STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

ASSOCIATION OF MUNICIPAL ATTORNEYS

To Initiate Arbitration Between Said Petitioner and

CITY OF MILWAUKEE
(CITY ATTORNEY'S OFFICE)

Case 347
No. 42711 INT/ARB-5360
Decision No. 26304-A

Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Mr. Lee Cullen, appearing on behalf of the Association.

Lindner & Marsack, S. C., Attorneys at Law, by Mr. Jonathan T. Swain, appearing on behalf of the Employer.

ARBITRATION AWARD:

On February 15, 1990, the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator, pursuant to 111.70 (4) (cm) 6. and 7. of the Wisconsin Municipal Employment Relations Act, to resolve an impasse existing between Association of Municipal Attorneys, referred to herein as the Association, and City of Milwaukee (City Attorney's Office), referred to herein as the Employer or the City, with respect to the issues specified below. The proceedings were conducted pursuant to Wis. Stats. 111.70 (4) (cm), and hearing was held at Milwaukee, Wisconsin, on June 12 and June 22, 1990, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were transcribed and briefs and reply briefs were filed. Final briefs were exchanged by the Arbitrator on September 4, 1990.

THE ISSUES:

The issues in this dispute are rates of pay for 1989 and 1990. All other matters have been tentatively agreed between the parties, and have been filed as stipulations with the Wisconsin Employment Relations Commission. The difference in the wage offers of the parties over the two years as measured by the amount of "lift" proposed by the parties is 2.5%. The difference between the offers of the parties

as measured by effective cost is a difference of 1% for 1989 and 2.5% for 1990.

The final offers of the parties are:

EMPLOYER OFFER:

All terms and conditions of the 1987-1988 Agreement shall be continued except as otherwise agreed between the parties and except as noted below:

1. Salary
   - 2% across-the-board wage increase effective Pay Period 1, 1989.
   - 2% across-the-board wage increase effective Pay Period 1, 1990.
   - 2% across-the-board wage increase effective Pay Period 14, 1990.

ASSOCIATION OFFER:

1. All terms and conditions of the 1987-88 Agreement shall be continued except as otherwise agreed between the parties in their written stipulations and except as noted below:
   A. SALARY. Revise Article 12 as follows:
      1. Effective PP 1, 1989, increase rates of pay for all employees by 2.0% over the PP 26, 1988 rates of pay.
      2. Effective PP 14, 1989, increase rates of pay of all employees by 2.0% over the PP 13, 1989 rates of pay.
      3. Effective PP 1, 1990, increase rates of pay for all employees by 4.5% over the PP 26, 1989 rates of pay.

DISCUSSION:

Wis. Stats. 111.70 (4) (cm) 7 directs the Arbitrator to give weight to the factors found at subsections a through j when making decisions under the arbitration procedures authorized in that paragraph. The statutory factors are:

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

The undersigned will, therefore, review the evidence adduced at hearing and consider the arguments of the parties in light of the foregoing statutory criteria.

Prior to evaluating and analyzing the offers of the parties as required by the statutory criteria, it is necessary for the Arbitrator to make a preliminary ruling. The Association has submitted posthearing, what it has marked as Association Exhibit No. 67. Association Exhibit No. 67 is the Krinsky arbitration award dated July 10, 1990, involving Milwaukee District Council 48 and the City of Milwaukee, Case 39, No. 42072, INT/ARB-5227. Counsel for the City opposes its admission. Counsel for the Association argues that the document is admissible, pursuant to the statutory criteria found at 111.70 (4) (cm) 7, i.: "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." During the course of hearing, parties made arrangements to submit certain documents posthearing. Neither party included in their agreement of posthearing submissions the Krinsky Award. Because the hearing was closed at the conclusion of the second day of hearing held on June 22, 1990; and because by the parties' own agreement the posthearing submissions were limited to those to which the parties had agreed; the undersigned now concludes that no evidentiary submissions are proper after the close of hearing, unless they fall within the scope of the understandings of the parties reached during the course of the hearing. It follows from the above that Association Exhibit No. 67 is rejected, and the Krinsky Award will not be considered in these deliberations and in the final determination of which final offer to adopt.

