significantly, adopting MPSO arguments regarding furloughs would "neutralize" a "long-standing and bargained contractual right" in spite of a unanimous decision of the Wisconsin Court of Appeals. Accepting the MPSO view of costing would reimburse officers for City exercise of its bargained right to furlough. On balance, the cost of the competing offers supports the reasonableness of the City's. MPSO assertion of essentially two 3% wage increases rests on Ward's flawed costing; the assumption that if there is any money in the City budget available for officers, it must be restricted to them to the exclusion of any other claim for City service; and the assumption that any difference between these parties has no impact regarding the demands of either the MPA or Local 215. The Greco Award will not support the MPSO on these points. His concern with the comparables reflects a far different economic climate from roughly a decade ago and reflects far different salary rankings than those presented today.

MPSO reading of the City budget is particularly troublesome. The assertion that the WSF amply covers the large gap between the offers wrongfully presumes that it is restricted to the public safety units and that it is sufficiently large to fund the \$1.1 million required by the MPSO offer. The MPSO brief exaggerates the "savings" provided by employee payment into the ERS by wrongfully stating the date upon which newly hired police officers will pay into the ERS; by overstating the number of City-employed general employees; and by ignoring that general employees will not be furloughed in 2015. Nor will the evidence support the assertion that the TSF is funded excessively. More accurately, the evidence shows that the fund balance is prudent. The evidence fails to show that making TSF funds available to the MPSO falls within proper budget protocol. MPSO attempt to make use of the 2015 Contingency Fund wrongfully makes operating expenses an "emergency situation". Adopting the MPSO view of the budget would roll back practices that have resulted in improved bond ratings. MPSO arguments regarding the Parking Fund highlight the budget imprudence its "tunnel vision" would cause. No more persuasive is the MPSO analysis of the CPI. Ward's analysis wanders outside of statutory parameters. In any event, the CPI factor is statutorily less significant than City economic conditions.

The "intangibles" discussed in the MPSO brief overlook significant facts. The City dwarfs suburban comparables in size. The City "compensates its supervisors more generously than the next *five* largest cities in the state" even without regard to pension contributions. There is no evidence that the City has difficulty recruiting or retaining supervisors. MPSO concerns regarding City provided training are not "new or noteworthy." Not all MPSO members offer such training, which does not warrant a pay increase anyway. The record regarding internal investigative processes in comparable units is too muddled to warrant any conclusion regarding MPSO pay. Regarding changing duties, the evidence shows no more than that MPSO officers have come to use more advanced tools over a larger expanse of time than that covered by the agreement at issue in order to provide a constant level of service. Officer numbers and crime frequency fluctuate over time. In any event, the linking of pay to such fluctuations is more ethereal than the MPSO arguments

acknowledge. If crime rates go up, should pay increase because the demands grow? If the rates go down, should officer pay go up because they have been successful, or down because work demands fell? In any event, there is no reliable data that cities with high crime rates pay better than less crime-ridden, but wealthier, neighbors. This is not to diminish police efforts to do "more with less." Rather, it reflects an across the board reality, which falls short of justifying MPSO wage demands.

Contrary to its arguments, MPSO contentions regarding the "stress" and "extra work" traceable to furloughs boils down to dissatisfaction for the loss of pay for the days not worked. The arguments obscure that furloughs were scheduled in widely separated pay periods to minimize stress and extra work. If MPSO arguments are credited on their face, it is not evident how the City manages to staff regarding vacation and other paid days. Employees have a contractual right to paid time off and the City has a right to furlough where circumstances require. There is no qualitative difference pointing to added stress or workload. The absence in pay is evident, but that is not the point the MPSO seeks to make.

Ultimately, the parties' conflicting final offers have "to be evaluated in their full context." MPSO concerns regarding pay lost to furlough days must be weighed with their failure to acknowledge the cost of pension contributions. MPSO arguments are flawed by the "tunnel vision" they manifest. Focusing on the need to raise MPSO pay due to City goals to "assure safe neighborhoods" ignores that those neighborhoods demand funding in other areas: infrastructure improvement such as street improvement or increased lighting; blight remediation; increased building inspection to enforce code violations; "and a host of other City-funded programs." The City's DPW plays a role through refuse collection as well as through the street cleaning and snow plowing that make police patrol possible. The City's Health Department and Public Library system impact resident health and safety no less, if more subtly, than law enforcement.

Beyond this, the MPSO attempts to put "none too subtle pressure on the arbitrator" by warning against issuing the first award permitting erosion in MPSO rank. The assertion is misplaced. Neither Rice nor Torosian approved the MPSO offers. Greco did, "in a context far different than exists today." Putting aside the recession's impact, that award, nearly a decade old, viewed lower wage rankings and lesser pension contributions than those posed here. Paying attention to the statutory factors now presented as well as the "vulnerable financial circumstances of the City", the "totality of the statutory factors favors an award of the City's final offer."

