STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Arbitration of
a Dispute Between

AFSCME Local 883

and the

City of South Milwaukee

Case 111
No. 66538
INT/ARB-10847
[Dec. No. 31993-A]

APPEARANCES

For the Union: **Atty. Mark A. Sweet**, Law Offices of Mark A. Sweet, LLC, 705 E. Silver Spring Dr., Milwaukee, WI 53217; **Ms. Penni Secore**, Staff Representative, Milwaukee District Council 48, AFSCME, AFL-CIO, 3427 West St. Paul Avenue, Milwaukee, WI 53208.

For the City: **Atty. Joseph G. Murphy,** Murphy & Leonard, LLP, 2013 14th Avenue, P.O. Box 308, South Milwaukee, WI 53172-0308.

ARBITRATION AWARD

AFSCME DC 48, Local 883, hereinafter referred to as "Union" and the City of South Milwaukee, hereinafter referred to as "City" or "Employer," selected the undersigned to issue a final and binding award pursuant to Wis. Stats. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act contained in said Statutes. A hearing was conducted in South Milwaukee, Wisconsin on May 10, 2007. Each of the parties submitted post-hearing initial briefs and reply briefs. The last of the reply briefs was received on August 12, 2007.

Based on Wis. Stats. 111.70(4)(cm)6. and 7., the arguments of the parties, and the evidence submitted and entire record herein, I issue the following award.

BACKGROUND

The City of South Milwaukee, Wisconsin and AFSCME DC 48, Local 883, representing employees of the City in the Library, Water, Wastewater, Equipment and Supplies-Mechanics, Street and City Hall departments, are parties to a collective bargaining agreement that expired on June 30, 2006.

Following a mutual exchange of initial proposals on June 7, 2006 and participation of both parties in negotiation sessions on two occasions, the Union filed a petition alleging the parties were deadlocked and requesting interest arbitration. Marshall Gratz, a member of the Wisconsin Employment Relations Commission (WERC) staff, conducted the statutorily required investigation of the alleged deadlock. The investigation included mediation.

WERC Investigator/Mediator Marshall Gratz reported, "both parties have stipulated to three pages of tentative agreement items executed on November 9, 2006 in addition to the respective final offers submitted by each." Although the parties are in continued agreement as to the items they stipulated be included in the successor agreement, mediation efforts failed to produce agreement on an *entire* successor agreement. Thus, four (4) items remain in issue between the parties, on which the parties continue to be at impasse.

At the close of the investigation and mediation by the aforesaid Marshall Gratz, the parties selected A. Henry Hempe to arbitrate the dispute, whose selection as arbitrator was formalized by appointment of the WERC. Arbitrator Hempe conducted a hearing on May 10, 2007. The parties agreed to submit briefs, reserving the right to submit reply briefs as well. Each party opted to submit a reply brief, the last of which was received by the arbitrator on August 12, 2007.

FINAL OFFERS OF THE PARTIES

***Union**:*

The Final Offer of the Union is annexed hereto as Exhibit A and incorporated by this reference as if fully set forth herein.

***City**:*

The City's Final Offer is annexed hereto as Exhibit B and incorporated by this reference as if fully set forth herein.

Stipulations:

As set forth above, the parties stipulated to three (3) pages of Tentative Agreements to be included in their successor agreement. Said 3-page stipulation is annexed hereto as Exhibit C and incorporated by this reference as if fully set forth herein.

Summary of Differences:

1) Wages:

The Union proposes wage increases to all base salary and wage rates of 3% on July 1, 2006 and an additional 2.5% on July 1, 2007.

The City proposes wage increases to all base salary and wage rates of 2% on July 1, 2006 and an additional 2% on July 1, 2007.

2) Health and Dental Insurance:

The Union proposes continuing with the State of Wisconsin Health Insurance Plan(s), with the Employer paying 100% of the lowest qualified plan less employee contribution of $35/month (single) and $70/month (family) until January 1, 2007 on which date the employee contribution will increase to $45/month (single) and $80/month (family).

The City proposes continuing with the State of Wisconsin Health Insurance Plan(s), with the Employer paying 100% of the lowest plan offered less employee contribution of $35/month (single) and $70/month (family), until January 1, 2007 on which date the Employer will pay 95% of the lowest plan offered, until January 1, 2008 on which date the Employer will pay 93.5% of the lowest plan offered, until June 30, 2008, on which date the Employer will pay 92% of the lowest plan offered.

3) Dental Insurance:

The Union proposes maintaining the *status quo* with respect to dental insurance. (Employer provides and pays for dental care insurance for all employees covered by the collective bargaining agreement and pays the premiums for said insurance in full.)

The City proposes to make available dental insurance for all employees and to contribute a maximum sum of $30/month toward the premium of a single plan and $75/month toward the premium of a family plan. The employee will pay the balance of the premium for the plan of the employee's choice.

4) Sick Leave Cash Out at Retirement:

The Union proposes to continue the contractual provision that on its face allows retiring employees to deposit the value of their accrued sick leave into a Section 125 Plan for future health insurance premiums.

The City proposes to delete the aforesaid contractual provision.

RELEVANT STATUTORY PROVISIONS

Pursuant to the provisions of Wis. Stats. 111.70(4)(cm)6.d., the arbitrator is required to adopt without further modification the final offer of one of the parties on all disputed issues that are submitted.

In reaching a decision, the undersigned is further required by Wis. Stats. 111.70(4)(cm)7, 7g., and 7r. of the Municipal Employment Relations Act to consider and apply the following criteria to the evidence and arguments of the parties.

7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations on expenditures which may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. "Factors given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

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

In addition, a provision of the State of Wisconsin's 2005 – 07 Budget Bill limits the City to tax levy increases of 2% or equal to the local percentage rate of rate of new construction, whichever is greater.

Reference is also made to the State's 2008 Expenditure Restraint Program (ERP) payment, for which qualification by South Milwaukee required that its 2007 general fund budget increase be less than 4.1% when compared to the City's 2006 general fund budget. The City's ERP payment for 2007 is anticipated to be $376,992. If the City exceeds the ERP allowable percentage increase in any given year the penalty is forfeiture of next year's ERP payment.

COMPARABLE COMMUNITIES

***Union*:**

The Union lists the following communities as its primary comparables in this matter: Cudahy, Franklin, Greendale, Greenfield, Oak Creek, and St. Francis.

As secondary comparables, the Union cites Hales Corners, West Allis and West Milwaukee.

City:

Although omitting Greendale, the City accepts the remaining primary comparables suggested by the Union, subject to its observation that the City's fiscal resources and levy limits make the comparisons unequal. South Milwaukee, posits the City, is the least fiscally able of the list of comparables.

POSITIONS OF THE PARTIES

***Union*:**

The Union begins by noting the tentative agreements reached by the parties that will be included in the successor two-year Labor Agreement regardless of which parties prevails in this proceeding.

The Union urges the statutory arbitration criteria applied to competing final offers must be analyzed in terms of both the specific and the whole, and points out the Legislature has set out numerous factors to be considered by the arbitrator.

The Union agrees that the factor to be given the greatest weight is set forth in Wis. Stats. 111.70(4)(cm)7. which accords such weight to any State law or directive that places limitations on municipalities as to expenditures made or revenues collected. But, the Union points out, there is no state law or directive that limits South Milwaukee in paying for the wages and benefits of its employees.

The Union acknowledges that failure by a municipality to comply with the State imposed Expenditure Constraints and Levy limits will subject the violating municipality to fiscal sanctions by the State. But the Union denies that this means specific line item increases within the municipal budget must each conform to the overall levy limit for that

year. In support, the Union points to the levy limit of 2% that was in place for 2006 did not stop the City from voluntarily providing a 3% wage increase to its police and nonrepresented employees. Thus, concludes the Union, there is no legal bar to implementation of either party's final offer relative to limitations on expenditures or revenues

Moreover, says the Union, the total difference between the parties' final offers for both years of the prospective labor contract is only $42,401. The Union argues the City has never claimed an inability to pay the Union's final offer, and reasserts that the "greatest weight" factor does not preclude the offer of either party.

The Union argues that application of the "greater weight" criterion set forth in Wis. Stats. 111.70(4)(cm)7g. yields the same result. The Union notes that 1) the City's police unit received a voluntary 3% wage increase in 2006 and has a premium sharing rate lower than that proposed by the Union in this matter, and 2) the fire fighters' arbitration case provided a 3% increase for both 2006 and 2007 with a premium sharing rate that is less than that proposed by the Union in this matter for singles and $5 more than that proposed for family.

The Union finds a study commissioned by the Southeastern Wisconsin Regional Planning Commission that purports to measure "municipal fiscal capacity" to be flawed. It describes the study as presenting a unique and simplified method for determining municipal fiscal capacity that negates and removes a host of creditable variables, including population demographics, average household income, and the age and size of the infrastructure. The Union questions whether the Planning Commission is an authoritive source for the study.

The Union argues that the comparable communities for South Milwaukee has already been established, and chastises the City for its omission of the Village of Greendale in the list of external comparables.

