STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of	:	
MILWAUKEE POLICE ASSOCIATION	:	**Case 446**
Local #21, I.U.P.A., AFL-CIO	:	
To Initiate Arbitration Between Said	:	**No. 55881, MIA 2153**
Petitioner and CITY OF MILWAUKEE	:	
	:	**Decision No. 29581-B**

APPEARANCES:

Eggert Law Office, S.C., by Laurie A. Eggert, Esq.
on behalf of the Milwaukee Police Association

Thomas J. Beamish, Esq., Assistant City Attorney and
Thomas E. Hayes, Esq., Special Deputy City Attorney,
On behalf of the City of Milwaukee

ARBITRATION AWARD

Milwaukee Police Association Local #21, I.U.P.A., AFL-CIO (Union, Association or MPA) and the City of Milwaukee (City, MPD or Employer) were parties to a collective bargaining agreement covering calendar years 1995, 1996 and 1997 for all non-supervisory law enforcement personnel. The parties have not been able to agree to the terms for a successor agreement. The Association filed a petition requesting the Wisconsin Employment Relations Commission (WERC) to initiate final and binding arbitration, on December 15, 1997, pursuant to § 111.70(4)(jm), Wis. Stats.

The WERC requested a member of its staff, Marshall L. Gratz, to investigate the matter. That investigation was conducted between January 30 and July 2, 1998.

After the WERC issued a declaratory ruling in Case 448, Investigator Gratz discussed the status of the matter with the parties, and on March 25, 1999 he certified that their negotiations were at impasse. On May 8, 1999, the undersigned was informed that he had been selected by the parties to act as arbitrator to resolve the dispute.

A scheduling conference was conducted at Sheraton Four Points Hotel on May 19, 1999, at which time the parties agreed to make minor corrections to their final offers before June 1, 1999. Both parties submitted their revisions in a timely manner. The initial hearing date, June 3, 1999, was cancelled by mutual agreement of the parties. Twenty-nine days of hearing were conducted at the Sheraton Four Points Hotel in Milwaukee, Wisconsin, between June 4 and October 21, 1999. The hearing record was closed after the filing of a delayed Union Exhibit on November 8, and the filing of two delayed exhibits by the City on December 17, 1999.

The parties exchanged their initial briefs directly to one another on December 31, 1999. Their reply briefs were exchanged directly by transmittals dated February 1, 2000, the last brief was received by the undersigned on February 3rd.

INTRODUCTION

Because these parties are long-time adversaries, they are sophisticated advocates of their cause in arbitration. Eight of their last 18 bargaining agreements, counting this one, have been arrived at after arbitration. Only two contracts, 1991-92 and 1995-97, of their last six were settled voluntarily. The final offers in this proceeding indicated that there were 17 disputed issues. The better part of the first hearing day was spent mediating, only one issue was resolved.

During the 29 days of hearing considerable evidence regarding the Association's proposals to reduce retirement eligibility and increase pension benefits was placed in the record. Evidence also showed that the City of Milwaukee was in the process of attempting to negotiate settlements of adverse judgments, involving tens of millions of dollars. Those judgments had been rendered in favor of former and present employees of the City of Milwaukee, because courts found the City had improperly transferred pension funds in which one group of employees and former employees had an interest to other funds in which other employees and former employees have an interest.

The 29 days of hearing generated 4,687 pages of sworn testimony and over 200 exhibits were entered into the hearing record. A number of disputed issues were resolved over the 4½ month period of the arbitration hearing. Most significant was the agreement by the

Association to support the "Global Settlement" of the retirement pension judgments described above. Based upon evidence in the record, that agreement by the Association and Milwaukee's employee bargaining units constituted a significant step toward settling the judgments. There is no evidence in the record, and the undersigned does not know whether the Global Settlement was approved by the courts. The agreement between the parties that resulted in the Association's supporting the Global Settlement provided that the Association would withdraw its demand relating to pension issues from its final offer in the proceeding. There is evidence that if the Global Settlement is approved by the courts, improvements to the Association's members' pension benefits will be implemented. If such implementation takes place during the term of the parties 1998-2000 agreement, it will have been accomplished by the agreement of the parties. None of the evidence relating to the pension issue have been considered by the undersigned in this decision, except for evidence that earlier retirement age will accelerate retirements, and evidence that the MPA supported the settlement.

With the pension issue put aside, the parties directed their full attention with renewed vigor to the remaining issues. Summaries of the arguments that the parties advanced in 682 pages of "Briefs?" commence on the pages indicated opposite the list of now resolved issues, as follows:

The briefs and the evidence have been reviewed carefully. The undersigned made an effort not to summarize all of the parties' arguments. Arguments that were collateral to the issues have been omitted, they were not ignored.

ARTICLE 1. DURATION OF AGREEMENT AND TIMETABLE

The present contract was for the period 12:01 a.m., January 1, 1995, through 12:01 a.m., January 1, 1998. The contract provides that between 6 and 6½ months prior to the expiration of the contract, June 15-July 1, 1997, the MPA shall give the City written notice of which changes it requests in the +successor agreement. Negotiations for the successor agreement are scheduled "beginning 30 calendar days following the date such notice is provided."

The Union's offer is for a three-year contract for the period January 1, 1998 through January 1, 2001. Written notice to commence bargaining for a successor agreement would be due between June 15 and July 1, 2000.

The City's offer is for a two-year contract which would have expired January 1, 2000. Notice to commence bargaining would have been due between June 15, and July 1, 1999.

THE UNION argued that having this proceeding result in an expired contract would lead to too many problems. It said that it would be unable to bargain for health care benefits and the vacation benefits contained in the City's offer would lapse. It argued that a three-year contract would maintain the status quo, and noted that the City has a three-year agreement with the plumbers' union.

The Union said that its offer would give the parties a little time off between the present proceeding and future contract negotiations. "It will, at least, be able to open negotiations on time."