DISCUSSION

Sec. 111.70(4)(jm), Stats., states a process known as "wide open" interest arbitration, in which an arbitrator is neither bound to select one or the other final offer in its entirety nor to select one or the other of the final offers on each specific issue presented. Rather, it authorizes an arbitrator to, "Set all items of compensation, including base wages . . . pension programs, including amount of pension, relative contributions, and . . . eligibility conditions" under Subsection 4a.

The parties narrowed their dispute to economic items, addressing the bulk of their arguments to the Base Salary issue of Article 9. In my view, the Pension issue is the necessary preface to the Base Salary issue.

The Pension Issue Of Articles 14 and 15

The arguments on this issue foreshadow themes swirling around the Base Salary issue, including the impact of prior arbitrations, comparables, parity and the effect of this proceeding on the other protective service units. The Pension issue reflects the greatest persuasive force of MPSO arguments. This cannot obscure that those arguments virtually ignore Sec. 111.70(4)(j)m)4w, Stats.

More specifically, the Pension issue skirts the tension between the Subsection 4w greater weight factors and the traditional factors applied under Subsection 5. The City brought the issue to the table late, due to tumult surrounding Acts 10 and 32, including the litigation of a declaratory ruling. It is evident the City's proposal has yet to be discussed in depth. Whether or not in-depth bargaining can resolve the issue, it is essential that the parties exhaust bargaining prior to a resolution through arbitration. The MPSO understandably questions the wisdom of applying this change to its members ahead of the larger MPA and Local 215 units. It forcefully argues that past difficulties in benefit changes highlight the risk of its being saddled with a pension change not yet applied to the larger units, particularly the MPA. The end result, it argues, can only be a disincentive for police officers to promote. These objections have force, but pale in significance to the need for this matter to be thoroughly bargained.

More significantly, ERS pension represents a unique benefit, uniquely tailored to the City. The delay in resolving the 2013-14 agreement has been accompanied by City efforts to ameliorate the effects of the recession on the ERS. On the broadest level, a pension benefit, unlike a base wage rate, is tailored not just to recruit, but to retain, officers. More specifically applied to the City, the unique structure of the pension, including its "early out", recognizes that the nature of the work demands placed on City protective service officers can be expected to wear them down earlier than general employees or, presumably, than other protective service employees working in less demanding settings.

Beyond this, City concern with its ability to fund protective services on its property tax base points to the significance of the ERS pension benefit. The Stable Contribution Policy confirms prudent ERS management. The policy is expected to return the ERS to the greater than 100% funding levels the ERS sets for itself. The prudence of this effort, in light of retirement funding on a national level, is noteworthy. That contributions will be made without regard to market returns underscores the underlying prudence. More to the point, the absence of City contributions between 1995 and the 2010 budget highlights the significance of the ERS benefit. For that period, the pension fund did not draw on City funding in the fashion that wages inevitably must, due to the availability of market returns to the ERS. Markets need not inevitably rise, as the Stable Contribution Policy recognizes. This cannot obscure that the ERS has access to funds, generated by market returns rather than by the SSRP or by property tax. This means a level of caution is necessary regarding the ERS benefit that is not necessarily appropriate to Base Salary. As is evident from Finkler's, Nicolini's and Weissenfluh's testimony, the City cannot compete well against municipalities with a wealthier per capita tax base. This is particularly true of wages, which rest on the SSRP and the property tax to a degree the ERS does not. This highlights the significance of the ERS as a means for the City to attract and, perhaps more importantly, to retain officers in spite of the work demands placed on them.

Argument regarding how a *quid pro quo* analysis should apply to this issue is better left to the Base Salary issue, and specifically to whether this benefit must be considered regarding the asserted need for a catch-up raise. The Pension issue thus prefaces the Base Salary issue. Beyond this, *quid pro quo* arguments are secondary to the need for meaningful bargaining prior to a request for a change in a bargained benefit through arbitration. Only after meaningful bargaining is it possible to evaluate what, if any, *quid pro quo* is appropriate to a requested change in benefits.

More specifically applied to this issue, under any view of the statute or of prior arbitrations between the parties, caution is necessary regarding an arbitrator's alteration of bargained benefits, see e.g., DEC. NO. 25223-B AT 12. Here, the evidence fails to show that the parties have exhausted bargaining on the need for, or the reasonableness of, the proposed change. Lack of detail regarding these points is noteworthy, particularly as compared to the Base Salary issue. That the benefit is fully funded and is uniquely tailored to the retention of MPSO represented officers cautions against changing it in the absence of a demonstrated need. City fiscal concerns have more persuasive force regarding the Base Salary issue than the Pension issue. Against this background, the City's Pension proposal is unpersuasive and the 2013-2014 labor agreement will not include it. This leaves the "status quo" from the 2010-12 argument to continue in the 2013-14 labor agreement, with any needed "housekeeping" changes.