The Union believes application of the factors enumerated in Wis. Stats. 111.70(4)(cm)7r. support the Union's Final Offer. The Union points to City Ex. D 14, which reflects an annual CPI for 2006 of 3.2%. The Union points to its Exhibit 7, which shows the average wage increase for municipal workers in comparable communities for 2006 was 3.36%. Moreover, the Union continues, although the City fire fighters received a 2007 wage increase of 3% in their interest arbitration case, the Union is proposing only a 2.5% increase for 2007 in this matter – which is also below the comparable community average of a 2.8% increase for the two year period. The Union notes that the higher skill positions of Heavy Equipment Operator are the lowest paid among the external comparables.

The Union further attacks the City's offer of 2% for each year of the stipulated two-year agreement as not only outside the comparable community average, but also outside the average and/or mean for internal comparables.

With respect to health insurance, the Union accuses the City of wanting the AFSCME unit to "set the pace" for the City's other bargaining groups. The Union notes that the City, as a participant in the Wisconsin Public Employers Group Health Insurance Program (hereinafter State Group Health Program), has a large built-in pool base and the rate range is extensive. As a result, the Union believes the City has a significantly more stable premium rate than municipalities that do not participate in the State Group Health Program.

Currently, the City pays 100% of the lowest qualified plan subject to employee premium contributions of $35 (single) and $70 (family). The Union proposes an increased employee premium contribution of $10/month.

Looking at internal comparables, the Union finds that the fire fighters' contract continues the same relationship to employee premium sharing as is in the Union's proposal. The Union contends health insurance proposal is also supported by the police defined dollar amount as the employees' share of the premium, a relationship that has continued into 2006 (but is open for 2007). Moreover, the Union argues that since the AFSCME unit employees are paid lower amounts than the police and fire units, the City's proposal has a greater impact on the AFSCME employees.

The Union contends the external comparables also support its health insurance proposal.

Most onerous to the Union is that part of the City's offer that would further increase the employees' premium contribution on the last day of the proposed labor contract.

With respect to the City's proposal to modify the dental insurance situation by capping its premium payments at the current level of the lower cost plan, the Union notes that the premiums for the lower (self-funded) plan have remained constant and, further, that the proposal does not cover the existing cost of the alternative plan. According to the Union, the City is again attempting to forge new ground with its smallest union.

The Union is also opposed to the City's proposal to eliminate the contract provision that enables retiring employees to structure their sick leave payouts into a Section 125 Plan to pay for future post-retirement health insurance premiums. The Union argues that the City's sole basis for this proposal is a dated letter from its auditors suggesting that the contractual arrangement may be illegal. At no time, says the Union, has the City sought a ruling from the IRS, adding that the Section 125 option has been in effect for "some time," without objections being raised in any bargaining sessions, and, finally, even if the arrangement allowed by the provision is illegal, the City can, under the "savings clause" of the labor contract, meet with the Union to make appropriate adjustments.

In summary, the Union argues:

1) The total dollar difference between the two proposals is $42,401 over the stipulated 2-year contract term, and is too small an amount to base rejection of the Union's offer on the "greatest weight" factor.

2) The Union disputes the conclusions reached by the Study by the Southeastern Wisconsin Planning Commission as to municipal fiscal capacity, suggesting that if Greendale is included in the City's comparables the credibility of the study is further reduced.

3) Internal and external comparables fully support the Union's Final Offer.

4) The health insurance proposal of the City simply shifts premium costs without regard to the impact on the employees, and without consistency within all the City's bargaining units. Most offensive to the Union is the City's attempt to increase employee premium contribution a third time within the term of the proposed labor contract, without having to balance the entire economic picture for the 2008-09 contract year.

City:

The City argues that under its proposal, the AFSCME employees will receive 56% of the 2007 wage and benefit expenditure budget increase, with the remaining 44% divided among the Police, Fire, and non-represented units. The City believes it has proposed all the wage and health insurance benefits it can afford with the budget restrictions the State has imposed. The City describes the Union proposal as requiring 74.7% of the total wage and benefit expenditure increase budgeted for 2007 and 97% of the 2% levy limit increase.

The City asserts that fire fighter arbitration award has resulted in the City eliminating two fire fighter positions and reducing the department's minimum staffing from 7 to 6.

The tax levy limit affects South Milwaukee with much greater effect than it does to any of the neighboring communities, according to the City. There is, says the City, a direct and obvious correlation between the levy limit and the expenditures the City can fund, but at the arbitration hearing, no one proposed how the City might fund the Union proposal. The City concludes its offer is the more reasonable and the one that best satisfies the applicable criteria.

With respect to the "Greatest Weight" factor, the City notes that the 2% levy limits applied to South Milwaukee in 2006 and 2007, and the City increased its tax levy by 2% each year. The City computes the costs of its 2006 and 2007 wage and insurance

proposals as representing an increase in expenditures for this Union's employees of 2.92% for 2006 and 3.16 for 2007. But, the City continues, the Union's wage and insurance proposal for the same years would require increased City expenditures of 3.45% for 2006 and 3.66 for 2007.

The City emphasizes it has been reducing its workforce since 2003 to meet state budget limitations, and points to the elimination of 5-full-time and 7-part-time positions in 2003, 4-full-time and 11 part-time summer positions in 2004, 2-full-time positions in 2005, and 2-full-time fire fighter positions and 4-part-time school crossing guards in 2006. According to City calculations, these reductions saved it $678,089.

The City believes the effect of the levy limit impacts the analysis of "other factors," including external comparables. The City says that of the communities with which South Milwaukee is traditionally compared, only Greenfield faced similar levy limits. The City disputes that Greendale has been traditionally used for comparison. The City acknowledges that the levy limits do not render comparable data from these communities irrelevant, but urges that the levy limits should affect the degree to which the wages and benefits awarded in the other communities serve as a model for South Milwaukee.

The City posits that the economic circumstances detailed in its discussion of levy and expenditure limits also apply with respect to analysis of the "Greater Weight" factor. In support, the City attests that in 2004 it borrowed $2,850,000 in the form of an unfunded liability bond. The bond proceeds were required by the Wisconsin Retirement System to fund a deficit reported by the System. The loan is being repaid over an 18-year period.

The City also reports an unfunded retiree health insurance liability of $13.7 million for which annual contributions of $1.6 million is required.

The City looks to a July 2005 Southeastern Wisconsin Regional Planning Commission (SEWRPC) study on comparative municipal fiscal capacities for support for its argument that South Milwaukee economic conditions are poorer than in any of the neighboring comparables. The SEWRPC analysis found the City's effective fiscal capacity to be 79% of Cudahy's, 81% of Franklin's, 82% of Oak Creek's and Greendale's, 87% of St. Francis, and 94% of Greenfield's. This, says the City, works out to the City having a fiscal capacity of only 85% "of the average of the traditional communities, and should be reflected in analysis of the "Greater Weight" economic condition factor as well as the comparables.

In this case, avers the City, the effect of the levy limits is that the City cannot raise taxes to raise the additional $42,401 necessary to meet the expense of the Union proposal.

The City acknowledges that its final offer represents total costs for both 2006 and 2007 that exceed its levy increase limitation, although its wage proposals mirror the 2% levy increase limitation.

The City notes that its January 1, 2007 proposal will cost a Union employee $17.22/mo. less than the Union proposal for a single plan and $10.73/mo. less for a family plan. Until June 30, 2008, the City continues, the City's proposal will cost a Union employee $7.04/mo. less for a single plan and $14.65/mo. more for a family plan.

The City describes the real differences between the two health insurance proposals is that the City seeks to share the risk of future premium increases with the employees by stating the employer/employee premium contributions in terms of percentages. The City argues that with the dramatic increases in health insurance premiums there has been no real *status quo* for health insurance premiums for some time.

Levy limits and double digit health insurance premium increases have insured that the City cannot preserve its *status quo* with respect to its health insurance premium contributions. The City avers that since 2003, Union employees have contributed to health insurance premiums in fixed dollar amounts that averaged 4.9%. It describes its proposal to share the risk of increased premiums as a reasonable proposal that will restore *status quo* by insuring to some extent that excessive insurance premiums are reasonably divided. The City cites arbitration awards where the arbitrator did not apply the *quid pro quo* doctrine and argues that in this matter, as well, the doctrine of *quid pro quo* has no legitimate application.

The City is critical of the Union's failure to factor an increase in employee premium contribution for January 2008, even though the Union concludes that a 5% increase in the premium rate will likely take place then. The City claims this disparity between Union recognition of the probable increase and its failure to propose any further premium contribution by Union employees belies the Union claim that the premium-sharing proposal it has made is fair and reasonable – and demonstrates the reasonableness of a proposal based on percentage increases.

As to external comparables, the City argues that acceptance of the City proposed wage increases of 2% per year "will not result in wages out of the comparable range [of] wages for Union employees." The City repeats that it is least fiscally able of any of the communities in the pool of comparables. But even so, says the City, comparison of its 2% wage increase proposals to those in St. Francis, Greenfield, Franklin, Cudahy, and Oak Creek adjusted for known increases in 2006 and 2007 finds South Milwaukee ranking 2nd in custodian wages for both years, 4th and 3rd in public safety officer for 2006 and 2007, respectively, 2nd in Clerk III in both 2006 and 2007, and 5th in Heavy Equipment Operator in both 2006 and 2007. (City Ex. D 4)

The City looks to Union Ex. 3 for comparisons of health insurance premium contributions. From this exhibit the City concludes that acceptance of its proposal will not result in Union employees making comparatively excessive premium contributions.

As to dental insurance, the City argues that it provides greater benefits than any of the other comparables and will continue to do so under its proposal to freeze its contribution at its current level.