The Union argued that, evidence from comparables shows that three-year contracts are not unusual. It noted that 41% of suburban comparables contracts and 38% of state comparable contracts over the past ten years have been for three-year periods. It said that longer contracts were more typical in the large city comparables where 59% were for three years over the past decade. The Union argued that the trend is toward longer contracts, as evidenced by 12 three-year contracts out of 14 currently settled big-city comparables.

THE CITY said that the 1995-1997 contract is an exception to the long-established practice between the parties for two-year contracts. It noted that since bargaining their l967-68 contract, 12 out of 13 of the parties' agreements have been for two years. That exception is the current contract. The City responded to the Union's "befuddlement" about how to engage in timely negotiations for a successor contract by noting that Arbitrators Kerkman (1987-88) and Fleischli (1993-94) issued their awards for two-year contracts after the current contracts had expired. It argued that the parties' bargaining history supports a two-year contract. The City reviewed Union exhibits from comparables, and concluded that the data does not support three-year agreements. It said that the Union's argument that national comparables support its offer is overstated, because the Union failed to provide any data from four of the 18 national comparables. In its reply, the City said 12 of the parties' last 13 contracts, including two awarded in arbitration, have been for two years.

The City said that the argument that a two-year contract would impair the Union's ability to bargain over health insurance is ludicrous. It cited evidence that the City's contracts with health insurance benefit administrators do not affect future benefit increases. It cited contract language, which it said makes it clear that, "it is the contract between the City and its represented employees that defines the health care benefits, not a contract the City enters into with some outside third party to administer the benefits. …" The City noted that the Wisconsin Municipal Relations Employment Act controls and ensures the Union's right to negotiate health insurance benefits. The City denied that employees' vacation benefits would lapse under the City's offer.

The City argued that two-year contracts is the norm among comparable law enforcement units. "Second, the City's two-year agreement with its firefighters for 1998 and 1999 is also an important consideration, in light of the pay parity history … ." The City said that a two-year contract would permit the parties to "assess their current financial circumstances. In that respect the recent global settlement clarifies issues that undoubtedly affected and protracted the parties' dealings in the last round of bargaining." It said that a two-year agreement will permit informed bargaining, "rather than requiring the arbitrator inevitably to guess as to the ramifications of an award for 2000."

In its reply, the Union said that the term of the parties' contract is not a substantive provision which needs to be consistent with past contracts. It argued that if the City's two-year offer is selected, the agreement regarding the commencement of negotiations would be unenforceable. The Union said that the real reason the City wants a two-year contract is to be able to "get a contract with the firefighters in 2000 and then force it down the throats of the MPA."

DISCUSSION – DURATION

Length of contract does not appear to have been an issue in prior arbitration proceedings between these parties. Arbitrator Fleischli's 1993-94 award wasn't issued until May 1, 1995, but in that instance both of the offers were for 1993 and 1994. There does not appear to be any legitimate reason to limit the duration of this contract arising out of these proceedings to a period of time that will have been expired five months before the contract is signed by the Mayor. The City's assertion that the parties' bargaining history supports a two-year agreement would have been correct if it were not for the three-year term of the expired contract. The City's concern that a three-year contract with the MPA will complicate negotiations with other pattern setting bargaining units is not a reasonable explanation for ignoring a reasonable proposal. The record in this proceeding demonstrates that many factors complicated bargaining between these two parties. It would be irresponsible to permit the terms of their agreement to be dictated by the City's fear about how this arbitration award will be interpreted by other unions.

There are a number of reasons for extending the contract through the current year, the least of which is to give both sides of the table some breathing space and a cooling down period. More important is the belief that some imponderables that were disputed on the record will be easier to deal with after the passage of a little more time. If the global pension settlement is approved, there will be an accelerated number of retirements. The global settlement will have direct effect upon the City's financial condition. The failure of the global settlement to gain approval will also have effects. Those unknown direct effects are not a factor to be accounted for herein. The indirect effects, such as increased retirements, will have an impact upon some of the issues in this proceeding. It appears preferable to know how many

additional separations there will be from the Department, and how those separations will affect the Department's operations before revisiting the issues that prevented the parties from arriving at a voluntary agreement. It will take some time for the City to implement the changes in the parties' agreement that result from this award, and for the parties to assess the effect of those contract modifications.

ARTICLE 10 BASE SALARY

Article 10 of the parties' current contract sets out the salary schedule for all wage classifications of employees who are members of the MPA.

The Union's offer would raise wages across the board by 3.25% effective pay period 1, 1998. It would move Article 37 Unanticipated Duty Pay (UDP) to wages and then increase wages across the board by 3.25% effective pay period 1, 1999. Effective pay period 1, 1999 it would reclassify the position of Latent Print Examiner from pay range 805 to pay range 808. It would raise wages across the board by 3.25% effective pay period 1, 2000.

The City's offer would raise wages across the board by 3% effective pay period 1, 1998 and by 2.5% effective pay period 1, 1999. Employees who resigned, were terminated or were discharged before the execution of the 1998-1999 contract would not be eligible to receive the wage increases. The City's offer would extend the period of time that the City would have to pay the wages due under the terms of the new contract to 60 days after the contract is approved by the Mayor.

WAGE OFFERS UNION ARGUMENTS

The Union said that Milwaukee police officers "have the most complex and dangerous job in the state and should be paid accordingly; yet they are near the bottom of the wage range in the metropolitan area." It cited evidence that the city's population has a high concentration of poor and is much more ethnically and culturally diverse than populations in the surrounding suburbs. Because the City is large, Milwaukee officers typically don't know the people they are dealing with. It cited evidence that there are three times more violent crime per officer in Milwaukee than in the majority of its suburbs, and it ranks first in reported serious property crimes. "Overall, when comparing the crime-related workload of Milwaukee officers with

their suburban counterparts, it is clear that much more of Milwaukee officers' workload is comprised of violent crimes and arrests, and serious property crime and arrests." The Union cited evidence that similar conclusions result when data from the largest cities in the state is compared to data from Milwaukee.