The Article 9 Base Salary Issue

This issue is the focus of the parties' arguments. Their breadth and depth require some focus to bring them within the ambit of the statute. Subsection 4w of Section 111.70(4)(jm), Stats., read together with Subsection 5, make the "proper compensation" for MPSO represented officers the determination necessary from arbitration. Subsection 4w states the "economic conditions" in the City are entitled to "greater weight" in reaching this determination than the cost-of-living considerations noted in Subsection 5a and 5b. As the parties note, past arbitration decisions bring traditional factors, including comparability, to bear with and on the considerations authorized by these subsections. As the City notes, Subsection 5a refers to an index not maintained by the BLS since 1982, as confirmed by CITY OF MILWAUKEE, DEC. NO. 24936-B (KERKMAN, 11/88).

The MPSO devotes little attention to Subsection 4w. It urges Subsection 5, bolstered by prior arbitration awards, offers the most persuasive guide. The MPSO adds that City failure to recognize the 1.15% annual impact of the 2013 and 2014 furlough days underscores the weakness of its offer. The City counters that it faces pressing and ongoing fiscal issues grounded in the "greater weight" criterion, adding that MPSO unwillingness to value City ERS contributions underscores the reasonableness of its final offer.

Ultimately, the tension between these subsections is the basis of the dispute and the ground on which it must be resolved. As preface to that, it is necessary to touch on the comparables the parties cite, for they impact both subsections.

The parties generally agree that, beyond the City's protective services units, some group of national comparables, coupled with the Metropolitan Milwaukee Group and Wisconsin's Largest Cities group, set the relevant comparisons. Perhaps the best observation on comparables was that

of Arbitrator Torosian, who noted, "it is apparent that the parties are in constant disagreement over what cities constitute the appropriate comparables as it relates to Milwaukee law enforcement personnel" DEC. NO. 32859-A AT 15.

The City urges that a group of Midwest cities relatively close to Milwaukee, but not including Chicago, establishes the only helpful national data. The MPSO cites the Vernon 18, as applied originally and as modified by the 2010 census, as the relevant national comparables. Torosian used both parties' national groups, but his updated Vernon 18 does not line up with the 2010 update. In any event, as Torosian confirmed, Greco used both the Midwest and Vernon 18 groups, and, as he added, "Greco did not favor one over the other" DEC. NO. 32859-A AT 17. Beyond this, it should be noted that Greco relied on the national comparables particularly regarding evaluation of pension contributions on total compensation. More to the point, as Torosian confirmed, most arbitrators follow external comparables, once established in a bargaining relationship, absent "sufficient change in circumstances to warrant a change" (DEC. NO. 32859-A AT 16). This reflects that whatever guidance they offer is rooted in the consistency of their use. Thus, Torosian used the comparables used by Greco, as do I.

Although these groups of comparables have varied over time, they guide the analysis here. This should not obscure that use of the national group is problematic. The MPSO asserts that the appropriate analysis for the national comparables is wage-only, and the City finds them unreliable even on that limited point. The Vernon Award set out the original Vernon 18, to provide "a national group of similarly sized cities" which would afford a "manageable and more meaningful" (DEC. 26109-A AT 38) guide than the top 100 cities nationwide. It is evident that the group has become less manageable. Whether the Vernon 18 should be applied as originally set or as modified by the 2010 census highlights how diffuse the guidance is that large groups of comparables can offer. More to the point, examination of the Torosian and Greco Awards demonstrates that each paid more attention to City protective service units, the Metropolitan Milwaukee Group and the Wisconsin Largest Cities Group than to any national group. It is also evident that comparison to Wisconsin jurisdictions, particularly the City's suburban neighbors, motivated MPSO leadership in their analysis of comparables and in their setting a bargaining priority for catch-up increases. The comparison of their work to their suburban and state-wide peers is a primary concern in the evidence. Beyond that, City use of furloughs dominates much of the MPSO arguments. That the City typically promotes from within the MPD highlights the local focus. Against this background, the metropolitan, state and internal comparables bear most heavily on this record, with the national comparables playing a limited and supportive role.

The role of parity in a comparability analysis has dominated past decisions, emphasizing the significance of internal comparables regarding wage and benefit analysis. They also provide a compelling view of the history of this bargaining relationship, but afford little guidance here. Whether or not the Greco Award broke the parity relationship, the plain fact is that the MPSO is in the arbitration process while the larger units are not. There is no evidentiary basis in this record on which to apply base wage or total package parity.

The evaluation of the strengths and weaknesses of each offer is clouded by the data supplied. The parties' data sets, even regarding years in which salary is not in dispute, do not match. This

makes it impractical to summarize dollar figures in comparative rankings, since there are different figures for each rank at each year for each comparable. Base Salary thus turns on rankings, as reported by the parties. Use of rankings reliably tracks wage trends, if at the cost of specificity in the underlying dollars.

The sheer bulk of the data makes it impossible to address all the strengths and weaknesses of the final offers. To make the discussion possible, I will focus on the dominant themes of each final offer and highlight some of the data supporting it.