The City describes its effort to delete the contract provision allowing retiring employees to contribute their accrued sick leave to a Section 125 Plan as merely an effort by the City to remove an unusable provision from the labor agreement. According to the City, IRS regulations presently prohibit the City from allowing any employee to use this provision.

The City submits that City Exhibit F 5 consisting of a survey by the U.S. Department of Labor demonstrates "that the citizens who pay the taxes which fund the Union employee health insurance benefits pay more of their own health insurance premiums than the Union employees would pay under the City proposal." To the City, this suggests that the comparison of the City's proposal to employees in the private sector favors adoption of the City proposal and rejection of the Union proposal.

As to internal comparables, the City notes it has control over the wages and benefits of only one group of its employees, the non-represented. This group received wage increases of 2% for 2006 and 2% for 2007; in addition, they currently contribute 5% of their health insurance premiums. The City explains that due to an interest arbitration loss to the fire fighter unit, that group received 3% increases for both of those years. The Police unit received a 3% increase for 2006 under a contract the parties entered before the 2% levy limit came into play for the City, and the police wage increase for 2007 is scheduled for arbitration.

The City lists two reasons that the fire fighter arbitration award should not be persuasive for any issue involved in this matter. First, the statutory criteria governing this case differ from that in the fire fighters' case. Second, the City's posture in this case is far less aggressive than with the fire fighters. The City describes several changes in its position in this matter, which include: e.g., 1) the City *not* seeking any changes in retiree health insurance; 2) the City *not* proposing to limit its future health insurance premium exposure to a fixed dollar amount.

The City again notes that because of the fire fighter arbitration award, the City reduced its minimum staffing requirements at the Fire Department and eliminated two fire fighter positions. The City describes the award as exacerbating its fiscal situation.

Although the City acknowledges including evidence as to the Consumer Price Index (Cost of Living), "given the greatest weight to be given to the tax levy limit, the City believes this information to be irrelevant."

In conclusion, the City states it has offered all of the wage and health insurance benefit increases it can afford. It describes itself as "not a wealthy community," again citing the SEWRPC study. It reiterates its elimination of 9-full-time employees since

2003, and borrowing $2.85 million to fund its unfunded pension liability, but expresses frustration that the wages and benefits percentage of its budget continue to grow (from 82.5% in 2003 to 83.15% in 2007). The City closes with the observation that the Union has offered no evidence that the City's offer is less than it can currently afford.

***Union* (Reply):**

The Union accuses the City of placing complete reliance on the tax levy limitation legislation, which negates a host of other significant and viable factors that, in the Union's opinion, play an equally important role in funding the City's budget. Arguing that the tax levy does not directly go to wages and benefits, the Union points out the City also receives state aid and programs and special funding, federal and state, that are ear marked for specific functions and programs, e.g., highway, security, initiatives, and that the funds received for such programs must be used for such programs, and not diverted to some other purpose. Indeed, says the Union, some of this special funding specifically provides for a percentage match of wages and benefits to assist staffing a particular program.

The Union is not impressed with City attempts to portray its fiscal situation as more dire than that of its neighboring, comparable communities, noting that the City may have received greater revenue sharing and designated funding assistance that more than compensate for the tax levy revenue limitations.

The Union renews its criticism of the City's failure to include Greendale in its pool of external comparables, pointing out that Greendale is also under a 2% tax levy increase limitation with an effective fiscal capability only slightly higher than that of South Milwaukee according to the SEWRPC study. The Union adds that among the comparable communities, three of the seven (South Milwaukee, Greendale and Greenfield) were under 2% levy limits.

The Union again points to the average wage increase for the comparable communities was 3.36% for 2006 and 2.8% for 2007, and emphasizes that the Union offer for each year falls below those figures.

The Union also recounts that the City's increases to its fire, police and non-represented personnel for 2006 support the Union's offer of a 3% increase for that year.

The Union emphasizes that AFSCME's proposed two-year wage and benefit increases amounts to a yearly average difference of $21,200.50 when compared with the City's 2-year proposal. The Union does not view this as a substantial difference from the perspective of a total 2006 City budget of $13.5 million and total 2007 City budget of $13.7 million.

The Union disputes the City's claim that it has offered all it can afford. To the Union, the City has offered all it wishes to designate from its total budget. This, says the

Union, is not the same as an inability to pay, and the City has never claimed an inability to pay the Union's proposal.

The Union notes that over a 2-year period the City had and has multiple budgetary options with respect to a wide range of line items in the budget, including supplies, new equipment, capital expenditures, filling vacant positions, and management-employee ratios.

The Union credits the City with cleverly casting its tax levy limit argument "in multiple formats and contexts", but in fact "this bottom line is the City's cornerstone of evidence", and is but a single argument.

The City's failure to make staffing cuts in 2007 further undercuts its claims of fiscal woes, according to the Union.

The Union is not impressed with the City's 2004 decision to borrow money to pay a deficit in the State Retirement System, describing the basis for the deficit as "an actuarial adjustment." The Union goes on to note that the federal requirement for municipalities to identify future liabilities is relatively new, and does not include a requirement to fund the liabilities as opposed to the practice of "pay as you go." The Union does not find the City's liability in this area as unique or even exceptional for South Milwaukee.

The Union renews its attack on the SEWRPC study on "municipal fiscal effectiveness." Describing the document as the City's "single source reference" for its fiscal health in comparison to that of its comparable communities, the Union notes several problems with the City's reliance on the document (apart from the fact that it may or may not be statistically solid): 1) SEWRPC contracted out this study to a firm, and without the RFP, the parameters or scope of the study requested are unknown; 2) the study does not provide the factors and/or variables that SEWRPC had asserted to be the measures for determining its fiscal conclusions; 3) the study's failure to recognize that municipalities receive funding from a variety of sources, not just the municipal tax base; 4) the study was based on 2003 data, when existing fiscal circumstances did not exist and did not include the comparable community of Greendale. Therefore, the City's assumption drawn from the study that it has only 85% of the fiscal capacity of the average comparable community is moot in this proceeding, according to the Union.

Finally, with respect to health insurance, the Union agrees that the parties "must work toward balancing the costs of the plan, the scope of the plan, and the payment relationship between the parties." The Union also agrees that the traditional *quid pro quo* balance does not always cover the health insurance issue.

But, says the Union, by virtue of participating in the State Group Health Insurance Program, the City is liable for premium payments (less employee dollar contributions) of only the lowest cost plan. Thus, the City has a financial cushion that communities with

only their own pool rating do not enjoy. The Union notes that City has actually seen a decrease in insurance premiums in the last 7-years.

The Union asserts that three comparable communities are also part of the State Group Health Insurance Program. Franklin, Greenfield, Oak Creek and St. Francis are not. Among the comparables, Cudahy, Franklin and Greendale premiums for single coverage premiums are more costly than in South Milwaukee. The Union further notes that only two of the comparables (Cudahy and Oak Creek) have a straight percentage employee contribution without a dollar cap listed.

The internal comparables (Fire and Police) have a limit on the employee contribution, says the Union. The City's proposal would break the AFSCME away from the internal comparables, while the Union's proposal would retain the dollar amount caps, but increase the actual dollar amount of employee contribution, the Union emphasizes. Actually, the Union concludes, the Union proposal offers greater savings for the City.

According to the Union, the City's proposal is not about premium cost savings for the City, but is about the future premium payment relationship between the parties. The Union continues to view as outrageous the City's attempt to increase employee premium contribution by its proposal to raise employee premium contributions on the last day of the term of the successor agreement – mid-year – when the parties will not know what the premiums will actually cost when new rates are established six months later. This, says the Union, is unfair. *Quid pro quo* is not impacted, the Union asserts. The Union describes the City's proposal as raising an issue of bargaining as equal partners in the years ahead.

The City also disputes the City's assumption that employee use of health insurance provisions will change with percentage premium contributions, instead of fixed dollar. All the City will accomplish by its percentage proposal is to cost shifting. The Union emphasizes that there is no question here of cost sharing, for that is already done by these parties.

The Union also rejects the City's attempt to use the 2005 U.S. Dept. of Labor's National Compensation Survey in support of its health insurance proposal. First, says the Union, it is a survey, not a study; second, there are no regional distinctions; third, there is no differentiation between union and non-union employers; fourth, the survey does not address full-time, part-time, seasonal, professional, non-professionl, urban or rural distinctions.

The Union again asserts that its wage proposals also favor selection of the Union's final offer, citing the CPI of 3.2 for 2006, and 2.4 for the first three-months of 2007. It also notes the 3% increases received by the police unit in 2006, and the pair of 3s (%) received by the fire fighters in both 2006 and 2007, along with what it argues was a 5% wage lift for non-represented employees in 2006.

The Union emphasizes that its final wage increase offer of 3% for '06 and 2.5% for '07 asks for less than the fire fighter's award provided that unit, and is less than the comparable communities' average wage increases of 3.36% and 2.8% for '06 and '07, respectively. This, says the Union, is another reason why the City's attempt to slip in one last premium modification on the last day of the contract is poor public policy.

Finally, the Union is again critical of the City's attempt to remove the Section 125 option for retiring employees with respect to sick leave payout from the contract language. The Union sees this as a knee-jerk reaction, based solely on a dated letter from an auditor, with no legal or IRS review.