THE PATTERNS OF SETTLEMENT

The City relies heavily in its argument on the internal patterns of settlement, contending that the internal patterns of settlement should control, and that they require the adoption of the Employer offer. The Union counters, arguing that when considering the percentages of the package increases, the patterns of settlement support the Association offer, because the Association argues that the City assesses too high a cost to the changes in the pension which apply to all municipal employees, excepting Police and Fire. The Association further argues that the Protective Service bargaining units received increases higher than the wage patterns relied on by the City. The Association further contends that where the wage pattern relied on by the City was adopted in nonprotective service units, other considerations such as wage inequity increases were effectuated in those units which are not present in the stipulations, the final offers or the bargaining for the Municipal Attorneys' unit.

The undersigned agrees with the City's position that internal patterns of settlement carry significant weight in determining which party's final offer should be adopted. Furthermore, the evidence persuades the undersigned that the wage proposal of the Employer in this dispute conforms to the settled units, except for the Protective Service units, and the units represented by the Milwaukee Building and Construction Trades Council. City Exhibit No. 4 establishes that the Employer offer here of 2% effective Pay Period 1, 1989; 2% effective Pay Period 1, 1990; and 2% effective Pay Period 14, 1990, exactly mirrors the general wage increases agreed to voluntarily by the following unions who negotiate with the City: Public Employees' Union, Local 61; Staff Nurses Council, IAMAW, District 10, Association of Scientific Personnel. Additionally, the Employer offer exactly mirrors the unilaterally implemented increases for management and non-management nonrepresented employees. It is also very close to the agreement between Local 494, Fire Department Dispatchers and the City, where the settlement terms were 2% Pay Period 14, 1989; 2% Pay Period 14, 1990, and 2% Pay Period 1, 1991.

With respect to the Protective Services settlements or awards, City Exhibit No. 4 shows that the Police Supervisors Organization settled for 2% Pay Period 1, 1989; 2% Pay Period 19, 1989; 2% Pay Period 1, 1990, and 2% Pay Period 18, 1990. The Firefighters settled for 2% Pay Period 5, 1989; 2% Pay Period 23, 1989; 2% Pay Period 5, 1990, and 2% Pay Period 23, 1990. The Milwaukee Police Association was awarded 2% Pay Period 1, 1989; 2% Pay Period 19, 1989; 2% Pay Period 1, 1990, and 2% Pay Period 8, 1990.

From the foregoing history of settlements and awards that were available at

the time the hearing closed, it is clear that the Protective Service units have either settled for or been awarded increases which provide a "lift" of 8% over the two years, while the remaining settlements reflect a lift of 6% over the two years. This compares to a proposed lift by the Employer of 6% and by the Association of 8.5%. It is clear that the Association offer is closer to the wage settlement patterns established in the Protective Service units, and the Employer offer is on point with the settlements which have occurred in the nonprotective service units and the increases which were unilaterally implemented on behalf of the nonrepresented employees. It remains to be determined whether the patterns of settlement of the Protective Service settlements and awards or the patterns of settlement of the nonprotective service settlements should control in the instant dispute.

The City distinguishes the wage offer of the Protective Service units from the wage offer in the nonprotective service units by reason of the cost increases it incurred when it negotiated pension modifications for employees who are not in protective services, while no modifications to pension benefits were negotiated for employees represented by Protective Service units. The record establishes that the City was advised in 1987 by its actuary, the Wyatt Company, that the Tax Reform Act required a revision to the offset provisions then in effect in the Employer's pension plan covering all of its nonprotective service employees. As a result of the requirements of the Tax Reform Act, the parties bargained with all of its non-protective employee units to conform the plan to the provisions of the Tax Reform Act. The City proposed two alternative plans, one which was a non-integrated plan with a 70% cap without offset of social security benefits at a cost increase of 2.8342% of payroll. (City Exhibit No. 17) The alternative plan proposed by the City was an integrated plan which provided for a 70% cap with the maximum allowable social security off set permitted under the Tax Reform Act which carried an increased cost of .501% of payroll. The City bargained with the employees, and all of the units, including this unit, agreed to the more expensive plan, the nonintegrated plan without social securit offsets and a 70% cap. Pursuant to those agreements, the City assessed the cost against all of the units of the increased amount of 2.8342% of payroll for all nonprotective service units. The cost was not assessed to the Protective Service unit settlements because those plans had been nonintegrated prior to the adoption of the Tax Reform Act.