The MPSO case is rooted in its view of a history of erosion in MPSO wages, which needs to be rectified by a catch-up increase and which must be evaluated against the singular demands placed on City police supervisors. The history roots in Subsection 5, and dates from the Rice Award, where he noted:

The Employer . . . points out that when its proposal is factored into the salary rate, the wage rate for its sergeants would rank second among the 16 largest police departments in Wisconsin and its lieutenants would rank first. The Employer asserts that its proposal would place its sergeants pay rate second among the 15 suburbs and sheriffs department in Milwaukee County, and its lieutenants would rank second in 1987 and first in 1988. DEC. NO. 25223-B AT 5.

The MPSO notes that Sergeants fell to a rank of 20 and Lieutenants to a rank of 9 for 2010 in the Metropolitan Milwaukee Group, while Sergeants fell to a rank of 7 and Lieutenants to a rank of 5 for 2010 in the Wisconsin Largest Cities Group. This general slide was recognized in the Greco Award and underscored in the Torosian Award where he noted, "nothing has changed since Greco's Award regarding catch-up" DEC. NO. 32859-A AT 24. Under a wage-only view, the City's offer would lead to a loss of rank for Sergeants in the Metropolitan Milwaukee Group in 2014 (viewed from 2009 or earlier), and would preserve Lieutenants at a rank of 6. Costing furlough days at 1.15% exacerbates the dollar differences and further erodes the rankings. Viewing the data against the Vernon 18, whether or not modified for the 2010 census, highlights the erosion. This erosion is significant because MPSO officers work under the most demanding conditions statewide and deserve to be wage leaders.

The dominant theme of City lines of argument is also historical, but rooted in Subsection 4w. Drawing on Nicolini's, Finkler's and Weissenfluh's testimony, the City contends that its high level of poverty produces low income per capita which, combined with low equalized property value per capita, leave a poor tax base from which to levy. Its effective tax rate is thus higher than virtually any comparable. Its population places higher service demands on it. With SSRP declining in real terms, the City is driven to more reliance on its property tax base. Even though it has restructured through self-funding insurance costs; eliminating FTE positions; and adopting the Stable Contribution Policy, its expenditures push ERP limits and restrict its ability to compete with comparables having a stronger property tax base. Its service demands coupled with its funding sources place it in a vice, squeezed in a way no comparable can match.

Each party's dominant theme has force but poses a significant flaw. As preface, the record confirms the demands placed on City officers. There is no dispute their work is demanding in ways few, if any, of its comparables can routinely match. This establishes the validity of MPSO desire to make its officers number 1 among the comparables. However, the litigation point is "proper" compensation under Subsections 4w and 5 of Sec. 111.70(4)jm, Stats. Neither final offer puts MPSO officers at a number 1 rank, nor did the cited awards. Stripped of the well-stated rhetoric of the parties' arguments, the statutory issue remains the constant and driving force of this proceeding.

Minor difficulties within the MPSO historical view warrant some note. The difficulty with the data is troubling. The Greco Award states the MPSO offer would rank Sergeants among "the suburban jurisdictions" at "nineteenth out of 28 or seventeenth out of 29" in 2006 (DEC. NO. 32301-A AT 18). MPSO exhibits put that rank, in 2006, at 16. This highlights the difficulty of moving with confidence within the sea of data. More significantly, the Rice Award does not afford the MPSO a firm footing regarding its starting point. Rice did not specify the individual municipalities he used for comparison purposes. The MPSO draws the conclusion that Sergeants ranked second based on the City's stated position as reported by Rice. However, Rice also reported that the MPSO argued the existence of "*at least* two police departments in the metropolitan Milwaukee area in which the sergeants receive higher wages than the Employer pays its sergeants" (DEC. NO. 25223-B AT 8, emphasis added). Thus, the reference point for the number 2 rank is murky.

Nor can it be said that the MPSO view of that award is complete. It urges the Greco Award requires a wage-only analysis. This is accurate to a point. Greco restricted his review to wage-only data in order to track the asserted wage erosion over time. He viewed this as the necessary base on which to determine whether loss of rank in wages had been proven and whether it was sufficient to break parity within the protective services units on wage rates. He notes this determination was, "a separate question" to "where this unit now stands when total compensation is measured" (DEC. NO. 32301-A AT 27). MPSO arguments obscure the distinction, as highlighted by Greco's statement that, "total compensation must be used in ascertaining where employees stand *vis-à-vis* their comparables." *Ibid.*

MPSO assertion of a wage-only analysis is thus accurate, but incomplete. Viewed as a whole, the Greco analysis confirms the need to assess the City's economic conditions to fully assess final offers:

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 2004-06 agreement. DEC. NO. 32301-A AT 23.

The Torosian Award confirms this view: "the Arbitrator agrees with the City that its economic and financial condition must be taken into consideration in determining the merits of the parties' positions" (DEC. NO. 32859-A AT 29). Similarly, the Vernon Award confirms that "base wages cannot be singled out as a measuring stick . . . (t)otal compensation must be considered and given significant weight" DEC. NO. 26109-A AT 40. Thus, the MPSO wage-only analysis is not supported in prior awards.