The Union cited evidence that 45% of Wisconsin's workload is generated in Milwaukee, and that approximately 80% of its officers' time is spent going from call to call compared to 35-50% obligated time in other large cities. It cited testimony from a former judge and from a former Supreme Court Justice that, the nature of more of the calls that Milwaukee's officers respond to is dangerous, involving gun offenses, drugs and the risk of injury or death than in suburban comparables. The Union cited testimony that drug and gun offenses in the County have increased dramatically and that the police officers' job has changed dramatically with the advent of the 911 system. "I think that there's many more obligations that are placed on the officer right now as far as not only on his or her time, but also on the obligations and requirements of the job [sic] much more complex than it ever has been." The Union said that the risk to officers has also increased because there has been a reduction in the number of two-man squads over the past 10-15 years.

The Union cited testimony that increased complexity and risk translate to a need for higher pay. "We would expect wages in Milwaukee to be at the upper end of police pay in the region as their work is generally busier, it has greater complexity than in the regional comparables and there is greater risk." The Union argued that Milwaukee police officers should be the highest paid police in the state, just as they were in the past. "However Milwaukee is near the bottom of the wage range when compared to the suburbs."

The Union said that its offer for 3.25% wage increases is in line or lower than comparable increases, while the City's offer for 3% in 1998 and 2.5% in 1999 is substantially below raises in all three comparable groups. It cited median and mean increases of 3.26% and 3.19% in 1998, 3.27% and 3.43% in 1999 and 3.23% and 3.26% for 2000 for suburban comparables. The Union said that wage increases in state comparables showed average mean and median increases of 3.3% and 3% in 1997-98 and 1998-99. "For 1999-2000 the median is 3.3% and the mean is 3.4%. The City's offer is below the median and substantially below the mean for Wisconsin's largest cities." Data from national comparables showed similar results

for both 1997-98 and 1998-99; there are not enough settlements for 2000 to draw any conclusions. "The MPA's percentage across the board raise is reasonable, and is in line with other cities. The City's offer is low in 1998 and ridiculously low in 1999."

The MPA argued that the most relevant wage comparison is with Milwaukee's suburbs, because their costs of living are similar and because the suburbs are the likely destination for officers who leave the MPD. It said that from the early 1980s until the mid 1990s, Milwaukee's wages were near the top of the wage scale compared to the suburbs. "However, from 1995 through 1997, Milwaukee's wages dramatically declined in comparison with the suburbs." First, in base wages in 1980-82, Milwaukee ranked from fourth through sixth from 1990-1993, and it slipped to twelfth place in 1994. In 1997, "Milwaukee placed 21st in base salary, $1,666 below the top-paying suburban department." The Union said that the total compensation which includes base salary, uniform allowance, holiday pay, longevity pay and miscellaneous allowances, has also fallen in comparison to total compensation paid in the suburbs. In 1997, a first-year officer ranked 19th, officers at the top steps ranked 21st after five years, 18th after ten years, 19th after 15 years and 16th after 20 and 25 years. "A similar pattern exists for total benefits and compensation."

The Union said that after the suburbs, comparison with state comparables are most relevant. In base wages, first-year officers in Milwaukee rank ninth, after their fifth year they rank fourth, after 10 and 15 years they rank fifth, and after 20 and 25 years they rank sixth. It argued that the City "gets off cheap in total employer contribution, the amount the employer pays for all elements of compensation and benefits." The Union said that, "comparing base wages among the national comparables is less useful than comparing the percentage of increases agreed to in those diverse cities. …" It said that among the national comparables Milwaukee's rank in both base wages and total direct compensation drop from sixth place for an officer after one year to eleventh place for officers after 25 years of service.

The Union said that the City's offer would cause Milwaukee's base wage rank to fall from 21 to 23 among 30 suburban comparables in 1998. The Union's offer would place twenty-second in 1998. It said the City's offer would result in a base wage rank of 25 in 1999 compared to the Union offer which would move Milwaukee to tenth place. The Union noted testimony that, "the MPA proposal without UDA is basically a weak status quo proposal." It

said that moving UDA to base wages moves Milwaukee's base wages to tenth among suburban comparables without imposing the cost upon the City.

The Union said that Milwaukee detectives "are acknowledged as being the best in the state", they have the most difficult and complex job in the area. It cited testimony that the Milwaukee County Sheriff's Department has its detectives receive training from MPA detectives. The Union described increasing crime, violence and drug use and detectives being first responders as reasons that a detective's job is more difficult than it was 15 years ago. "Currently detectives' obligated time is in the 80% range – far outside the optimal 30% range –with 'unobligated time' used for additional work related tasks." The Union said that Milwaukee's detectives have historically, and as late as 1991, received the highest maximum base pay in the Milwaukee metro area. "By 1997, Milwaukee detectives ranked eighth in the metropolitan area". Both offers maintain these detectives' rank of eighth in 1998, however, the MPA offer would improve the detectives' rank to fourth in 1999, "but only with adding UDA to base." The Union cited statewide data which shows that in 1991 and 1992, Milwaukee detectives ranked first in base pay, their ranking was third in 1997. The City's offer would maintain that rank in both 1998 and 1999. The Union's offer maintains the rank of third in 1998, and with UDA in 1999 the detectives will rank second. They will slide to third in 2000 even under the MPA's wage package. Comparisons with national comparables showed Milwaukee's detectives ranked 9 in 1991, and 10 in 1997. The Union said its offer would restore the number 9 rank for all three years of the contract. Under the City's offer, they would rank ninth in 1998, but drop to tenth in 1999.

The Union said that Arbitrator Kerkman awarded pay parity between Detectives and Sergeants in Milwaukee in his 1998 decision. It reviewed evidence that the City broke detective/sergeant pay-parity in the City's 1991-92 contract with the supervisor's union. The Union said that its wage offer will help narrow the gap between detectives and sergeants.