The Association argues that the Attorneys' Unit should not be assessed increased pension cost because of the pension revisions and the elimination of the integration of social security, because prior to the amendment of the plan the

integration of social security had little or any impact on pension costs attributable to the Attorneys' Unit. The undersigned has reviewed all of the evidence with respect to the foregoing Association argument and finds it to have merit. The evidence establishes that for the purpose of pension funding, the actuary for the City has calculated the percentage contribution of total payroll for all nonprotective service employees. As a result of that calculation over the years, pension costs for City attorneys have been understated compared to their actual cost. This is so because the City attorneys are high salaried employees compared to the rank and file employees in many of the other collective bargaining units. Thus, the averaging which occurred as a result of the actuarial calculations understated the actual amount of contributions for pension purposes required for employees in this unit. The actuary used the same method to determine costs incurred by reason of the pension modifications negotiated as required by the Tax Reform Act. As a result, it was determined that the options agreed to in bargaining, including this unit, required an additional contribution of 2.8342% of payroll. The foregoing percentage increase of payroll, however, was the equivalent of a blended average of all the various bargaining units and nonrepresented employees employed in nonprotective services for the Employer. This average does not take into account the actual increased costs attributable to the individual collective bargaining units. Association Exhibit Nos. 55 and 56 furnish that data for this unit. Association Exhibit No. 55 is a letter from S. Lynn Hill, Consultant Actuary for the Wyatt Company. In response to a request of the Association, Wyatt supplies the actual cost increases by reason of the pension plan modifications as it pertains to the Attorneys' collective bargaining unit. In her explanation, Hill explains the methodology used for ERS funding as follows:

> In addition to the enclosed exhibit, you requested that I provde a detailed written explanation that could be used in place of further testimony. Let me begin with an explanation of the funding method used by the City of Milwaukee Employes' Retirement System (ERS).
>
> The ERS uses an aggregate funding method wherein the annual required contribution is determined as a percent of pay that applies to the entire General Employe group. This percent is applied against the aggregate payroll of the General City to determine the City's contribution to the ERS, and against the aggregate payroll for each employing agency (Water Department, School Board, etc.) to determine that agency's contribution to the ERS. That is, each agency contributes the same percent of payroll as any other agency. If this were not so, the ERS would have to maintain separate asset pools for each agency, or would have to maintain a complicated accounting system, in order to determine the separate contribution rates for the City and for each agency.

Although each employer is charged the same percent of payroll for each employe, the cost to the ERS to provide benefits for any two employes is unlikely to be identical. The cost of providing individual benefits under the current plan will vary by age, credited service, sex, and pay history. Since Social Security benefits are skewed in favor of low paid employes, the basic benefit under the current plan is much more likely to be reduced, and reduced to a greater extent, than is the basic benefit for high paid employes. The result is that it costs the ERS more, as a percent of an individual's pay, to provide benefits to a high paid employe than to a low paid employe. Under the new plan the cost of providing individual benefits will vary by age, credited service, and sex. The cost, as a percent of pay, will not vary by pay level.

The current costs shown on the first cost lines of the enclosed exhibit, and on City exhibits 17 and 23 are based on the percent of pay that is applicable to the entire General Employe group. The dollar amounts required are equal to that percent of pay multiplied by the payroll for the indicated groups. City Exhibit 23 shows that the current plan required contribution for the entire General Employe group is approximately 4.458% of payroll. (This is based on December 31, 1988 data and differs slightly from the current costs shown on City Exhibit 17, and the enclosed exhibit, which are based on December 31, 1987 data. This variance is due mainly to changes in the assets of the ERS. The assets have no bearing on increases in costs that are due to benefit changes.)