More significantly, the MPSO wage-only view ignores the full cost of its offer, and thus fails to address the impact of Subsection 4w. This is the fundamental flaw in its case. None of the cited arbitration awards had to address that subsection. This should not obscure that even though Subsection 4w did not then exist, the Greco and Torosian awards each note the significance of City "economic conditions" in the evaluation of the final offers. Failure to account for City pension contributions undermines the persuasive force of MPSO documentation of its need to catch-up, because it is inconsistent with prior awards and irreconcilable to Subsection 4w. Discussion of the Pension issue above highlights the significance of this flaw, because the MPSO offer ignores the availability of market returns to ease ERS funding, and instead focuses on wages, which draw from the SSRP and the City's problematic property tax base. Even if pension dollars can be generated from market returns, the fact remains that funding the pension from City dollars, prior to their investment, is a draw on the same sources that fund wage increases.

Beyond this, the record posed regarding the wage erosion noted in the Greco and Torosian Awards paints a more mixed picture on this record than the MPSO acknowledges. Under a wage-only view regarding the Metropolitan Milwaukee Group between 1991 and 2012, Sergeants fell to a rank as low as 20 in 2010; Lieutenants fell to a rank as low as 12 in 2002; and Captains fell to a rank as low as 8 in 2011. For this group, the City offer puts Sergeants at 9 in 2014, while the MPSO's would put them at 7. Both offers put Lieutenants at 6 in 2014. In 2014, the City offer puts Captains at 6, while the MPSO offer puts them at 5. For the Largest Wisconsin Cities group over the period between 1991 and 2012, under a wage-only view, Sergeants fell to a rank as low as 7 in 2010; Lieutenants fell to a rank as low as 6 in 1998; and Captains fell to a rank as low as 5 in 2011. For the Largest Wisconsin Cities group, both the MPSO and City would put Sergeants at a rank of 3 in 2014. Both offers would put Lieutenants and Captains at 4 in 2014.

Even though progress in ranking is evident in a wage-only view, consideration of pension contributions notably impacts them. Viewed against the Metropolitan Milwaukee Group, adoption of either offer moves Sergeants to a rank of 5 in 2014. Adoption of either offer puts Lieutenants at a rank of 4 in 2014. Regarding the Wisconsin Largest Cities Group, consideration of pension dollars puts Sergeants, under adoption of either offer, at a rank of 2 in 2014. Adoption of either offer puts Lieutenants at a rank of 3 in 2014. The parties did not provide this type of data for Captains.

MPSO focus on a wage-only view of the Base Salary issue undermines the persuasive force of its view of the City budget. At a minimum, the assertion that loss of wage steps by general City employees, coupled with increased ERS contributions can generate savings to fund the MPSO offer is a cold view of the loss of those employees' bargaining rights. More to the point, the view is not reconcilable to Subsection 4w, which demands recognition of the "economic conditions" of the City. It is unpersuasive to assert those "conditions" can be evaluated on only some of the City's costs. The assertion that the City's move to a self-funded plan generated savings available for the MPSO is similarly flawed. Viewed more objectively, the "savings" are a decline in the escalation of premium rates from the period when insurance was provided by a third party. Absence of any MPSO acknowledgment of the risk assumed by the City's stepping into the shoes of a third party insurer is noteworthy. Nicolini testified the City bore "all the risk". Whatever the level of stop-loss insurance, if any, the risk is substantial, if difficult to measure. Under no persuasive view can it be considered a pool of money freely available for expenses unrelated to insurance.

This does not refute the MPSO view that the City can fund its offer. The City does not argue that it cannot. Thus, "the issue before the Arbitrator remains, which offer is more reasonable when all factors are considered." That statement, from the Torosian Award (DEC. NO. 32859-A AT 27) does not refer to Subsection 4w, but is accurate. Although MPSO arguments regarding that subsection's application to its historical analysis is limited, it forcefully challenges the City's historical analysis, which poses "past pattern and practices from the 1990's that disguise an unwillingness to pay stance with an inability to pay posture" which "never changes."

The City's historical view traces a decline in the manufacturing base, leading to unemployment and to job creation at lower wage rates. Property values declined while poverty grew. The MPSO cautions that the City paints a bleak picture to highlight its bargaining posture, adding that the bleakness is contradicted by the Mayor's upbeat budget message. This cannot obscure that the evidence confirms Finkler's view that "the City of Milwaukee comes out as relatively poor and relatively higher taxed compared to . . . whichever set of cities that happens to show up" (Tr. at 456). The City's high rates of families living under the poverty line, its low median household income, and its low per capita income underscore this. Finkler's and Weissenfluh's surveys show poor rankings in full value per capita and high rankings in effective tax rates. Juxtaposition of high ranks for households including children aged under five with low ranks for households aged 65 and older points to a growing concentration of households unable to flee high effective tax rates and a declining concentration of households better able to fund and to flee them. Decline of SSRP funding pushes the City onto its comparatively highly taxed residential property owner. The weakness in per capita value of that tax base means that the burden to cover expenditure increases, even if held at or below the inflation rate, grows disproportionately in the City as compared to wealthier municipalities. MPSO assertion that SSRP funds nearly cover the MPD budget has force, but is ultimately unpersuasive. The funds apply to departments beyond the MPD. They draw money into the City from sources other than the property tax and City tax payers. The money is not, however, free or a clear advantage to the City. SSRP levels have been declining and bring with them State control. Political winds shift, and City reliance on SSRP inevitably brings funding risks that do not have to respond to City need or to City control.