The Union said that the City of Milwaukee has problems recruiting qualified applicants, and retaining qualified officers until retirement. It said that in 1993, Chief Arreola recognized the problem. It cited letters that Arreola wrote to the City Attorney and to the Fire and Police Commission (FPC) outlining his reason for wanting pre-employment contracts. "He noted that the MPD had in recent times experienced the loss of a number of police officers to other

law enforcement agencies, and for other reasons, and that the frequency with which officers are leaving the Department for other employment (especially law enforcement) appear to be increasing." Arreola estimated that the 27 individuals who left the MPD for other law enforcement agencies within the three year five month scope of the proposed contract "results in a cost in an excess of $180,000." The Union said that "the City's interest in the pre-employment contract coincides with the decline in Milwaukee police officers' wages relative to their suburban counterparts.."

The Union said that a city witness "admitted that one reason there might be such a large applicant pool is that Milwaukee is the only place where applicants with fewer than 60 college credits can go." It said that many of the most educated and qualified people on the hiring list for police offer aren't willing to take the job. Of the 170 people from the top of the list who were offered the job, only 40 "earned any education credits credited by the FPC. … Of the 40 people with education points … 18 took the job, but 22 turned it down." The Union cited evidence that the FPC had to go through 170 names in order to hire 78 people. It argued that either the applicants aren't qualified or they don't want to be police officers, "either way, it means the Milwaukee job is not attractive enough to hire qualified applicants."

The Union said that 46% of the police officers who left the Department between 1994 and 1999 went to other law enforcement departments. "It's even worse if one takes out those who left for a reason other than taking another job … Among the 85 experienced police officers who quit the job and took another job, 64 went to another law enforcement job." The Union noted that 31 of the 64 took jobs in Milwaukee suburbs. It said that this resignation rate increased by 40% from 1992-1994 to 1997-1999. The Union argued that the City has a problem retaining its most highly qualified officers, because they have transferable skills.

The Union noted that though the City's wage offer to MPA is far less than the City's settlement with the firefighters union, it noted that the City said it hopes this award will maintain wage base parity with the firefighters. It argued that wage base parity is not a proper goal, because police offers have different levels of skill and education, and the complexity of their jobs is different than those of firefighters.

"The proper measure of a police officer's pay is external comparables." The Union noted that the Legislature recognized the distinct nature of the Milwaukee Police Department

when it enacted the section of the statutes that provides for this proceeding; "Milwaukee Firefighters are covered by a different statute," § 111.77, which lumps together all other police and fire units. It noted that the U.S. Department Labor (DOL) recognizes the differences between the occupations and pointed to O*NET data in the record. It reviewed that data, and concluded that police officers have a "higher level of knowledge than firefighters in business and management, social sciences, health services, English and foreign languages." They score highest in areas of law and public safety and communications. "In contrast, firefighters have more knowledge in the limited areas of engineering and technology, and some exact sciences." It cited O*NET data that, police "have higher levels of skills in the cognitive, social and complex problem solving skills, such as speaking, critical thinking, active listening, social perceptiveness, negotiations, problem identification and information gathering. In contrast, firefighters' skills are in the area of technical skills, such as the selection, operation, repair and maintenance of equipment." The Union also reviewed O*NET data which categorized police and firefighter abilities and work activities. It said that police officers have higher levels of ability in the cognitive area, such as verbal, idea generation and reasoning, quantitive, perceptual and special abilities than firefighters. It said police outscore firefighters in information input, mental process and interacting with others. The Union said that the O*NET data shows that police have higher levels of skill and ability in virtually all categories except for physical and manual work activities.

The Union said that in the past, police and firefighters may have been hired from the same labor pool. Now, the complexity of policing has changed. "The LESB has recognized the need for more education because of the changes in policing." The Union said police officers in Milwaukee and all comparable municipalities are required to have 60 college credits within five years of hire. Firefighters only need a high school diploma or its equivalent. "Virtually every other comparable city has higher educational requirements for police than for fire." The Union cited evidences that police officers are three times more likely to have a BA degree than firefighters, and that "the upgrading of police educational levels has not been paralleled by firefighters." It argued that in order to attract and retain college-educated applicants, employers must increase wages and benefits. "Over the past several years, high school graduates' wages have been stagnant, while college graduates' wages have increased."

The Union said that police and firefighter wage parity is not the norm. It said that in most cities police are paid more than firefighters. "Parity is rare among national comparables. In 1997 only four cities had parity; in 1998, that number declined to three, when Boston ended parity." The Union said that among state comparables only one has parity. All other cities, except two, pay police officers more than firefighters. The Union cited evidence that parity in Milwaukee is not based on any job analysis, or belief that the jobs are comparable. "The city argues for wage base parity only because it ensures labor peace with the firefighters." It argued that the City's insistence on wage parity has resulted in Milwaukee underpaying police officers. It argued that the City's bargaining strategy is to "bargain first the firefighters because they are already fairly paid, and then impose the settlement on the police in the name of parity."

The Union argued that the City has not followed a pattern of internal parity. "First it settled with the firefighters for more than it is offering to police." It said that the City settled for 3.25% with sanitation workers in 1998, and granted them an additional fifth week of vacation. The Union noted that the City claimed that the sanitation workers gave up their lunch hour as quid pro quo for the higher wage increase. The Union reviewed testimony regarding the Chief of Police "forcing police officers to remain in service, rather than allowing them to take a break by coming into the district station to eat." It argued that by accepting the loss of their lunch hour, the police provided quid pro quo, similar to that of sanitation workers. The Union cited differences in the City's settlement with the plumbers union, which it said, "is outside its concept of parity."

The Union said that the City had not presented any evidence to support the reduction of a custodian's salary, denial of back pay to employers who leave the department and delaying the implementation of the payment of wage and benefit increases. "The City's failure to put in any evidence on these issues is a significant additional defect in its Article 10 offer, the City's flawed Article 10 offer should be rejected in total."