The Union alleges that the City's proposed modification of the dental plan setting a dollar limit for the City's premium contribution has never been properly discussed in bargaining by the parties. The dental policy is a self-insured product of the City, the Union states. The City has presented no evidence or arguments evidencing a need for change.

City (Reply):

The City's Reply accuses the Union of misconstruing or misinterpreting the statutes by arguing that the provisions of Wis. Stats. 111.70(4)(cm)7. (factor given greatest weight) apply only if the State imposed limitation is a legal bar to the proposal. The City urges that this factor requires the arbitrator to consider the impact of the State mandated limitations throughout the review of all of the other criteria. The terms of the statute do not limit its effect to only one criteria or any one part of the parties' proposals, the City asserts. The statute provides that the arbitrator consider this factor "in making any decision," the City posits.

Similarly, the City ripostes, the Union has misconstrued the provisions pf Wis. Stats. 111.70(4)(cm)7g. (factor given greater weight). The City describes the Union as claiming the economic conditions of South Milwaukee should not be considered because 1) the City's 2004 – 2006 contract with its police unit required a 3% increase in 2006, and 2) the City did not include the Village of Greendale in its chart analyzing the Municipal Fiscal Capacity report of SEWRPC. The City finds these claims to be *non-sequiturs.*

Moreover, says the City, no evidence in this case suggests that the City knew or should have known that the Legislature would impose a 2% levy limit for 2006 when it entered into the 2004 - 2006 contract and the SEWRPC study was not published until 2005.

According to the City, the Police unit contract was signed January 5, 2005. It included a 0% wage increase for 2004, two 2% increases for 2005, and a 3% increase effective January 1, 2006. The City finds this wage section of the Police contract as providing an grossly incomplete picture of the City's economic conditions.

The City acknowledges the SEWRPC study existed when the Police contract was negotiated. Moreover, the City continues, it attempted to manage its wage and benefit increases with workforce reductions to offset the increases. But, the City urges, those efforts and their lack of success do not relieve the arbitrator of the duty to take the economic circumstances of the community into consideration and give those circumstances greater weight.

Finally, the City notes, even when Greendale is included in the Fiscal Capacity Analysis comparison, South Milwaukee still remains on the bottom. The City denies it is arguing that it should win because it has less ability to pay than the other comparables. Rather, the City explains, it argues the directive of the statute requires the arbitrator to give the economic circumstances of the community greater weight in assessing the impact of the subsequent criteria. The terms of the statute, says the City, provide that the arbitrator should consider this factor "(i)n making any decision."

The City abandons its earlier argument that CPI evidence is irrelevant. Instead, the City not only disputes the Union argument that the CPI factor favors the Union wage proposal, but also claims the CPI evidence actually favors the City's offer. The City contends that the Union's CPI argument is unreasonable, for it assumes that the relationship between CPI and wage increases should be 1:1.

But the CPI includes all consumer price factors, not just the cost of gasoline or the cost of bread, the City continues, and urges that comparisons of the parties' proposals to the CPI should be based on total cost, not merely wages. Viewed in this light, the City contends the CPI factor favors the City's proposal for 2007, in that the Union's proposal represents an increase of 3.66% and the City's, an increase of only 3.16%. This, adds the City, is particularly true "if one gives the greatest weight to the levy limitation and greater weight to the economic conditions of the City.

The City notes its belief that a fair comparison of the parties' 2006 proposals cannot be made with the exhibits in evidence. The City suggests that a fair comparison would involve removing the 1/01/06 1% wage increase in the parties' previous contract from the starting point and then the total increase of each proposal over 2005 computed for comparison to the annual CPI increase for 2005.

The City points out that the 3% wage increase to the Police unit occurred as a result of the 2004 – 2006 contract between the parties that was entered into on January 5, 2005.

The City clarifies that non-represented employees received a 3% wage increase on 12/1/04, a 3% increase on 7/1/05, and a 2% increase on 1/1/06. The City disputes that it gave a 5% increase to the non-reps after the Levy Limit first went into effect.

The City takes issue with the Union portrayal of itself as the City's "smallest union," and asserts that AFSCME Local 883 represents 67-City of South Milwaukee employees, out of a total city workforce of about 150-persons. The remaining

employees, says the City, are divided among the fire fighter unit, the police unit, and the non-represented employees. The City identifies the AFSCME bargaining unit as the largest union of City of South Milwaukee employees.

DISCUSSION

Limitations on Collection of Municipal Revenues (Greatest Weight):

The City saturates its arguments in this matter with frequent references to Wis. Stats. 111.70(4)(cm)7. That section provides:

> 7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall consider and give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

The City's continuous emphasis of this section is understandable: the City is under a 2005 – 2007 State Budget provision that limits its tax levy increase to 2%.

Indeed, City arguments come close to at least the implication that in conjunction with the state imposed 2% tax levy increase limitation on South Milwaukee, the "greatest weight" factor constitutes not only "point and game" in this matter, but "set and match," as well.

That, however, is not my interpretation of the factor. Certainly, Wis. Stats. 111.70(4)(cm)7. requires the arbitrator to "consider" and "give greatest weight" to state imposed limitations on municipal revenue increases. In my view, however, those terms do not necessarily result in an *automatic* win for a municipality when, as here, it finds its ability to increase its tax revenue collection constricted by state mandate to a 2% tax levy increase.

Were that the legislative intent, the Legislature could have easily so provided. But, in fact, the statute does not mandate ultimate arbitration winners and losers, or, for that matter even prescribe any formulaic means or method of "greatest weight" factor calculation and application. Those tasks are still reserved to reasonable arbitral judgment, subject, of course, to the arbitrator's duty to account for the consideration of this factor.

This view neither denies nor denigrates the "greatest weight" advantage the statute assigns to this factor. Unquestionably, when individually matched against any of the other single factors, the factor described in Wis. Stats. 111.70(4)(cm)7. has the greatest individual weight. In my view, however, the statute also authorizes a sufficient

combination of the other factors to overcome the single one to which it assigned the "greatest weight. " Were this not so the arbitrator's task would be limited to determining whether the municipality is subject to any state imposed revenue collection limitations and if it is, declaring the victory for the municipality without reference to the remaining factors.

Thus, pending an analysis of the remaining factors, I hold in abeyance consideration of the factor to which the Wis. Stats. 111.70(4)(cm)7. assigns the greatest weight.

I turn to consider the remaining statutory factors.

Economic Conditions (Greater Weight):

Wis. Stats. 111.70(4)(cm)7g. instructs the arbitrator to give "greater weight to the economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r."

The City argues the economic circumstances it details in its discussion of the "greatest weight" factor also apply under this "greater weight" factor as well, including the 2% levy increase limitation and the City's efforts to reduce its workforce since 2003. In addition, the City cites its $2.85 million loan taken out in 2004 to fund a reported deficit in its payments to the Wisconsin Retirement System and a 2005 SEWRPC study that purports to demonstrate that the City has 15% less ability to fund its municipal services than its comparable neighbors.

However, it appears that out of the traditional seven external comparables, Greenfield is also subject to the same 2% tax levy limitation as South Milwaukee. (City Ex. B 3.) Testimony at the arbitration hearing added the Village of Greendale as a third neighboring community in the traditional pool that labors under an identical limitation.

The SEWRPC study cited by the City is of relevance and may offer a helpful starting point. Unfortunately, the study seems incomplete and is somewhat dated. It assumes that municipal fiscal capacity consists solely of the amount of services that can be supported by the municipal tax base, and ignores other municipal funding sources (e.g., state aids, state and/or federal grants). Perhaps most significant is that the study was based on data that is already 4-years old, which may or may not represent current conditions. Under these conditions, the study's conclusion that South Milwaukee has only 85% of the municipal fiscal capacity of its comparable neighbors seems arbitrary.

The City's repayment of its reported $2.85 million payment of its deficit to the Wisconsin Retirement System is, as the Union argues, an actuarial[1] adjustment with

[1] This deficit is referenced in City Ex. F 4, p. 5 and involves the City's Postemployment Benefits Other Than Pensions Plan. The "deficit" is an actuarial assessment that due to the greater age of retirees the claim cost of retiree health insurance benefits (which they are permitted to retain upon payment of the group premiums charged to active employees.) is higher than that of the active employee.

respect to an unfunded future liability that federal law (GASB) now requires be reported by all municipalities. The City obtained a loan to repay the deficit, which, according to the City, is costing it an annual amount of $214,000 in principal reduction and interest for the next 18-years. Thus, it appears the City's annual loan payment obligation is roughly ten times greater than the cost differences between the City's and Union final offers in this matter for each year of the successor 2-year labor agreement.[2]

Given the relatively short-term vintage of the GASB reporting rules, the City cannot be fairly faulted for its previous reliance on the Pay-As-You-Go practice followed by many, if not most, Wisconsin municipalities. It may be that the now 18-year loan repayment schedule in excess of $200,000 per year with which the City is obligated to comply was a deliberate (and not unreasonable) attempt to extend the repayment term to the repayment term limits imposed by state statute and constitutional mandate. As to this, neither party offers an explanation.

The Union does note that other possible options of meeting the deficit are unknown. That is a fair criticism, except that the Union does not offer any such options. However, the Union's observation that the GASB requirement is relatively recent and applies to all municipalities is accurate, suggesting (without verification) that at least some of the other comparable communities are experiencing the same stress.