The final piece of this theme is City costing. City use of actual costs is preferable to Ward's costing rubrics. There is nothing wrong with Ward's analysis, since he consistently applies his methodology to both final offers. However, given City emphasis on the weakness of its funding sources and the demands of the "greater weight" factor, the availability of actual costs is an advantage in assessing the offers. That the dispute can be reliably measured at \$1,088,210 is a luxury in assessing the City's "economic conditions." Beyond this, Fleck's work regarding the CPI analysis required under Subsection 5 bears note. Her display of the offers against a July/June year directly addresses the need to evaluate the offers against "(i)ncreases in the cost of living as measured by the average annual increases" in the BLS-CPI "since the last adjustment in compensation for those members", see also DEC. NO. 25223-B AT 6; and KERKMAN, DEC. NO. 24936-B AT 15. The table she created supports favoring the City's offer against CPI increases.

However, that table also points to the fundamental flaw in the City's arguments, which mask "unwillingness to pay" as "inability to pay". CPI and comparability analyses inevitably use costing rubrics. More specifically, the parties' wage comparisons turn on end rates, which are not earned

by every unit member. Beyond this, the parties use the "lift" of split increases to indicate cost. In the second year of the City's offer, a 1% raise is paid mid-year. For 2014, the mid-year increase "lifts" the end rate a full percent. However, its "cost", for that year, is 0.5%. This bears directly on the evaluation of the offers. Fleck's CPI table displays "lift", not "cost". In the absence of actual cost, the CPI analysis suffers. The CPI reflects full year costs, but split increases do not generate full year payments. This shows up as decreased retroactive pay in an actual cost analysis, but use of lift without cost is incomplete and inflates the City offer against the CPI.

More significantly, the City's actual cost analysis ignores furlough days. Ward's costing reflects this, using a discount factor of 1.15%. Even if the City is correct that his discount is inflated, it ignores that the City does not use any discount factor. This inflates the cost of its offer against the MPSO's in each year and against any comparable that did not impose furloughs. City assertion that it can legally furlough has no bearing on this. The MPSO asserts the furloughs were punitive. Whether or not they were has no bearing here for the same reason. An interest arbitrator has no jurisdiction to address the legality of either point. The statute, however, demands a weighing process driven by analysis of cost.

That furloughs cost 1.15% per year presents another costing rubric. It is impossible to gauge their actual cost here. Were officers on furlough uniformly replaced? Was overtime involved? Does the discount reflect the impact of higher rates on retroactive pay? The difficulty of generating actual costs is difficult to overstate. Beyond this, furloughs pose broader issues. Nicolini testified the alleged 2009 budget "surplus" reflects the cost of implementing the Stable Contribution Policy. In his view, this budgeting, with the furloughs, made it possible to buttress the ERS without resorting to layoff. This underscores the difficulty of budget analysis.

In any event, absolute precision on costs is not determinative here, because this matter concerns the unwillingness, not the inability, of the City to fund the MPSO offer. This should not, however, obscure the difficulty with City arguments that treat furloughs as if they had no fiscal impact on MPSO officers. This is irreconcilable to Subsection 5, as underscored in the Torosian Award, where he noted, "a two-day furlough . . . really translates to a pay cut" (DEC. NO. 32859-A AT 28). City failure to consistently apply actual costs undermines its budget analysis. The City appropriately points out that the MPSO treats all unencumbered fund balances as if they were available for MPSO use. This ignores the complexity of competing demands made on the City for a limited pool of resources. Regarding the WSF, however, the issue becomes closer. The City highlights that those funds are not the property of employees generally or of the protective services specifically. It can be granted that actual wage increases beyond 2012 were undetermined. However, faced with MPSO analysis of what portion of the WSF should be considered appropriate for the MPSO, the City abandoned any use of actual cost methodology.

In sum, the City's case poses a fundamental flaw regarding its presentation of cost. The flaw is to use actual costs to assess the parties' offers regarding the City's economic conditions while ignoring them regarding the impact of CPI increases and regarding the comparison of its offer to other municipalities.