WAGE OFFER CITY ARGUMENTS

The City noted that its final offer would have provided across the board salary increases of 3% in 1998 and 2.5% in 1999. It reviewed the fact that it negotiated a voluntary settlement

with Milwaukee Professional Firefighters Association Local #215 (Local #215) which provides for salary increases of 3% in each 1998 and 1999. "The City recognizes that the arbitrator's award of a 3% across-the-board increase in base salary in 1999 for MPA members would be consistent with the City's position on parity." It said for that reason, "adjustments to the second year of the City's proposal have been made to reflect the consequences of such a 3% across-the-board increase in 1999," in the City's brief.

The City said that there is no evidence that police officer compensation in Milwaukee makes the City unable to recruit or retain qualified police officers. The City said that the pre-employment contract that Chief Arreola proposed, in 1995, was intended to address a discrete, limited problem. It cited testimony that "the pre-employment contract was directed at recouping the cost of sending recruits through Milwaukee's Training Academy." It explained that individuals interested in joining small police departments, without training programs, would apply to other departments, like Milwaukee's, which did provide training. After being trained and certified as police officers, they would leave. It cited evidence that during the period 1994 through September 1999, thirteen of the 38 MPA members who were on probation, left the Department to seek employment with other law enforcement agencies. Eight of those 13 were not residents of Milwaukee at the time that they started on probation with the Department. The City calculated that "2.26 MPA members on probation resigned each year to seek employment with other law enforcement agencies. The City said that with MPA having approximately 1800 members, 38 resignations from people on probation over 69 months is a relatively low number of people leaving the department. It said that during the same period four persons who resigned, including three who left for law enforcement jobs elsewhere, sought reinstatement.

During the same 69 month period 140 MPA members who were off probation left the department for various reasons other than retirement. Sixty-four sought employment in law enforcement elsewhere; "48 of these 64 were not residents of the City at the time they were appointed to the Department." Twenty-one from the group of 64 subsequently sought reappointment. The City reviewed data about the number of people who resigned and retired from the department annually since 1994. It said that the data shows the number of people who voluntarily resigned has not increased significantly in recent years.

The City reviewed the Union's analysis and rebuttal testimony about separations from the Department. It said the data taken from a City exhibit pertaining to educational pay does not support the conclusion that the separation rate for new employees is 15.77%. It argued that when the raw data is annualized, it "translates to between 18 and 19 separations per year", an annual turnover rate of 1.02%. The City reviewed evidence that the average number of voluntary resignations from the Department from January 1994 through September 15, 1999, has remained constant. Those rates "are identical to that for firefighters and substantially lower than for general employees." The City said that turnover rates for younger employees, in all categories, are higher than for employees with substantial service. The City said that the MPA's pension actuary confirmed the conclusion that the Department has not had problems retaining qualified employees.

The City said that the argument that it cannot recruit or retain qualified applicants implied that the quality of its officers is slipping. It said that is not the case. It cited evidence that during the most recent two-week application period in 1997, the Department received over 2400 applications. "Some 1282 took the written component of the exam to become a police officer, of whom 812 persons make up the final eligible list." It said that 96 persons were appointed from this list, which will expire in May 2000.

The City said there have not been any dramatic changes in officers' workload since they negotiated their prior contract. It cited testimony from an MPA witness, that "it is very difficult to measure an officers' workload." The City noted that a Union's expert witness presented evidence that the "Milwaukee officers have the greatest crime related work demands in comparison" with suburban and state comparables. It said that the conclusions drawn by this witness are not reliable, because of the low number of incidents of violent crimes reported in smaller municipalities. The City said that if a few additional incidents were added to the numbers of violent crime in smaller cities, some suburbs and state comparables would have higher ratios of violent crime than Milwaukee. It noted that the witness "did not compare the crime-related work load of Milwaukee police officers with the largest police departments." It cited evidence that, based on FBI Crime Index data, Memphis had a 18.3% violent crime ratio compared to Milwaukee's 13.7% ratio. The City reviewed data that it said showed, based on FBI data, Milwaukee ranked 16 out of 20 national comparables; 12 out of 16 state comparables

and 5 our of 20 suburban comparables in violent crimes per law enforcement member. It concluded that data presented by the Union was "of marginal utility in making meaningful comparisons regarding true officer workload among jurisdictions and police departments." The City said that its point in reviewing the foregoing data was, "the MPA has not shown significant changes in the workload of its members since the voluntarily negotiated 1995-1997 contract that require payments in excess of the generous total compensation offered by the City in arbitration."

The City said that its wage offer is supported by internal settlements. It noted that Local 215, which represents 1000 firefighters and associated personnel, settled for 3% raises in both 1998 and 1999. The Police Supervisors contract, for 1997-98, provided a 3% increase to approximately 300 supervisory police personnel. "The arbitrator should not view this proceeding in a vacuum, unmindful of the sure damage that would be done to labor peace in the City, which is a legitimate and substantial concern of the City's, if wage parity is broken." The City said that Arbitrators Fleischli, Vernon and Kerkman recognized that pay parity should be maintained "absent the MPA's showing that such would result in an unacceptable level of compensation." It argued that the MPA has not made that showing.

The City compared evidence of the amount of direct compensation, defined as the total of base pay, longevity pay, holiday pay, uniform pay, gun pay, certification pay and miscellaneous cash payments made to officers, paid to officers with 10 and 20 years of service in Milwaukee and in comparable municipalities. It noted that the average police officer in Milwaukee has ten years of service. It also noted that Arbitrator Vernon established that National comparables consist of the nine national cities immediately above the City in population and the nine national cities immediately below the City in population." It said that, except for the City's having included Portland and the Union including Honolulu, the parties agreed to the composition of the national comparable group. It said that it was correct to include Portland, because latest census data ranks Honolulu 13 places below the "Vernon 18".

A Milwaukee police officer with 10 years would receive $46,172 in direct compensation, in 1998, under the City's proposal. Both of the parties' offers would place Milwaukee's officers in ninth place in 1998. A 3% increase would provide direct compensation of $47,499 in 1999. That, and the MPA proposal would maintain the ninth

place rank. Officers with 20 years of service would receive $46,522 and rank 11 in 1998, under the City's offer. The Union offer would also result in a ranking of 11 in 1998. A 3% increase in 1999 would result in $47,849, and rank eleventh compared to tenth under the MPA offer. The City noted that officers in San Jose receive $61,047 in direct compensation.