The current costs shown on the second cost line of City Exhibit 23 represent the contribution that would be required, under the current plan, if the ERS maintained a separate trust fund for the Municipal Attorneys and the benefits for this group were paid solely from this fund. They are the costs to the ERS of providing the current plan benefits to the Municipal Attorneys. In order to determine these costs it was necessary to allocate a portion of current Retirement Fund assets to this group. The allocation is explained on the exhibit.

The increase in cost required to provide the new plan to the entire General Employe group is shown on the second cost line of City exhibit 17. The General City, and each employing agency, will be required to contribute to the ERS approximately 2.8% of payroll for each employe.

The increase in cost to the ERS to provide the new plan benefits to the Municipal Attorney group is shown on the second cost line of the enclosed exhibit. It would be the cost if a separate trust fund were maintained for the Municipal Attorneys. . . . . .

Attached to the foregoing letter from Hill was Association Exhibit No. 56. Exhibit No. 56 shows the .48% increase of which Hill speaks in her letter, and also shows that the required City increased contribution on behalf of Municipal Attorneys calculates to $4,576.00.

Employer Exhibit No. 22 sets forth the cost the City attributes to pension improvements as $35,062 in the first year. Therefore, the actual increased cost of

$4,576 in the Attorneys' unit is a significantly lower increase than the cost calculated by the City. City Exhibit No. 21 sets forth the dollar value of a 1% increase for 1990 in the Attorneys' unit. The exhibit establishes that without rollups 1% increase calculates to $12,128. The $4,576 dollar cost for the pension improvements in the Attorney's unit, then, represents a .377% increase for pension costs over and above the cost generated in the prior plan. The undersigned is persuaded by the foregoing data that the unit comprised of attorneys is distinct from the general employee units as it relates to pension costs, and, consequently, the wage settlement patterns for general employee units should not be imposed as the pattern for this unit for that reason. Rather, it would appear that the modest increase in pension costs for attorneys would more closely align them with the Protective Service units where it was unnecessary to negotiate increased pension costs because there was no impact as a result of the Tax Reform Act.

The foregoing conclusions are reached after due consideration has been given to the Employer argument that because the Attorneys' costs have been understated over the years in relationship to general employees as a whole, they should not now benefit from a separation of costs; the Employer arguing that the increase in pension costs as calculated for all general employees should be attributed to this unit. The undersigned disagrees. Whether there has been an understatement of costs attributed to this unit is immaterial. The fact is, that the pension increase in this unit cost the Employer only .377%, and that is the cost that should be attributed for the purpose of bargaining.

The undersigned has also considered the Association argument that other improvements bearing cost impact have been made among other settled units that have not been made in this unit. The record evidence satisfies the undersigned that there have indeed been such adjustments in other units, and that none of those adjustments are present here. For example, Public Health Nurses received reclassifications in addition to the 2% pattern over two years; the Laborers received reclassifications, in addition to the pattern; Machinists received a new maximum pay step in 1990, in addition to the pattern. None of the foregoing adjustments are present in the agreements or the offers of the parties in this dispute. It follows from all of the foregoing, that, the internal wage pattern upon which the City relies, fails to establish a preference for the Employer offer in this dispute.

The undersigned has concluded that because of the limited impact that the pension modifications have as it relates to the Attorneys' unit, their circumstances with respect to the patterns of settlement are more akin to the settlements and awards which occurred in the Protective Service units. The Protective Service units

settled for a total lift over the two years of their agreement of 8%. Here, the Association proposes a lift of 8.5% over the two years of the Agreement. Thus, the Association offer here is one half percent over the pattern of the Protective Service settlements when comparing wage lift. It remains to be determined whether the record supports an award in this matter providing an additional one half percent wage lift to Attorneys, compared to the employees in the employ of the City in the Protective Service units.