Each flaw is fundamental. Acceptance of either final offer in its entirety fails to weigh Subsections 4w and 5. Acceptance of either reads one subsection to the elimination of the other. MPSO focus on wage-only rankings has some support in the Greco and Torosian Awards, and thus in Subsection 5. However, this support cannot obscure that the MPSO reads Subsection 5 to eliminate consideration of pension costs. This makes it impossible to fully assess its offer against City economic conditions under Subsection 4w. Acceptance of the City final offer as a whole does not offer a reasonable alternative. The proposed Pension change shows no demonstrated need and was not accompanied by meaningful bargaining. Having demonstrated that pension costs are a necessary factor in the application of Subsection 4w, the City neglects to use actual costs regarding the furlough days or to value their split increases against the CPI or the comparables. This eviscerates Subsection 5, thus defeating the weighing process under Subsections 4w and 5. Lift can be considered under Subsection 5, but actual costs must be considered or there is little to “weigh” in the determination of “greater weight” under Subsection 4w.

As confirmed in the **AWARD** entered below, I have not adopted either party’s final offer on the Base Salary issue. The discussion thus turns to how to read the subsections in a manner that permits each to have meaning in the statutory weighing process.

The analysis starts with the Pension issue. As noted above, the benefit is uniquely tailored to this unit and its preservation imposes significant costs. The City’s proposed modification is prospective, but ERS costs have a bearing on the application of Subsection 4w. More specifically, consideration of City contributions ameliorates the erosion in rankings that the MPSO documents on a wage-only basis. As noted above, MPSO officer rankings improve when those contributions are accounted for.

The impact can be seen regarding the ATB increases provided by comparable municipalities which maintained full payment of the employee share of the pension benefit. Drawing from City exhibits displaying those increases, the impact can be viewed thus:

Metropolitan Milwaukee Group & Wisconsin Largest Cities Group: ATB % Increase Where Employer Pays Full Employee Share of Pension				
<i>Sergeants</i>				
<i>Lieutenants</i>				
Jurisdiction	1/1/2013	7/1/13	1/1/2014	7/1/2014
Brookfield		2.50 2.50		2.50 2.50
Germantown	NA 0.00	NA	NA 2.00	NA
Menomonee Falls	2.00 2.00		2.00 2.00	
Racine	1.00 1.00		2.00 2.00	

Drawing from City exhibits, the mean ATB for the entire Metropolitan Milwaukee Group (excluding the City) for Sergeants was 2.42% in 2013 and 2.50% in 2014. For Lieutenants, the mean was 2.17% in 2013 and 2.26% in 2014. For the entire Wisconsin Largest Cities Group (excluding the City), the mean ATB for Sergeants was 2.42% in 2013 and 2.73% in 2014. For Lieutenants in that group, the mean was 2.11% in 2013 and 2.71% in 2014.

Including the City, only 5 municipalities within the combined comparable groups continued to pay the full employee share. The deflationary impact on the ATB increase is notable, particularly regarding the mean for the comparable groups treated separately. This presumably reflects the *quid pro quo* offered for decreasing or eliminating employer payment of the employee share.

The AWARD tracks the Brookfield increases. This reflects the numbers involved rather than the relationship between the municipalities. More specifically, it reflects the numbers balance the application of Subsections 4w and 5 that in a way the final offers do not. The statute permits an arbitrator to "set" compensation. In my view, the prudent course is to stay within the comparables.

At a minimum, the comparable ATB increases of those municipalities choosing to continue full payment represent an objective view of the value of maintaining full employer payment of the employee pension share. The Brookfield numbers are close to the City proposal in lift. Over two years, the lift exceeds that offered by the City by 0.5%. Racine is a closer comparable to the City in the sense that it shares with the City the funding issues faced by a city experiencing the economic forces accompanying a decline of a manufacturing base and the growth of an urban core subject to decay. Finkler's analysis underscores this, as does Weissenfluh's. In my view, this would make Racine a prime comparable for a Base Salary comparison with the City. The cost of the City's Base Salary lift compares to Racine's. However, my reading of the evidence is that the parties are accustomed to the use of lift to address issues of rank within the comparables. On that basis, Brookfield's numbers are more suited to this record than Racine's. The total lift affords some cushion against erosion, as well as some enhancement, in ranking. Beyond this, the added un compounded lift; whether it be the 0.5% between Brookfield's numbers and the City's, or the 2% between Brookfield's and Racine's; is not excessive given that no other comparable which chose to continue full payment of the employee share of pension used furloughs. More to the point, the 3% un compounded lift in Racine is less than the cost adjusted lift proposed in the City's offer, as calculated by Ward. It may not be possible to precisely cost the furloughs and it is not appropriate to use interest arbitration to reimburse the MPSO for City exercise of a legal right. However, some measure is necessary to address the unaccounted-for cost of the furloughs. Use of the Brookfield numbers provides a means to do so that the Racine numbers cannot. If this is economic surgery, it may well be an operation by scissors rather than by scalpel. However, it affords a way to account for the costing gap between the City and the municipalities which did not furlough.