The current picture of South Milwaukee economic conditions the City paints suggests the City needs any spare dollars it can find. Although the cost difference between the parties' final offers is only $42,401 over a 2-year term of the successor agreement – a miniscule amount when compared to 2006 and 2007 municipal budget amounts of $13.5 and $13.7 million, respectively – the City complains that even this small sliver of two successive annual budgets in excess of $27 million cannot be found in the City coffers – or if found, cannot be spared.

But the picture of fiscal distress the City paints is blurred by an element of the City's final offer. In its offer, the City, in effect, rejects a Union offer to increase employee health insurance premium contributions by $10/person/month effective January 1, 2007, opting, instead, to live with the *status quo* for an additional 12-months in hopes of obtaining two greater cost shifting measures in 2008.

Unquestionably, South Milwaukee's economic circumstances are not as comfortable as City leaders would prefer. At the same time, its deliberate ploy of postponing immediate fiscal relief offered by the Union's willingness to increase employee health insurance premium contributions in hopes of obtaining greater employee premium contributions in the future suggests the City is confident that it has the ability to pay the Union's final offer,

Based on these circumstances, I am persuaded that the economic circumstances in South Milwaukee provide an equal greater weight advantage to the final offer of each party. On the one hand, City political leaders would prefer to be out from under the tax

[2] City Ex. D 1 reports a cost difference of $20,991 for 2006 and 21,410 for 2007.

levy limitation. On the other hand, South Milwaukee's economic situation includes an offer that costs only slightly more than that of the City and appears to be an offer the City can meet.

Wis. Stats. 111.70(4)(cm)7r. lists the remaining ten factors for arbitral consideration.

Authority of the Municipal Employer:

The first is the lawful authority of the municipal authority. (Wis. Stats. 111.70(4)(cm)7r.a.) The City presents an issue with respect to this issue. The City argues that under its 2% tax levy limitation it is legally barred from increasing municipal taxes to provide any monies in excess of the tax revenue generated by its 2% levy increase. Noting the Union's offer exceeds the City's by some $42,401, the City argues it lacks the legal authority to raise taxes in excess of 2% to meet the expense of the Union offer.

The City is correct that its tax levy authority has been limited in 2006 and 2007 to a 2% increase. But it does not necessarily follow that it has insufficient funds to meet the Union's offer. Although the City argues that the Union's 2-year offer exceeds the monies it allocated in its 2006 and 2007 budgets for Wage and Benefit increases by $42,401 (more precisely $20,991 for 2006 and $21,410 for 2007) line item allocations are essentially a discretionary, unilateral operation by a municipality, usually adopted before the completion of labor negotiations.

The City's total budget for 2006 was $13.5 million. For 2007, it is $13.7 million. This includes line item expenditures for virtually every anticipated project and expense, including capital improvements, equipment, and filling position vacancies. It is a discretionary document based on the information available at the time and the best judgment of City legislators and administrators.

Thus, while the South Milwaukee's tax levy increase could not exceed 2% for 2006 and again in 2007, under Wis. Stats. 65.90(5)(a), it has the authority to amend its current budget by making line item adjustments sufficient to meet the Union's offer, should it be selected. Given the small percentage of the budget represented by the cost difference in the parties' respective offers that equates to $21,200.50 per year, it would also appear to have the ability to do so.

One of the remaining issues also touches peripherally on the "Municipal Authority" factor, although neither casts it in that posture. As a contractual housekeeping measure, the City has proposed deletion of the last paragraph of Article XIX of its 2004 – 2006 agreement. The language the City proposes to eliminate reads as follows:

> Retired employees who elect to use their sick leave pay out, as provided in Article XIX Terminal Leave shall be allowed to use the Section 125 Plan to pay for their portion of their health insurance premiums after retirement (if

> permissible under the plan or relevant State or Federal Law).

The City argues that it would be illegal for it to actually implement this option for any retiring employee that may make this request. If the City is correct, it seems clear it lacks the requisite authority to take the action described in the paragraph.

The legality (or illegality) of the provision is not clear. The City's concern is based on an old letter (City Ex. F 11) dated January 28, 1993. The letter is directed to the then South Milwaukee City Administrator and signed by a Paul A. Nowinski, a CPA with a Brookfield, Wisconsin certified public accounting firm. With the letter came the enclosure of three articles that the letter's author urged the administrator to read. Nowinski's letter expressed no opinion as to the legality of the provision the City now seeks to delete.

Although the City submitted a copy of IRS Publication 502 at the arbitration hearing, neither party has offered any legal authority or argument as to whether said provision represents a legal option for retiring employees and the City. The City has concluded the provision is illegal for it to implement, but other than offering IRS Publication 502 into evidence, has offered no legal argument or authority that seeks to interpret and apply IRS Publication 502.

At the arbitration hearing, the City conceded it had never sought an IRS opinion on the matter. Moreover, tax law is an arcane specialty that often requires specialized expertise. I am not a tax lawyer, and I note with interest that not even the CPA apparently employed by the City in January 1993 offered his own expert opinion on this question, but simply referred the then City administrator to three articles that he enclosed.

I do not doubt that the City may have a valid basis of concern. But inasmuch as the venue of interest arbitration in which the parties are currently engaged is clearly not a tribunal of competent jurisdiction to determine unresolved tax questions, I decline to do so. Should the City seek a definitive result for its question, an inquiry to the IRS would probably be productive.

Unless and until it is able to find credible support for its position that "under the (Sec. 125) plan or relevant State or Federal Law" the provision the City seeks to eliminate cannot be legally implemented, the factor of Municipal Authority cannot be appropriately invoked in support of the City's proposal for deletion.

Given the legal "no-man's land" in which the provision currently exists, an assessment of the City's proposal to eliminate it under the "Such Other Factors . . ." standard of Wis. Stats. 111,70(4)(cm)7r.j. is appropriate and appears in the latter portion of this award.

Stipulations of the Parties:

Wis. Stats. 111.70(4)(cm)7r.b lists "stipulations of the parties" as an item to which the arbitrator is directed to give weight. The parties have reached several stipulations to be included in their successor agreement, but neither party has offered any arguments with respect to them.

Interests and Welfare of the Public: Employer's Ability to Pay

Wis. Stats. 111.70(4)(cm)7r.c. directs the arbitrator to give weight to "(t)he interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

Certainly, the interests and welfare of the public include tax consequences. No evidence has been introduced that indicates the Union's proposal will be unduly burdensome to City taxpayers, particularly with the 2% levy limit in place for at least 75% of the term of the successor labor agreement between these parties. While the SEWRPC study assesses South Milwaukee as having only 85% of the municipal fiscal effectiveness of other comparable communities, it did not consider other sources of revenue available to the City, including an estimated ERP payment to the City by the State in the not inconsiderable amount of $376,992.

It is also worth noting that competent, municipal employees whose employment morale is bolstered by the knowledge that they are fairly compensated for their work provide superior, efficient, effective municipal services. High employee morale also significantly contributes to bargaining unit stability, which not only increases worker efficiency but also reduces employer time and expense in training new, replacement employees. These advantages are clearly in the best interest and promote the welfare of the public.

Finally, the City makes no claim of inability to meet the Union's offer. The City does contend that its budget allocations to wage and benefit increases are insufficient to meet the Union offer, but given the relatively small cost difference between the two offers, that is a matter that can be remedied by the City, as is more fully discussed in connection with consideration of the "lawful authority of the municipal employer" factor, above.

Comparables: External and Internal; Private Sector: (Premium Contribution)

Both parties address both external and internal comparables, also listed as factors to which the arbitrator is directed to give weight in Wis. Stats. 111.70(4)(cm)7r. d. and e. The City additionally submits material offering national survey information on private sector health insurance premium contribution. The factor set forth in Wis. Stats. 111.70(4)(cm)7r. f. seeks a comparison with private sector employees.

A threshold issue of comparing the parties' respective offers with external municipal employers is a disagreement as to whether or not the Village of Greendale should be included in the comparability pool.

A. Comparability Pool

Each party offers the same pool of external comparable municipal communities, except that the City omits the Village of Greendale.

"The appropriate comparable communities are those which have previously been determined: the cities of St. Francis, Greendale, Cudahy, Franklin, Greenfield, Oak Creek and South Milwaukee." *City of South Milwaukee and South Milwaukee Firefighters Protective Association, Local # 1633 I.A.F.F.,* Case 109, No. 65729, MIA 2733 (Oestreicher, 10/06).

The City has offered no explanation why it accepts what appears to be a well-established comparability pool, but omits Greendale. Like many arbitrators, I am reluctant to disturb an existing pool of external comparables, particularly when it has been established following a recent arbitral review.

In this case, given Greendale's proximity to South Milwaukee, its inclusion by Arbitrator Oestreicher in an interest arbitration matter involving this municipality less than one year ago, and in the absence of a persuasive reason to eliminate it from the pool, I deem Greendale's inclusion as an external comparable in this matter as appropriate. I find no reason to disturb the comparable communities endorsed by Arbitrator Oestreicher.

B. Comparisons

1. Wages:

The City argues that acceptance of the City's proposed wage increases of 2% for each year of the contract will not result in wages out of the comparable range of wages for Union employees. The City avers that with a wage adjustment of 2%, South Milwaukee would rank 2nd in custodian wages for 2006 and 2007, 4th and 3rd in Public Safety Officer for 2006 and 2007, respectively, 2nd in Clerk III in both 2006 and 2007 and 5th in Heavy Equipment Operator in 2006 and 2007. No statistic is noted for Greendale.