"The fact that the City continues to provide significant compensation levels to MPA's members is notable in light of the deteriorating economic health of the City's citizenry in comparison to the fiscal health of the residents of the national comparables." The City reviewed evidence of adjusted per capita income, from 1980 and 1997, in comparable counties. In 1980 Milwaukee County's $21,498 per capita was 72.4% of San Francisco's $29,706, which was the highest. In 1980 per capita income in Milwaukee County was 104.3% of the median $20.606, and 100.1% of the $21,471 average income in the 18 national comparables. Per capita income in Milwaukee County in 1997 reached $25,535, this was 63.3% of San Francisco's $40,357. It was 86.7% of the median $29,454, and 85.2% of the average $29,979. The City noted that Milwaukee's police do not have any money deducted from their gross pay for their contributions to their pensions. It said that that is not the case in other national comparables. It reviewed evidence which shows that, after adjustments for employee pension contributions, a 10 year officer in Milwaukee would place 7 out of 19 in 1998 under the City's offer. After a 3% increase in 1998, officers with 10 years would receive $47,499 and rank 8 out of 19 comparables. After 20 years of service Milwaukee's officers would rank 9 of 19 in 1998, a 3% raise in 1999 would maintain that ranking.

The City said that direct compensation in Milwaukee compares favorably with that paid in state comparables. It noted that a City exhibit showing compensation by state comparables reported 1997 base salary data for Appleton, because Appleton was not settled for 1998-99. An arbitration award subsequently granted 3% salary increases for both contract years. The City said that those increases do not materially affect state comparable rankings. The City's offer for 3% in 1998 would result in Milwaukee officer receiving the third highest wage, as would the MPA offer. It said that a 3% raise in 1999 would retain that rank. Both parties' offers would retain number 4 rankings, for officers with 20 years of service in both 1998 and 1999. The City reviewed evidence of adjusted gross income in Milwaukee and in the state comparables from 1991 through 1997. Milwaukee's 1991 income of $21,179 was 83.9% of

the median $25,252 and it was 78.6% of the average adjusted gross income that year. Milwaukee's $25,434 adjusted gross income was 77.8% of the $32,703 median income, and 74.2% of the average gross income in 1997.

The City said that both of the parties' offers would result in officers with 10 years being ranked sixth among thirty suburban comparables. It noted that if the $3000 EMP payment that Elm Grove officers receive was not included in Elm Grove's total compensation, Milwaukee would rank fifth. The officer with 10 years would rank eighth of 30 with a 3% increase in 1999. If the Elm Grove EMP payment is excluded, a 3% increase would produce a 7 ranking compared to fifth under the MPA proposal. The City's 1998 offer would result in a 20 year officer having fifth rank, fourth if the Elm Grove EMP payment is removed, compared to third under the MPA offer.

The City argued that the foregoing showing that Milwaukee's officers are well paid doesn't reflect substantial overtime benefits. It said that the average officer received $5,000 in overtime pay in 1997. It cited a previous arbitrator's observation that "overtime earnings are a significant part of the officers' overall compensation, which is one of the statutory standards. The said that those suburban communities that provide greater compensation are able to do so because of their greater tax base and lower numbers of police officers. It reviewed evidence that compared to average adjusted gross income per tax return in the City $21,179 (1991) and $25,434 (19997) with River Hills $171,698 (1991) and $289,248 (1997). Milwaukee's 1997 adjusted gross income is 54.9% of median adjusted gross suburban income of $46,359, it is 42% of their average income of $60,612 per return.

The City said that its 243 detectives, 13% - 13.5% of the MPA membership, are well compensated. In 1997 top detectives received $47,967, approximately 11.7% more than the top officer's salary of $42,934. The City noted that both state and suburban comparables had far fewer detectives, Madison 46, Racine 35, Kenosha 30, West Allis 20, Wauwatosa 16, Waukesha 15 and some suburbs a handful. The City said that because comparables have fewer detectives they can afford to pay higher detective salaries. The City said its offer would pay a maximum base detective salary of $49,406 in 1998 compared to Glendale which pays approximately $1700 more. The greater detective wage only costs Glendale $5,100. "By contrast, if Milwaukee were to match Glendale's detective's base salary for its 243 detectives,

it would cost the City in excess of $415,000 for a single year." The City said that a 20 year detective would receive $51,856 in direct compensation in 1998 under its offer. This would rank ninth in direct compensation among national comparables, as would the MPA's offer. A 3% 1999 increase would equate to $53,338 in Milwaukee. That and MPA's offer would retain the ninth rank among national comparables. Both offers would continue the detectives' gross compensation rank at third among state comparables and second among suburban comparables.

The City reviewed the Union's exhibits which purport to compare direct compensation paid to officers in Milwaukee with that of the three comparable groups. It said that the exhibits are inaccurate and misleading. It noted that a Union witness admitted that this listing of base wages for comparables with split wage increases reflected only the year end salary. The witness also admitted that amounts that were included in the calculations as holiday pay might not have been received if the officer elected to take the holiday off. It objected to the Union's having listed contributions paid by each employer, for pension benefits and health and dental insurance. It said that the payments made to third parties for benefits are not direct compensation to the employees, and the amount of the payment may not bear any relationship to the benefit that the employee receives. The City noted that the exhibit showed that it provided $2,219 per officer for pensions, while Shorewood provided a $8,538 contribution. The City recounted that the Union's witness did not assert that Milwaukee officers only received 25% of Shorewood's pension on retirement. "Nor was the value of an officer's pension in the state or national comparables measured or taken into account in [these exhibits]. The City said that the Union's including the employer's third-party payments for health and dental insurance was similarly inappropriate.

The City said that the Union's data for "cost-per-hour worked" is also flawed because it fails to reflect the value of the City's quartermaster system.