In order to evaluate the Association offer in this matter based on internal settlement patterns, the undersigned will also consider the percentage of increases for the total packages of the Protective Service units compared to the percentage increase for the total package proposed by this Association. From the Vernon Award, we are able to establish the package percentage increases for the Police Supervisors, the Firefighters, and the Milwaukee Police Association units. At page 43 of his Award, Vernon establishes the cost of the package for the Police Supervisors at 7.65%. At page 44 of his Award, Vernon establishes the package cost of the Firefighters' contract at 7.45%. At page 47 of his Award, Vernon establishes the package percentage of his Award to the Milwaukee Police Association at 7.46%. Using the same basis of calculating the split increase costs as was used in the Vernon comparisons, the 2% Pay Period 1 and the 2% Pay Period 14 proposed by the Association for 1989 establishes a 3% cost for the first year of the Agreement. The second year of the Agreement, under the Association proposal, calls for a 4.5% increase. The undersigned has determined that the actual cost increase for pensions, as it applies to this unit, calculates to .377%. Totaling the two year wage increases and the pension improvement, we arrive at a percentage package increase of 7.877%.

A more precise calculation of package costs can be derived from City Exhibit No. 22, which sets forth package costs of the City's proposal. From that data we can calculate the cost of the Association proposal. The 3% wage increase cost with rollups calculates to a total of $43,113 in 1989, pursuant to the City's method of calculating. In Exhibit No. 22 the City attributes a cost of $35,062 for the 70% cap nonintegrated pension improvement, which the City's actuary, Wyatt Company, has determined in Association Exhibit No. 56 to be a cost of $4,576. In the City's costing there are no other costs attributable to the proposal of the City for 1989, and, consequently, the undersigned attributes no other package costs for 1989 to the Association offer. Thus, the total package cost for 1989 totals $47,689. The second year new cost, based on the City's calculation method, establishes a cost of $66,402 for the 4.5% increase proposed by the Association, inclusive of rollups. The City also calculates a total of $5,394 new cost in the second year for the 70%

cap nonintegrated early retirement and health. Additionally, the City calculates negative second year costs for health insurance and dental insurance modifications totaling $3,853. The Arbitrator accepts these costs for the second year. The package cost for the second year is thus established at $67,943. City Exhibit No. 22 establishes that 1% with rollups is equal to $14,658 for 1989, and that for 1990 1% with rollups is approximately $14,756. Using these factors to arrive at a percentage based on what the undersigned's recalculated package costs for the first and second year, we arrive at a 3.32% package cost in the first year and a 4.60% package cost in the second year. By totaling the two years, we arrive at a 7.92% cost for the two year packages. The foregoing calculations square with the methods used by Arbitrator Vernon in his Milwaukee Police Association arbitration award. The Vernon method reflected the methods used in establishing the package costs in the Police Supervisors unit, the Milwaukee Police Association unit and the Firefighters unit. We now compare the 7.92% to the Protective Service settlements, and find that the package cost of the Association proposal is .46% higher than the MPA settlement awarded by Arbitrator Vernon; and that it is .47% higher than the voluntary settlement entered into between the City and the Firefighters; and that it is .27% higher than the package settlement cost in the Police Supervisors negotiations.

By way of comparison, we consider the City's final offer package costs, using the same methods of calculations which were used to determine the Association package costs, including a restatement of the 70% nonintegrated cap for pensions in the first year from the $35,062 to $4,576. Using the foregoing method, we find a first year package cost attributable to the City offer of $33,318, which calculates to a 2.32% package increase. In the second year, the City's package proposal calculates to an increased new cost of $45,809, which calculates to a 3.10% increase. Thus, the City's package increase for the two years totals 5.42%, which is 2.03%, 2.04% and 2.23% lower than the package costs for the MPA, Firefighters and Police Supervisors units.