The Union counters by noting that wage increases for employees of the comparable communities average 3.36% for 2006 and 2.8% for 2007, with an average 2-year cost of 5.88% and an average 2-year lift of 6.14%.

To this, the Union contrasts the City's offer of 2% in both 2006 and 2007 for a 2-year cost of 4% and a 2-year lift of 2%. The Union's proposal asks for a 3% wage increase in 2006 and 2.5% wage increase in 2007 for a 2-year cost of 5-½ % and 2-year lift of 5-½ %.

From the City's selected benchmarks, it is impossible to learn whether South Milwaukee is rising, falling or remaining in the same wage rankings as would occur with the City proposed increases. No information is recited as to what extent, if any, the Union's wage proposals for each year would alter the rankings of the communities being compared.

In summary, it appears the City's proposed wage increase ranks is not only significantly lower than the average increases for 2006 – 2007 among the municipal comparables, it does not match even the lowest increase granted by any single comparable to its employees.

With respect to the other employees of the City of South Milwaukee (internal comparables), it appears:

a) The Firefighter unit will receive 3% wage increases in both 2006 and 2007 (arbitration award, November, 2006).
b) The Police unit is in the last year of a contract that provided no wage increase in 2004, a pair of 2% increases in 2005, and a 3% increase in 2006. That unit is currently in arbitration.
c) The non-represented employees received a 2% increase in both 2006 and 2007.

The wage increases received by the non-represented employees are identical to the increases proposed for the AFSCME bargaining unit. According to the City, there are 37 non-represented employees of South Milwaukee. It is, of course, the only group of employees over which the City acknowledges it has "real control" as to wages and benefits. This factor augurs against according anything other than a minimal weight to the wages the City granted to its non-represented employees.

Neither party submitted evidence reflecting comparable private sector *wages*.

2. Benefits:

Health Insurance:

The topic of health insurance in this case presents something of an anomaly: as discussed earlier, the Union's offer to increase employee premium contributions effective January 1, 2007 by $10 per month per employee will be of greater fiscal benefit to the City during the actual term of the successor agreement than the City's own proposal.

In essence, the City offers to keep employee premium contributions at their present contractually stated dollar level until January 1, 2007; on that date the contractual expression of the employees' premium contribution will be modified by indicating the

Employer will be responsible for paying 95% of the premium.[3] The City proposes that its premium obligation be reduced on January 1, 2008 to 93.5% until June 30, 2008 thus necessarily increasing the employee premium contribution to 6.5%. The City proposes one further reduction in its premium payment responsibility occur on June 30, 2008 (the last day of the contract term) when the Employer's premium contribution will be reduced to 92%.

In summary, the City's offer would increase employee health insurance premium contribution from its present dollar level that translates into a percentage rate of approximately 4.9% to 8%, with the last 1 ½ percent effective the last day of the successor labor agreement.

The principal issue here, of course, is moving from a fixed dollar amount of employee health insurance premium contribution to a contribution that is expressed as a percentage of the actual premium amount. Even if the percentage remains unchanged in the future, as premiums rise so will the dollar amount the percentage represents.

An ancillary issue revolves around the "last day" contribution increase, without knowledge of how much the next premium increase will be.

As to its proposal to move to a percentage contribution, the City argues that it is merely seeking to share the risk of excessive premium increases in the future. In theory, the City's argument is not unreasonable. Certainly, health insurance issues currently reflect strong *mutual* interests as well as separate ones – a joint venture in which each party has a critical stake and each are locked together as partners. To protect those interests it is incumbent on each party to communicate candidly with the other so that those interests can be more readily identified and secured as the parties share in the development of a solution. Under some circumstances, the City's proposal "to share the risk" may be a reasonable solution.

The City contends a percentage rate employee contribution rate is necessary so that the employees and the employer will share the pain of excessive premium increases. Yet, the experience of the City under its current Wisconsin Public Employers Group Health Insurance Program (hereinafter State Group Health Program) shows only two 5% premium increases since the year 2000 and offers no basis for fearing an excessive premium increase. Indeed, even if one were to occur by one of the insurers in the State Plan, the City is still insulated since its obligation extends only to pay the premium for the lowest cost plan offered (less any contractually mandated employee contribution.)

Moreover, as the Union notes, the parties have shared the cost of insurance premiums since 2003. In addition, the City has some protection from excessive premium increases by virtue of its participation in the State Group Health Insurance Program that

[3] At present, the City pays 100% of the premium for the lowest cost plan, less monthly employee contribution of fixed dollar monthly amounts of $35/single and $70/family, respectively. The contributions are so identified in the labor agreement. The City estimates these fixed dollar amounts average 4.9% of the premium cost. I do not regard an increase in employee contribution of 1/10 of 1-percent as significant.

spreads health insurance risks among a larger pool of potential beneficiaries. Indeed, the Program presents a smorgasbord of health insurance coverages under circumstances that offer other protections to the City, as well.

First, the City is contractually obligated to pay 100% of the premium amount for only the *lowest* cost plan in the State Group Health Program, less whatever dollar amount the contract requires employees to contribute. If the employee opts for a plan that is more expensive, the employee is required to pay the difference in cost to the Employer in addition to the contract dollar amount of contribution. Second, premium rates under the State Group Health Program *have* been relatively stable. Hearing testimony indicated that since the year 2000, there have been only two health insurance premium increases of 5% each. Third, other than its generalized sentiment as to the parties sharing the risk, the City has presented no evidence of excessive health insurance premium increases in the foreseeable future, and thus has offered no apparent immediate need for change to a percentage contribution.

The Union is particularly unhappy with the last premium contribution increase proposed by the City that would go into effect on the June 30, 2008 – the last day of the labor agreement's term – well before the amount of any prospective premium increase would be known. From the standpoint of this AFSCME bargaining unit, any such increase will *not* impact the City's costs during the term of the parties' successor labor agreement. The Union objects to the City's effort to pile on additional employee premium contributions without knowing how much (if at all) the insurance premiums will increase.[4]

Looking to the data provided by the external comparables, Cudahy and Greendale join South Milwaukee as participants in the State Group Health Program. Franklin, Greenfield, Oak Creed and St. Francis are not. Currently, Cudahy, Franklin and Greendale appear to pay a greater amount than does South Milwaukee for single coverage. (Union Ex. 5) Franklin, Greendale, Greenfield, and Cudahy appear to contribute more than South Milwaukee for family coverage. (Union Ex. 5) Only Greenfield has lower premiums than South Milwaukee for single and family coverage (Union Ex. 6).

The City acknowledges Union Ex. 5, p. 3 demonstrates the results to the bargaining unit employees vis-à-vis the external comparables with respect to employee premium contribution if the City's insurance proposal were implemented, including the additional premium contribution of June 30, 2008. Under the City's proposal for increased employee premium contribution (single), the AFSCME unit would be in the top one-third (4th out of 12) of the comparables shown on January 1, 2007, slip to 6th out of 12 on January 1, 2008, and with the last premium contribution increase on June 30, 2008, plummet to 9th out of 12. Employee contribution to premiums for family coverage under

[4] At the arbitration hearing, the parties seemed to agree that a future 5% health insurance premium increase would not be an unreasonable forecast. But the Union adds the caveat that any cost impact would occur *after* the term of the successor labor contract had expired, when (presumably) the parties would again be in contract negotiations.

the City's proposal shows the same pattern: 3rd of 13 as of January 1, 2007, 8th of 13 as of January 1, 2008, and 9th of 13 as of June 30, 2008.

Under the Union's proposal, the same exhibit ranks employee contribution for single plan coverage to be 10th of 12 as of January 1, 2007, and 7th of 12 as of January 1, 2007.

However, based on its reliance on the 2% tax levy limitation and its belief as to its economic limitations as well, the City concludes the rankings that would result from adoption of the City's health proposal are reasonable. The problem, of course, is that these rankings show a significant downward trend, a result generally not favored by arbitrators absent at least near catastrophic economic conditions. Viewed in isolation, the external municipal comparables do not support the City's health insurance proposal.

With respect to the internal comparables, the 2006 Firefighters arbitration award locked in employee premium contribution of $35/single and $70/family for 2006. Effective January 1, 2007, employee premium contributions for the 21-person fire-fighting unit increased to $40/single and $80/family. The City pays 100% of the premium for the lowest cost plan, less the aforesaid contributions.

The 25-person South Milwaukee Police bargaining unit is currently in arbitration. Its existing labor agreement appears to provide 2006 health insurance coverage and employee premium contribution (expressed in dollar amounts) identical to the 2006 *status quo* of the AFSCME unit.

However, with respect to the 37 non-represented employees, for 2007 South Milwaukee will pay 95% of their health insurance premiums for the lowest cost plan (in the State Group Health Program) with employee premium contribution at 5%. Given the fact that this group's wages, benefits and conditions of employment are not subject to collective bargaining, these results do not weigh as heavily as those produced by collective bargaining or an arbitration award.

Based on the aforesaid, the internal comparables appear to favor the Union's offer, although that conclusion is subject to the caveat that an arbitration award in the pending arbitration matter with the police bargaining unit could change that picture to some extent.