The City said that the MPA failed to justify its wage proposal. It said that the Union ignored the significance of internal settlements with other protective employee units, and focused on external comparables. It said that the Union concentrated on suburban comparables over the period 1980-82 to the present to justify its demand. The City said that while Milwaukee top base wage ranked number one in 1980-82, if the Union had started its review in 1984, "the record would reflect that MPA members never had a base salary higher than fourth

place during that 15 year period." The City said that the Union's "selectively presented information obscures the complete picture of the historical relationship. It said that historically Glendale, Bayside, Oak Creek and Greenfield have ranked in or near the top of the suburban rankings. "Each of these suburban communities is undisputedly wealthier than Milwaukee."

The City argued that total compensation, not base salary, is the appropriate comparison. It said that the Union's comparison of Milwaukee with 1800 MPA members to Bayside with a total of 16 people on its whole department, and Hartland with 15, is not reasonable. The City noted that the ten highest ranking suburbs and their number of employees on a Union exhibit are Glendale (47), Bayside (16), Hartland (15), Brown Deer (28), Whitefish Bay (23), Oak Creek (44), Germantown (28), Oak Creek (44), Germantown (28), Shorewood (27), Menomonee Falls (57) and Greenfield (54). The City rejected the argument that the MPA's offer is necessary because the rankings of Milwaukee's base pay have declined. It said that Milwaukee's salary rank "has been achieved in significant respect through voluntary collective bargaining. It noted that the parties reached voluntary settlements in 1991-92 and in 1995-97, and cited arbitral authority "that where the parties have negotiated wage levels relative to the average, unless salaries are shown to be uncompetitive, past agreements should not be open to relitigation through the assertion that catch-up is necessary."

The City noted that its offer would grant the City sixty days, from the signing of the contract to pay the retroactive salary adjustment. "Under current Wisconsin law, the City has 30 days in which to make these retroactive payments." The City said that it needs some breathing room given the amount of the retroactive pay adjustment, their complexity, "and the vicissitudes of electronic data processing devices . It said that a computer breakdown could result in delays. The City said that most of its bargaining units have agreed to the 60-day time limit provision. However, when it failed to meet the 30-day payment requirement after an arbitrator's decision, the Police Supervisors' Organization brought legal action and prevailed on a retroactive pay lawsuit. The City said that it is trying to avoid litigation that could "cost the City dearly." The City said its proposal is reasonable and, "given the MPA's penchant to litigate at the drop of a hat, justified."

CITY'S REPLY – The City said that the parity relationships that are relevant "are the one between Firefighter and Police Officer and the one between Detective, Police Sergeant and

Fire Lieutenant. It said that parity between Local #215 Firefighters and MPA Officers has existed since 1981. The second dates to 1988. The City said that it did not break base pay parity, in 1991-92, when the MPSO traded Sergeant's underfilling pay for a 1% salary adjustment to the Special Duty Pay Article. "The 1% is limited to pension benefit calculation and not to any other benefits including overtime." It said that the MPA has not raised the MPSO adjustment during bargaining for three contracts subsequent to the 1991-92 MPSO settlement. The City cited its previous position about the importance of comparable internal settlements. It said this is especially true where there has been base salary parity at the top Firefighter and Police Officer pay step since 1981.

The City said that it made the 1999 wage offer of 2.5% to the MPA in May 1999, while its settlement with Local #215 occurred in August 1999. "The City realizes that a 3% ATB in 1999 for the MPA is necessary to maintain parity."

The City cited the Union's argument about Police Officer education levels. "In response, the City argues that there is no evidence in this record comparing educational levels of Milwaukee Police Officers with their firefighters." It noted that the O*NET "study" is not relevant to Milwaukee's Firefighters, of whom over half are involved in EMS activity. It argued that in view of errors in the O*NET study it has no probative value.

The City, noting the Union's argument that § 111.70(4)(jm) does not require internal settlement or parity comparison, said that that section also does not provide for comparisons with external comparables. It argued that following the Union's logic would limit the arbitrator to comparing the two offers with CPI data. It welcomed that analysis, "especially given the fiscal constraints on the City budget due to the State of Wisconsin's Expenditure Restraint Program, which limits municipal budget increases to the CPI as a condition for the receipt of millions of dollars in state aids."

The "MPA devotes nearly four pages of its brief to a MPA witness' O*NET analysis of the Police and Firefighter jobs." The City argued that there was no foundation to apply the data to Milwaukee, and it argued that Union testimony relating to Police/Firefighter educational requirements should be disregarded. It argued that another Union Expert's testimony, that "base pay at max step parity is not the norm, does not recognize the history of the parity relationship in Milwaukee, and should be discounted." The City denied that parity

is if "recent vintage". It said that parity existed prior to 1965, "during 1965-1981 parity was broken three times (1974, 1978 and 1981), and parity has existed since 1981 unbroken." The City noted that the MPA argument that the "City opposed parity for years," and admitted that it did, prior to the issuance of a fact finder's decision in July 1974. The City outlined its support for Firefighter/Police Officer parity at the maximum base pay step since that time.

The City said that the "Bogus Illegal Strikes Argument" should be disregarded. It said that the argument that the City has a recruitment problem is unfounded. It specifically rejected the argument that Milwaukee has lost recruits or police officers to suburban departments because of salary considerations.

The City noted the Union's assertion that the City should settle with the MPA before it settles with Local #215, rather than force the terms of Local #215's agreement upon the MPA. It said "what the MPA is suggesting is unworkable and certainly would put an end to meaningful collective bargaining between the City and its labor associations, especially amongst the pattern setters." It cited evidence that since 1974, seven of twelve contracts between the police and City have been arrived at in arbitration rather than collective bargaining. The City said that it views arbitration as the last resort. "Through its actions the MPA does not share this belief- thus, under the MPA's suggestion, contract settlements would be considerably delayed through inevitable interest arbitration." It said that the bargaining process permits solving problems that are common to all employee units through general settlement patterns. "This would not be possible under the MPA's suggested scenario." It argued that since the MPA insists on bargaining every issue deemed in its members' interest, it would be too bad for Local #215 and other units if the MPA's interests did not coincide with the membership interests of other labor association. The City said that the integrity of collective bargaining requires that, a settlement pattern established by a pattern setting labor association through bargaining should not be topped by another pattern setter in arbitration. "The whipsawing of bargaining between Local #215 and the MPA along with the labor unrest, that occurred prior to the 18-year era of labor peace would unfortunately return to the consternation of the City's elected officials and to the detriment of the public interest."