The major disparity between the MPSO wage proposal and that of comparables which pay the employee share reflects how the wage-only approach distorts the review of economic conditions required by Subsection 4w. The small number of comparables which made this choice speaks for itself. No other municipality which pays the employee share of pension comes close to the MPSO offer, which demonstrates that the 2.9% annual lift is sufficiently excessive to make it unacceptable. It generates an un compounded 0.8% above the Brookfield numbers in wage lift, but an

uncompounded 3.3% in wage cost. Beyond this, MPSO data indicates erosion has not necessarily affected the ranks in the same way. A unit-wide ATB does not target increases to the ranks most affected or to officers within those ranks whose qualifications may have been disproportionately affected. This complicates total cost considerations for the City, as a general ATB translates easily throughout the protective services units. This is not inherently bad, but is difficult to reconcile with MPSO concern to be first into the process. For example, a general ATB spread across both law enforcement units could complicate MPSO concern with the differential between supervisors and officers. In any event, this proceeding focuses on the MPSO. Whether it sets a pattern is debatable, cf., the Vernon Award, DEC. NO. 26109-A AT 28 ET. SEQ. The ultimate point here is that the MPSO has not shown how its ATB lift can be reconciled to Subsection 4w.

This is not to say the MPSO offer has no persuasive force. However, its force turns on past awards, and more significantly, on the City's offer, which is burdened by its Pension proposal. If the choice was between either offer viewed as a whole, the choice would be troublesome, because each poses a flaw that undercuts the balancing process demanded by the statute.

Use of the Brookfield numbers brings a balance neither final offer brings on its own, and avoids the unneeded conflict the parties' offers pose between Subsections 4w and 5. The Brookfield numbers reduce the City's in-year, actual wage costs in 2013 and 2014 compared to its own offer. This is a function of the use of figures within the established comparable group. This should not obscure that the City offer makes its split increases in 2014 a *quid pro quo* for the pension change it seeks. That change has been rejected and with it the wage proposal. More significantly, use of the Brookfield numbers reflects the importance of the Pension issue and the context of this bargain. The following passage from the Rice Award (DEC. NO. 25223-B AT 12) concerning the then-existing bargaining context prefaces this point:

The firefighters had to give up benefits that they had achieved in the past through collective bargaining in order to justify the wage increases they received and which have been awarded to the Union . . . the arbitrator is satisfied that there must be some take backs in the way of benefits as a *quid pro quo* for . . . wage increases . . .

Rice addressed parity in the award, but is cited here for his insight into bargaining. More specifically, Rice noted the inevitable tug between wage and benefit levels. The bargain posed here is for an expired contract. The MPSO push on a wage-only analysis under Subsection 5, coupled with its unwillingness to recognize City economic conditions under Subsection 4w, puts the pension benefit at unnecessary risk. Even if the Brookfield numbers are long in lift and short on cost, they reduce the incentive for change in a benefit uniquely tailored to this unit. This disincentive, stated in the terms of Subsection 4w, reflects the "greater weight" due the City's economic conditions. If the parties view the value I ascribe to the Pension issue to outweigh its value against the Base Salary issue, they will be in bargaining soon enough to address it. Rejection of the pension change coupled with the Brookfield numbers provide a stable base for future bargaining.

In conclusion, maintenance of the status quo regarding pension in the parties' 2013-14 labor agreement, coupled with 2.5% wage increases, on July 1, 2013 (PP14) and on July 1, 2014 (PP14), maintains or improves City standing under factors applicable under Subsection 5, at a cost that can

be supported under the City's current economic conditions, given the greater weight due them by Subsection 4w. With consideration for the ERS benefit, this roughly holds or improves City standing against relevant comparables while preserving a benefit uniquely tailored to retain officers facing the most demanding work, on a day in day out basis, of the comparables.

It is impossible to address all the parties' arguments, which turn on the major themes noted above. Those themes pose fundamental policy issues regarding how to match the social "value" due law enforcement duties with the economic "value" the public can afford them. The tension within these components of "value" is constant. Virtually every arbitration between the parties notes that the demands placed on MPSO officers warrant a number 1 ranking. Perhaps inevitably, this is juxtaposed with an explanation of why that rank has, may or will prove elusive. The tension is fundamental and thus never "solved", but simply "resolved" for the duration of an agreement. The record demonstrates high service demand areas are seldom high wealth areas, thus creating the anomaly that the hardest work and the highest pay have difficulty finding each other. The Award cannot solve that anomaly, but applies the weighing process required by Sec. 111.70(4)(jm), Stats., to resolve the parties' dispute for the duration of an agreement for 2013-14 by the following

AWARD

1. The City's proposal to amend "Articles 14 and 15 – Pension" shall not be included within the new (2013-2014) agreement.
2. Neither the City's proposal nor the MPSO's proposal regarding Article 9, Base Salary shall be included within the new (2013-2014) agreement.
3. Article 9 – Base Salary shall include within the new (2013-2014) agreement across-the-board increases of 2.5% effective July 1, 2013 (PP14); and 2.5% effective July 1, 2014 (PP14).



Richard B. McLaughlin, Arbitrator

April 29, 2015