I also find the Union's proposal as to health insurance premium cost sharing as offering a refreshing realism to the current health insurance issues that currently play a large role in the arena of collective bargaining. Moreover, its offer not only stays within middle boundaries of the range of comparables by providing a reasonable, moderate employee premium increase of $10/month on January 1, 2007, but actually garners more savings for the City than the City's own proposal during the term of the parties' successor 2006 – 2008 labor agreement. To that, I would add only that my view of this issue does not pivot on the doctrine of *quid pro quo*. I am primarily influenced by considerations of

costs to employees and cost savings to the Employer during the term of the successor agreement, and assessments of internal and external comparability.

Employee Premium Contribution Survey: Private Sector

The City offers a U.S. Dept. of Labor National Survey (City Ex. F 5) in support of its conclusion that the City's health insurance proposal to its AFSCME-represented employees is far closer to the national statistics on private sector employer costs than the Union's. The City finds these statistics significant because " . . . they demonstrate that the citizens who pay the taxes which fund the union employee health insurance benefits pay more of their own health insurance premium than the Union employees would pay under the City proposal." However, no specific data from either the South Milwaukee or any comparable community is cited.

In passing, I note that municipal employees are taxpayers as well as are private sector employees. I also observe that the statistics cited by the City are from a *survey*, not a *study*. Unlike other U.S. Department of Labor data (e.g., CPI figures), no allowance is made in this survey for different sectors of the country (e.g., north, south, mid-west, etc.) different population bases (e.g., rural, urban), size of the employers (e.g., large, small, medium), sorting out the business organizational identity of the employers (e.g., corporation, sole proprietorship, partnership, etc.), and whether or not the employees are organized (union-represented). Absent these distinctions, this survey of private sector employer costs for health insurance does not appear to relate directly to the subject bargaining unit in this matter and is of limited value.

Based on the external municipal comparables, and the internal comparables of the South Milwaukee Firefighter and the Police bargaining units, the factors set forth in Wis. Stats. 111.70(4)(cm)7r. d. and e. support the offer of the Union.

Neither party offers data that directly compares the parties' respective offers pertaining to employee health insurance premium contribution with any specific private sector entity in South Milwaukee or comparable community. Thus, I find an insufficient basis in this record to conclude the factor listed in Wis. Stats. 111.70(4)(cm)7r. f. supports the offer of either party.

* * * * *

Two benefit issues remain: Dental Insurance Premium Caps and the Retiree Health Insurance Section 125 Plan Premium Payment option. Neither party argues cost as a factor in resolving the issue. Neither party urges "comparables" as a determining factor.

I have already considered the latter issue under the Municipal Authority factor and found that factor inapplicable. I suggested appropriate, further consideration of the

issue take place under the aegis of the "Such Other Factors . . ." standard set forth in Wis. Stats. 111.70(4)(cm)7r.j.

I have also concluded that resolution of the Dental Insurance Premium Caps issues is governed by the same factor. Accordingly, I shall postpone discussion on both of remaining these issues until that factor is reached in this award.

* * * * *

Consumer Price Index (Cost of Living):

Each party claims the Consumer Price Index favors its offer. This factor, listed in Wis. Stats. 111,70(4)(cm)7r.g., instructs the arbitrator to give weight to the cost of living in considering the parties' offers.

We begin with the numbers submitted by the parties. The parties compare the Consumer Price Index for 2006 (3.2% increase) with the competing wage proposals for that year. The Union's proposal of a 3.0% wage increase for 2006 is obviously less than the reported CPI increase for 2006 of 3.2%. The City's proposed wage increase for 2006 is 2%, which falls substantially below the reported 2006 cost of living increase.

With respect to the cost impact of the parties' 2007 wage proposals, the data submitted shows only the first quarter of CPI figures for 2007, making a valid comparison of wage proposals with 2007 CPI figures impossible.

However, the City denies the assumption that the ratio of CPI to wage increases should be 1:1. Since the CPI includes all consumer price factors, not just bread or gasoline, the comparison should be between the total cost of each proposal and the CPI. Presumably due to the incomplete CPI figures for 2007, City argues a correct comparison of the total costs that the parties' competing proposals represent for 2007 year should compare the total increased cost of the Union's 2007 offer, which the City pegs at 3.66% with the lesser increased costs of the City's offer of 3.16%. [5]

Arbitrators and advocates continue to debate which comparison to the CPI (wages or total cost) more readily comports to the sense of the CPI factor. The answer seems to vary on a case-by-case basis. Where, for instance, the parties have already reached agreement as to wage increases but benefits remain in dispute, a total cost comparison may be most appropriate, particularly where disproportionate increased health insurance premiums are anticipated.

[5] As to 2006, the City argues a fair comparison of the parties' proposals for 2006 is not possible with the exhibits submitted, because City Ex. D 1 used as a starting point a 1% wage increase that took effect on January 1, 2006. The City urges that an appropriate comparison of the 2006 proposals to the CPI would require removal of the 1% increase (and complementary WSR and FICA increases from the 2006 starting point, and then compute the total increase of each proposal over 2005 for comparison to the annual CPI increase for 2005. The City did not submit such an exhibit.

Comparing only percentage wage increases, not the cost of the package, to cost of living increases is justified by some arbitrators on the grounds that it is the wage increase that insulates employees against the erosion of the dollar caused by inflation; the cost to the employer does not.[6]

Others take a different view, arguing that since a significant portion of the total package also stems from medical insurance costs comparing the total package increase against the CPI increase is appropriate.[7]

Regardless of which basis of comparison is used, many arbitrators (including the undersigned) have agreed that in arbitral disputes an analysis of CPI changes should focus on the previous one-year period.[8] If that were done in this matter, the CPI comparisons would focus on the annual 2005 (3.4%) and 2006 (3.2%) CPI figures.

The data submitted by the parties does include the 2005 CPI information (City Ex. D 14), so that a comparison can be made in this matter using the previous year's CPI increases. Inserting the 2005 CPI figure of 3.4% to analyze the cost increases reflected in the parties' respective offers shows a cost increase percentage of the City's offer at 2.92% or 0.48% less than the CPI increase for the previous year. In contrast, the Union's offer would require increased costs to the City of 3.45% or 0.05% above the CPI figure for the previous year.

Comparing the 2006 CPI figure of 3.2% to the additional 2007 costs imposed by the competing offers would show the City's offer with a 3.16% cost increase slightly below the CPI increase for the previous year; according to the City, the Union's offer would require cost increases to the City of 3.66% or 0.46% higher than the CPI increase reported for the previous year.

Thus, over the two year period reflected in the parties' proposals, the parties are virtually even when their proposals are subjected to a total cost analysis, with a very slim advantage to the Union. When wages, alone, are subjected to analysis under the cost of living increase factor, the factor offers obvious support for the Union offer.

On this basis, it appears the cost of living factor favors the Union two-year offer.

Overall Compensation:

This factor is set forth in Wis. Stats. 111.70(4)(cm)7r.h. and directs the arbitrator to consider the overall compensation presently received by the municipal employees, including direct wages, benefits and continuity and stability of employment. Wages and

---

[6] *Manitowoc Public School District,* Dec. No. 30473-A (Eich, 5/03); *Brown County,* Dec. No. 26207-A (Kerkman, 5/90).

[7] L*uxemburg-Casco School District,* Dec. No. 27168-A (Briggs, 8/92). Also see *Manitowoc County (Highway),* Dec. No. 19942 (Weisberger, 5/83).

[8] See *Buffalo County,* Decision No. 31484-B (Hempe, 5/06); *City of Madison (Police),* Dec. No. 28826-A (Malamud, 5/97); *City of Racine (Wastewater),* Dec. No. 24266-A (Mueller, 1/88); *Walworth County (Sheriff's Dept.),* Dec. No. 19811-A (Zeidler, 2/83).

benefits have already been raised and considered in the discussion of the comparables found in Wis. Stats. 111.70(4)(cm)7r. e., d., and f.

In the area of continuity and stability of employment, the City's general record is a sword with two edges. It presents what appears to have been an ongoing reduction of its workforce since 2003 that included a 2006 elimination of four part-time (unrepresented) positions and two full-time fire fighter positions as evidence of the City's reduced economic capacity. While no statistics were offered regarding position elimination or layoffs that directly affected the AFSCME bargaining unit, this evidence could be viewed as a general indication that municipal employment in South Milwaukee is not as secure as may once have been assumed.

Moreover, while the City's offer appears to reflect its intent to maintain a full component of AFSCME unit positions during the term of the successor agreement, no guarantees of this have been expressed.

Yet, I find no overt threats from the City of job elimination in the event the Union's offer is selected. Certainly, the relatively slight dollar difference between the offers of the two parties viewed from the perspective of back-to-back $13 million dollar annual budgets does not raise an obvious economic necessity to do so.

In my opinion, this factor does not offer a decisive advantage to either proposal.

Changes in Any of the Foregoing Circumstances:

This factor, listed as Wis. Stats. 111.70(4)(cm)7r.i. inquires as to any changes in any of the foregoing circumstances during the pendency of the arbitration proceedings. Neither party reports any such changes. This factor thus favors neither offer.