The foregoing comparisons, when restating the pension costs, which state the actual cost increases for pensions attributable to the Attorneys unit, leads to the inescapable conclusion that the patterns established in the Protective Service units, which the undersigned concludes to be the appropriate patterns for consideration in this matter, create a preference for the final offer of the Association, because it is less than a half percent above that pattern compared to the Employer offer which is more than 2% below that pattern.

In addition to the internal patterns of settlement, there are also patterns

of settlement established for Attorneys who bargain collectively in the Milwaukee area and the State of Wisconsin. Association Exhibit No. 1 sets forth those patterns. The exhibit establishes that the State of Wisconsin settled with its Attorneys unit for 3.75% across the board increase effective July 2, 1989, a 4.25% across the board increase effective July 1, 1990. In addition to the general increases, the State of Wisconsin and the Attorneys unit also agreed to certain reclassifications and regrades which added to those costs. Milwaukee County settled with its Attorneys unit for 2% effective December 25, 1988; 1% effective June 25, 1989; 1% effective December 3, 1989; and 4% effective December 24, 1989. Thus, for the two years, the general increases for Attorneys bargaining with Milwaukee County were what the Arbitrator estimates to be a 3.5% first year wage increase and a 4% lift; and a 4% wage increase in the second year. The City of Madison settled with its Attorneys for 3% in 1989 and 4% in 1990. Dane County settled with its Attorneys for 3% in 1989, effective December 31, 1989, and 1% effective July 1, 1990. All of the foregoing patterns of settlement are closer to the proposal of the Association than is the proposal of the Employer. The proposal of the Employer creates a 2% increase the first year and a 3% increase the second year, with a lift of 6%. The Association proposal creates a 3% increase the first year and a 4.5% increase the second year, which establishes a lift of 8.5% over the term of the Contract. From the foregoing, the undersigned concludes that the patterns of settlement for Attorneys who bargain with other employers in the State, i. e., the State of Wisconsin, Milwaukee County, Dane County and the City of Madison, create a pattern which supports the Association offer in this dispute.

SALARY COMPARISONS

We now turn to a comparison of salaries paid under the proposal of the parties compared to salaries paid in comparable jurisdictions. The Association relies heavily on a comparison between Assistant City Attorneys employed by the City of Madison and the City Attorneys employed by the City of Milwaukee. Association Exhibit No. 2 compares the maximum Madison salaries paid from 1980 through 1990. Association Exhibit No. 3 compares the minimum Madison salaries on the same basis. The exhibit establishes maximum salaries paid Assistant City Attorneys in Madison and Milwaukee have closely paralled each other in recent years. Looking back, however, to 1980, we find that Assistant City Attorneys in Milwaukee at year end 1980 were paid 102% of the salaries paid in the City of Madison. In 1981 and 1982 year end,

the salaries were at 101% of the City of Madison. In 1983 the salaries were at 98% of the City of Madison, and in 1984, 1985, and 1986, they were at 100%, equal to the City of Madison. In 1987 they were at 98%. At year end 1989 they were at 99%. If the City's offer is adopted in this matter, at year end 1990 the City of Milwaukee maximum salaries will be 98% of the maximum salaries paid at year end 1990 in the City of Madison. This calculates to $1,379.60 per year less for Milwaukee Assistant City Attorneys at the maximum than the salaries paid in the City of Madison. If the Association offer is adopted, the Milwaukee salaries will be $240.00 per year more, calculating to 100.36%. The comparison of the City maximum salaries paid in Madison and Milwaukee compared to the maximum salaries generated by the final offers of the parties causes the undersigned to conclude that the maximum salaries comparisons between these two municipalities favor the Association offer.

Association Exhibit No. 3 makes the same comparisons for minimum salaries for 1980 through 1990, and we find that at year end 1980 the minimum salaries paid Attorneys in Milwaukee were 102% of salaries paid by the City of Madison. By 1988, we find that the minimum salaries paid in Milwaukee were 93% of the minimum salaries paid to Attorneys in the City of Madison. If the Employer offer is adopted, the year end minimum salaries for Assistant City Attorneys in the employ of the City of Milwaukee will be 92% of the salaries paid in the City of Madison. If the Association offer is adopted, the minimum salaries paid Assistant City Attorneys in the City of Milwaukee will be 95% of the salaries paid in Madison. The undersigned is persuaded that the minimum salary comparisons also favor the Association offer.

