

September 7, 2004

To the Honorable
Committee on Judiciary & Legislation
of the Common Council
Room 205 – City Hall

Re: *Pasko, et al. v. City of Milwaukee, et al.*
Case No. 98-CV-009353
CCFN 040478

Dear Committee Members:

Enclosed please find a substitute resolution recommending settlement of the *Pasko* lawsuit.

This case arose out of a dispute that began in 1986 when the City stopped promoting police officers to the rank of Police Alarm Operators, a position that paid higher wages than that of police officer. Instead, the City appointed police officers to under fill the positions. The police officers were assigned to do the work of Police Alarm Operators, but were not paid at that rank. In 1993, police officers, working as Police Alarm Operators on an “underfilling” basis, began receiving special assignment pay, which was equal to that of a Police Alarm Operator, but was not pensionable. The affected officers filed suit and in 1998, the Court of Appeals held that the City’s action violated the City’s collective bargaining agreement with the Milwaukee Police Association. The first *Pasko* lawsuit will be referred to as *Pasko I*.

In 1998, after *Pasko I* had been decided, the City began appointing civilian dispatchers to positions formerly held by Police Alarm Operators and police officers underfilling those positions. The MPA and affected police officers filed a lawsuit that challenged the City’s hiring of civilian dispatchers. (*Pasko II*) The Circuit Court dismissed *Pasko II* on the ground that the suit was barred by the decision in *Pasko I*. The Court of Appeals reversed the Circuit Court and held that the affected officers should be promoted to the position of Police Alarm Operator, and that the pensions of affected officers who had retired earlier should be adjusted accordingly. The Wisconsin Supreme Court accepted the case for

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review and reversed the Court of Appeals. The Supreme Court held that the record was insufficient to decide whether the affected officers were entitled to appointment to the Police Alarm Operator positions under the collective bargaining agreement. Accordingly, the court remanded the case to the Circuit Court to determine whether the collective bargaining agreement specifically required the City to promote officers to any specific vacancy.

After the Supreme Court decision, the MPA amended its complaint to add the allegation that the City's appointment of civilian dispatchers violated the MPA contract because the City had not negotiated for the change with the MPA. The remand ultimately was directed to Judge Maxine A. White and resulted in her decision of December 18, 2003. In her decision, Judge White did not address whether the collective bargaining agreement specifically required the City to promote officers to any specific vacancy. She held that the City violated the City/MPA collective bargaining agreement when it failed to engaged in good faith bargaining about its decision and the effects of its decision to eliminate the Police Alarm Operator positions from the sworn personnel ranks in MPA's unit and reconstitute those positions as civilian employees in ALEASP's unit (the civilian dispatchers' union). In other words, Judge White found the City to have unlawfully refused to bargain about the "civilianization" decision and the effects of that decision with the MPA in violation of its obligations under the City/MPA collective bargaining agreement. She granted declaratory judgment in favor of the MPA and against the City to this effect, denied the MPA's request for a writ of *mandamus* compelling promotions, and did not address the issue of damages or other remedies arising from the City's violation, thereby deferring those issues to a later date. The City filed an appeal from Judge White's decision and began negotiations with the MPA to determine whether a reasonable settlement could be reached.

On July 22, 2004, an agreement was reached to finally settle the case subject to approval of the Common Council and the Mayor. A copy of the settlement agreement is attached to the resolution authorizing settlement. The settlement preserves the long-term ability of the City to continue the process of hiring civilian dispatchers rather than Police Alarm Operators, provides a remedy for the adversely affected individual police officers and retirees, and preserves the jobs of the currently employed civilian dispatchers.

There are currently 58 civilian dispatcher positions and one Police Alarm Operator position. The settlement involves 52 active police officers and 11 retired police officers

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who claim that they were adversely affected by the civilization of the dispatcher function. The active police officers claim they are entitled to back pay and appointment to Police Alarm Operator positions. The retired police officers claim they are entitled to back pay as well as future and past pension payment based upon Police Alarm Operator rate of pay.

Of the 52 active police officers, 27 who previously worked in the Communications Operations Division for more than one year have elected to return to the dispatching assignment as Police Alarm Operators if given the opportunity, the remainder have agreed to forgo assignment as Police Alarm Operators so long as they can retire at a final average salary equal to that of a Police Alarm Operator in the event they had not been promoted to an equal or higher paying position prior to retirement. Under the settlement, currently vacant civilian dispatcher vacancies (10 or 11 at this time) will be earmarked to be filled by Police Alarm Operators selected from a list 27 police officers noted above who have elected to fill positions. If further vacancies occur, the total number of earmarked positions could be increased to 15. As vacancies in the earmarked positions occur, police officers from the list of 27 police officers will be selected to fill the positions until the list is exhausted. Thereafter, the department will be able to fill the positions with civilian dispatchers.

The remaining 25 police officers who have elected not to fill Police Alarm Operator positions will be entitled to have their pensions calculated at the same level as Police Alarm Operators in the event their final average salary at the time of retirement is lower than it would have been had they retired as Police Alarm Operators. The pensions of the 11 affected retired police officers will be increased prospectively to the levels that they would have been had they retired at the current salary of the Police Alarm Operator rank. Under the settlement, no back pay or back pension benefits are owed.

The agreement, if approved, settles the *Pasko II* case and will result in the dismissal of several pending labor-related actions concerning the same subject. The settlement obligates the City to pay \$201,631.45 in attorney's fees and costs and to comply with the terms of the settlement agreement. Increased salary costs will be paid out of the police salary account. The increase in the members' contribution that must be paid to account for the increased pensions will be paid out of the city's fund established for that purpose. No additional funds need to be appropriated to those funds to implement the settlement.

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We recommend that the Common Council approve the settlement as it is in the best interest of the City.

Very truly yours,

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

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