Such Other Factors:

Wis. Stats. 111.70(4)(cm7r.j. is a catch-all factor designed to allow either party to introduce (and the arbitrator to consider) any other factor traditionally used in collective bargaining, mediation, fact-finding, and interest arbitrations that may be of relevance. Included in this generalized mélange are principles or tenets of arbitration that have been established in the "common law" of arbitration over the years. One such principle (e.g., the need for the party proposing a change to demonstrate a need for the change) appears to be an appropriate "decider" in resolving the two issues that remain. Strictly speaking, each is a "benefit" issue. Yet neither raises any cost issues that the parties chose to argue, in effect obviating any need for consideration of any of the other factors.

Dental Insurance Premium Caps:

The City proposes a change in its self-funded dental insurance program. Currently the City is contractually obligated to "provide" and pay the full premium for dental care insurance for all employees covered by the contract and their families. The

City seeks to cap its premium contributions for the dental insurance at $30/single and $75/family.

Neither party discusses this proposal in manner other than cursory. It appears evident that the parties do not regard the issue as a primary one.

One sentence suffices for the City: "With respect to dental insurance, the City of South Milwaukee provides greater benefits than any of the other communities and will continue to provide greater dental benefits than any of the other communities under its proposal to freeze its contribution at its current level."

City Ex. D 6 consists of a table of external comparables that appears to sustain the City's general comparison of its plan with that of external comparable communities (including employee premium contributions) but somehow escapes comment from either party. Superficial scanning suggests that each of the comparable communities (except Oak Creek) has a dental plan, some apparently offering greater employer premium contribution than South Milwaukee, others offering less, but a comparative evaluation is not possible without knowledge of the coverage each plan provides.

The Union is at least as succinct as the City: "The Union proposes the status quo. The City is proposing to cap the premium at the current level of the lower cost dental plan. While the amount for the lower plan, which is self-funded, has remained constant, it does not cover the existing cost of the alternative plan offered by the City . . ."

Normally a party proposing a change has the duty to show a need for the change proposed. The City's comment simply extols the existing plan and offers assurances that it will continue to provide greater benefits than any of the other communities under its proposal to freeze its contribution. I have no reason to doubt these contentions and assurances. Indeed, they appear to be supported by City Ex. D 6.

But the City's comments do not explain the basis or reason for its proposed modification of capping the City's payment of the entire dental policy premiums at the existing level. Perhaps, it may be safely assumed that the proposal is made as a preemptive cost saver or a possible future safety net. Yet no figures, estimates or costs are offered as to why the City deems a premium cap necessary from the City's standpoint.

The Union responds with a proposal to maintain the *status quo*. Yet the Union's proposal seems more reflexive than studied. It refers to an unexplained alternative plan offered by the City, yet under the 2004-2006 labor agreement, the City is required to offer only one. The Union describes the "lower plan" as "self-funded," and controlled by the City, but also asserts that the [premium] amount for this plan has remained constant.

A generally accepted tenet of arbitration is that a proponent of change has the obligation of demonstrating a need for the change.[9] One arbitrator described that obligation as follows:

> When one side or another wishes to deviate from the status quo, the proponent of that change must fully justify that position and provide strong reasons and a proven need.[10]

In the absence of the City demonstrating a need for the cap it seeks, I find the factor incorporating this "normal and traditional" consideration favors the Union's proposal for *status quo.*

Elimination of last paragraph of Article XIX: (Section 125 Option)

This issue has already been explained in some detail as I considered whether the "Municipal Authority" factor provided support for the City's proposal to eliminate said paragraph. I concluded it did not.

In support of its proposal to eliminate this language, the City argues that it would be illegal for the City to attempt to implement it. The City further notes that since this language requires the City to commit an illegal act, it need not be subjected to comparisons with similar provisions in other communities. The City states it will make no difference if the paragraph is actually deleted or not: since the City has concluded the provision is void, it has pronounced implementation a legal impossibility.

However, as my earlier consideration in this award of this matter suggested, the threshold issue is not *whether* the paragraph should be deleted on the grounds of illegality, but whether it *is* illegal for the City. Before the City can argue the first point, it must establish the second.

In opposing the City's attempt to eliminate the proposal, the Union points to what it calls "the savings clause" of the parties' 2004-2006 contract. This clause governs procedures to be followed by the parties if a particular contract provision is found to be illegal.

The clause to which the Union appears to refer is Section 2 of Article XXIV of the parties' 2004-2006 labor agreement and reads as follows:

> **ARTICLE XXXII – AMENDMENTS AND SAVINGS CLAUSE**
> **SECTION 2 -- VALIDITY**
> If any Article or Section of this Agreement or any addendum thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if such

[9] *Adams County (Highway Department),* Dec. No. 24579-A (Reynolds 11/88); also see *City of Verona Police Dept.,* Dec. No. 28066-A (Malamud, 12/94).
[10] *City of Menasha (Police Dept.), Dec. No. 27784 (McAlpin, 6/94).*

> tribunal should restrain compliance with or enforcement of any Article or Section, the remainder of this agreement and Addendums thereto shall not be affected thereby, and the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such Article or Section.

The City's proposal for deletion ignores the savings clause of Article XXXII, which, as a practical matter, appears to be almost custom-made for this kind of situation. Implementation of this clause, however, requires the predicate condition of establishing the paragraph's illegality has taken place. Merely a unilateral conclusion by the City does not establish the requisite predicate condition.

Under this circumstance, the City's proposal to eliminate this provision must be regarded as something more than a housekeeping measure. The provision the City seeks to eliminate was originally included in the parties' labor agreement a number of years ago, following what was presumably good faith give-and-take collective bargaining. Yet, in effect, the City is proposing that the Section 125 language be deleted – and the Union be deprived of the benefit of the "savings clause" in this instance! No *quid pro quo* is proposed for this deprivation. None is needed.

For the parties have already negotiated a solution to the potential legal conundrum, which inferentially incorporates a *quid pro quo*. The "solution" is Section 2 of Article XXXII, and the *quid pro quo* is whatever replacement language the parties negotiate. Certainly, the City has the legal option to propose that the parties sidestep that solution in this instance and simply eliminate the language the City describes as illegal without going to the trouble of negotiating replacement or alternative language. In effect, the City wants to make an exception to the savings clause provisions, but offers no reason or need to do so – or, for that matter, in the alternative, any recompense to the bargaining unit members for the loss of what was apparently once regarded as an apparently low cost benefit for them.

As stated above, it is well established in arbitral law that the party advocating a change to the *status quo* has the burden of demonstrating by clear and convincing evidence the need for change and, further, that it has offered a *quid pro quo*.[11] But in the instant situation, even if the City were to demonstrate in this proceeding by competent legal authority the need to eliminate the subject Section 125 language, for it to avoid beginning negotiations for replacement language set forth in the savings clause, it would still have to demonstrate the need to do so – and suggest a reasonable *quid pro quo.* The City has not done so – indeed, demonstrates a certain insouciance even if the Section 125 language to which it objects should remain. On this basis, the normal, traditional arbitral principles referred to in Wis. Stats. 111.70(4)(cm)7r.j. favors the Union's proposal that the language remain.

[11] *City of Plymouth (Police Dept.)*, Dec. No. 24607-A (Krinski, 12/87).

<u>"Greatest Weight" Factor:</u> (Revisit)

Wis. Stats. 111.70(4)(cm)7. instructs the arbitrator to " . . . consider and give the greatest weight to any state law or directive lawfully issued by a legislature or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal agency . . ."

But even the "greatest weight" I have accorded to this factor, has proven insufficient to outweigh the factors favoring the Union proposal. Those factors, in my opinion, included the internal comparables, the external municipal comparables, the interests and welfare of the public (including the financial ability of the unit of government to meet the costs of the proposed settlements), along with the slight advantage to the Union's proposal offered by the CPI factor.

In my view, the internal and municipal external comparables both offer strong support to the Union's offer that is not diluted by generalized and incomplete national survey data concerning private sector employee health insurance premium costs.

With respect to the interests and welfare of the public, it is fair to add that I am also impressed with the Union's recognition of its mutual or shared interests with the employer in the area of health insurance, which appears to have resulted in the Union's offer to increase its premium contribution. Other elements in the consideration of this factor include the higher employee morale to be gained by implementing an offer that follows the patterns shown in neighboring communities (even municipalities also laboring under a 2% tax levy limitation), and the greater savings to the City during the term of the successor agreement by the Union's offer to increase employee contribution to health insurance.

That factor also includes consideration of the financial ability of the City to meet the costs of the Union offer. As to that segment, I am influenced by the relatively small difference in the two-year costs of the respective offers. From this, I conclude that notwithstanding the City's reluctance to meet the costs of the Union's offer, it has the ability to do so even with the impediment of its tax levy limitation.

Although the CPI supports the Union's proposal only slightly when comparing total costs of the respective offers, the support for the Union's proposal is substantial when the wage costs of each offer are compared to the cost of living factor.

Two issues were weighed on the "Such Other Factors" standard. In both cases, the factor utilized (proponent of change must demonstrate a need for the change) supported the proposal of the Union.

The "greater weight" factor of economic conditions of the City, I have found offers no decisive advantage to either proposal. That is also my view with respect to the "overall compensation" factor.

Neither party suggested any changes of circumstances that had taken place during the pendency of the arbitration.

AWARD

Based on the testimony, evidence and data submitted, the arguments of the parties, and the foregoing discussion, I direct that the terms of the Union's Final Offer shall be incorporated in the labor agreement between the parties, together with the stipulations agreed to by the parties.

Dated this 8th day of October 2007 in Madison, Wisconsin.

_____

A. Henry Hempe, Arbitrator