The City has adduced evidence of salaries paid to public sector attorneys in the employ of municipalities in communities of Minneapolis, St. Paul, Denver, Kansas City, Rockford, Chicago, Indianapolis, Detroit, Cleveland, St. Louis and Des Moines. City Exhibit No. 5 establishes that if the Association offer is adopted, the maximum salaries without longevity would rank Milwaukee second at year end 1990 among these comparables at the maximum, and that the Employer offer would rank Milwaukee attorneys third among these comparables at the maximum at year end 1990. The Exhibit also establishes that there are five of the fifteen communities which pay salaries at the maximum for Assistant City Attorneys ranging from $63,516 to $70,287. The exhibit does not provide 1990 information for St. Paul, however, the undersigned has included St. Paul as one of the five foregoing communities because, for 1989, the maximum salaries paid there were $63,719. The undersigned is confident that the 1990 salaries in St. Paul will be at least that amount, and very likely, more. From all of the foregoing, the undersigned concludes that when comparing maximum salaries paid municipal attorneys in comparable out of state jurisdictions, the Employer offer

is acceptable, because it would rank the salaries paid at the maximum third among those comparables. That conclusion loses significance because there is nothing in the record establishing the rankings which existed for 1988, the year prior to the offers being arbitrated. Consequently, the undersigned has no basis to determine how the offers might change the historic rankings among these comparables.

Association Exhibit No. 64 shows that the highest ranking city attorneys in Minneapolis will be paid $75,197 for 1989 and an undetermined amount for 1990; that the City of Detroit will pay its highest paid principal Assistant Corporation Counsel a maximum of $57,318 for 1990, and its Special Litigator $63,266. The exhibit establishes that the City of St. Paul will pay its highest paid City Attorney a maximum of $78,334 in 1990; Denver, $63,516; Cleveland, $49,935; St. Louis, $61,492; Des Moines, $58,670; Madison, $67,459; (includes longevity of 11%); Dane County, $63,249 (includes longevity of 11%). The Association argues that the foregoing maximums should replace the maximums found in City Exhibit No. 5. The City has determined the maximums based on its assessment of the job duties performed by the Attorneys in the employ of the City of Milwaukee compared to the job responsibilities for the classifications set forth in the job descriptions of comparable attorneys in the other municipalities. The undersigned will not attempt to resolve the differential because he has determined that while the City's offer is adequate when making the comparisons found in City Exhibit No. 5; that conclusion loses significance because the data does not furnish a comparison showing how the rankings may have changed the parties' offers for 1989 and 1990 compared to the rankings which existed in the preceding year 1988.

THE COST OF LIVING

We turn now to a consideration of the cost of living criteria. The undersigned will make comparisons of the percentage increases in wage rates to the percentage increase in cost of living. The percentage of increase of wage rates is compared, because it is the wage rate rather than the cost to the Employer which establishes whether the offers of the parties measure up to the rates of increase in the cost of living. The undersigned will also make the comparisons of the lift rather than the blended percentage increase where there are split increases involved, because it is the lift which will determine whether the salary increases approach or exceed the increases in the cost of living.

The Association proposes a lift of 4% in 1989 and 4.5% in 1990, for a total of 8.5% over the two years of the Agreement. The Employer proposes a lift of 2%

in 1989 and 4% in 1990, a total lift of 6% over the term of the two years of the Agreement. City Exhibit No. 26 establishes that the City of Milwukee cost of living increases were 3.9% from the prior year as of December, 1988, and 3.2% as of December, 1989. The all City index establishes a CPI increase as of December, 1988, of 4.4% and as of December, 1989, of 4.5%. Thus, the two year increases of 1988 and 1989 total 7.1% increase in the City of Milwaukee index and 8.9% for all cities. Compared to the parties' offers, the all cities CPI increases for 1988 and 1989 exceed the offer of the Association by .4% and the offer of the Employer by 2.5%. When considering the Milwaukee CPI increases, the Association offer is 1.4% higher than the two year increase of the cost of living in 1988 and 1989, and the Employer offer is 1.1% lower than the CPI increases in the City of Milwaukee for 1988 and 1989. Thus, when considering the Milwaukee CPI changes for 1988 and 1989, the Association offer exceeds the CPI increases for the years 1988 and 1989 by an amount slightly more than the amount that the Employer offer falls short of the CPI increases. The undersigned concludes from the foregoing that the criteria of increases in cost of living is unpersuasive.

OTHER FACTORS

The Association introduced testimony from Attorney Scott Ritter, who testified that his primary reason for leaving was financial, and that he took a private sector position as an attorney with an insurance company which provided him with a higher salary. In addition, there is the hearsay testimony of Tom Bemish, who testified that he was aware of seven resignations since 1986 due at least in part to financial reasons. The City introduced evidence showing that since April, 1988, they have received 167 applications for openings in the City Attorney position. The City also adduced evidence showing that the average years of service for a Milwaukee Assistant City Attorney is 8.02 years, and that certain individuals have been there between 10 and 29 years.

The undersigned has considered all of the evidence and arguments of Counsel with respect to the turnover experienced in this bargaining unit, and finds that the turnover argument advanced by the Association to support their position is unpersuasive. There is only the testimony of one former Assistant City Attorney who testified that the reason for his leaving was financial. Aside from that testimony, there is the hearsay testimony in the record that there were seven other Assistant City Attorneys who terminated for financial reasons. That testimony simply is not sufficient because of its hearsay character. For those reasons, the undersigned concludes that the turnover argument of the Association fails.

The Employer argues that the turnover experience supports its offer because it contends that the salaries are sufficient to attract and retain employees. The fact that the City was able to attract 167 applicants suggests that the salaries are sufficient for that purpose. The Arbitrator finds the evidence with respect to turnover unpersuasive.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the internal and external patterns of settlement favor the adoption of the Association final offer. The undersigned has further concluded that a comparison of salaries paid in the City of Madison to the salaries which would be generated by the final offers of the parties in this dispute also favors the Association final offer. The undersigned has concluded that the salary comparisons with out of state jurisdictions are unpersuasive because there is no showing in the record what the rankings have been in the years prior to the Collective Bargaining Agreement which is now being arbitrated. The undersigned has also found that the cost of living criteria fails to support either parties' offer because the Association offer exceeds the cost of living percentage increases which have occurred in 1988 and 1989, and the Employer offer fails to come up to the cost of living increases for those same years. It is also concluded that the private sector comparisons advanced by the parties are unpersuasive, as is the turnover and retention experience.

If the Arbitrator had discretion to perfect an Award which did not limit him to the selection of one party's offer; that Award would be for more than the Employer offer and for less than the Association offer. The statute, however, limits the Arbitrator's jurisdiction to the selection of one party's offer, without modification. Because the internal patterns of settlement established in the Protective Service units is within a half percentage point of the Association offer; and because those package percentage increases are in excess of 2% higher than the value of the package increase of the Employer offer; the undersigned concludes that the Association offer should be adopted.

Therefore, based on the record in its entirety, and the discussion set forth above, after considering the statutory criteria and all of the arguments of the parties, the Arbitrator makes the following:

AWARD

The final offer of the Association, along with the stipulations of the parties

as furnished to the Wisconsin Employment Relations Commission, as well as those terms of the predecessor Collective Bargaining Agreement which remained unchanged through the course of bargaining, are to be incorporated into the parties' written Collective Bargaining Agreement for the years 1989 and 1990.

Dated at Fond du Lac, Wisconsin, this 3rd day of November, 1990.

Jos. B. Kerkman,
Arbitrator

JBK:rr