It denied that the Plumbers union (Local 75) received "roughly a 3.5% increase in 1999 with another 3.5% in 2000." It said that the contract provided the 14 members of the unit

ATB increases of 2% in 1999 and 2.5% in 2000. In addition, the education and training component was increased an additional one-half percent. The City calculated that, based upon the fact that 10 [sic] members of the unit received the latter increase, the settlement was for 2.36% and 2.5% increases.

The City argued that the Union mischaracterized the reason that Arbitrator Kerkman awarded MPA Detectives pay parity with Sergeants in 1988. It said Kerkman found that Detectives' job responsibilities were sufficiently complex to warrant comparable pay with Sergeants, he did not find the positions to be comparable. The City denied that it broke Detective pay parity when it converted one dollar an hour underfilling pay for a 1% pay raise for Sergeants in its 1991-92 contract with MPSO. It said that when the MPA set the 1991-92 bargaining pattern it negotiated "an additional 1% ATB increase for Police Officers, the largest component of its membership. Detectives did not receive that 1% increment. The City said that when it bargained with MPSO for 1991-92, the MPSO wanted the same 1% increment for Detectives, the largest component of its membership. "The City rejected that negotiating demand because of interlocking parity relationships with Fire Lieutenant, and the Detectives in MPA." It said that the MPSO settled for a single 1992 one percent increase, limited solely to pension calculations in return for Detectives giving up underfilling pay. The City, noting that the Union did not "do anything extra for the Detectives" since 1991-92, believes that MPA is attempting to save face with the Detectives by leveraging that 1991-92 MPSO contract to break Firefighter/Police Office base pay parity. "[B]usting Detective/Sergeant base salary parity" is also significant because MPSO Sergeants and Local 215 settled for 3% ATB in 1998.

The City said that there is no evidence that either the Detective or Sergeants job classifications have changed since 1991. It cited evidence of Police Officer, Detective and Sergeant base pay salary ratios in Milwaukee and its suburbs. It showed that Milwaukee's Detectives earn 111.72% of Police Office base salary compared to an average of 107.64% in thirteen comparable suburbs. There was data comparing Sergeant and Detective base salary from seven suburbs. The average Sergeant base pay in those suburbs is 3.5% greater than Detective's. Only in Milwaukee and Glendale do Detectives and Sergeants receive equal base pay.

The City denied that the transfer policy added to Local #215's contract had any monetary impact. It reviewed the Union's arguments, which it described as conjecture, and concluded that there is no basis for the Union's request for additional compensation.

The City said that in arguing that suburban comparables offer the best economic comparison, while downplaying national comparables because "such factors as differing tax rates and housing costs make wage comparisons iffy at best," the Union wants to focus on cost of living, taxes and housing costs. It said that the MPA argued that the decline in Milwaukee's base salary ranking compared to suburban comparables should be stopped. The City said that, that argument ignores "the City's diminished financial ability to provide wages and benefits … in comparison with the Milwaukee area suburbs."

The City said that arbitrators often give "short shift" to employer's ability to pay arguments, unless the employer is "flat busted is laying off workers and spilling red ink all over the place, … [or] where the gap between the parties in arbitration is so huge that to award the Union's proposal would bring down on the employer the circumstances of the first exception in one fell swoop." The City said that it is prudent not to exacerbate Milwaukee's financial weakness by exceeding the 3% settlement it agreed to with Local #215. The City said that the Union's reliance upon comparisons of Milwaukee's average income with the average incomes in suburban comparables to justify its demand does not accurately reflect Milwaukee's ability to pay. It said that the average adjusted gross income (AGI) data that it introduced is a more reliable measure. The City compared police officers' base salaries at the maximum with adjusted gross income for Milwaukee and suburban comparables in 1991 and 1997. Milwaukee's AGI was the lowest among all comparables during both years. In 1991 Milwaukee's $34,9917 base salary was 165% of its $21,179 average adjusted gross income. Base salaries in the twenty-eight suburbs averaged 92% of their adjusted gross incomes. AGIs in the suburbs averaged 219% of Milwaukee's. In 1997 Milwaukee's $42,934 base salary was 169% of its $25,434 AGI. Suburban salaries averaged 92% of suburban AGI, and they averaged 240% of Milwaukee's $25,134 adjusted gross income. The City said that the foregoing demonstrates that the suburban comparables have more than twice the ability to pay than does Milwaukee. "The most troublesome aspect of the data, however, is that the disparity is widening." It argued that the City is at a "critical juncture." Its offer will provide "a level

of services at a tax rate that allows the City to avoid the kinds of middle and upper class flight to the suburbs that destroyed cities like Detroit and Newark."

The City, noting that there is a small difference between the offers, said that, breaking Firefighter/Police Officer parity at maximum salary will disrupt the carefully calibrated comparability "that has provided the City with a measure of labor peace." The City said it fears breaking parity "will usher in the specter of collective bargaining instability amongst the protective services, with the likelihood of pattern-setting negotiated agreements being greatly diminished and the probability (nay certainty) of continual whipsaw bargaining, job actions, settlement delays, and other labor relations problems being greatly increased."

The City noted that it had estimated that the December 1999 CPI would be 168.6 during the hearing. It attached a copy of a Bureau of Labor Statistics bulletin, which shows the December 1999 CPI at 168.3, and asked that arbitral notice be taken. The City projected the cumulative 1998-99 cost of its offer, the MPA's offer and the CPI percentage increase respectively at 5.58%, 7.95% and 4.34%, and it said that its offer exceeded the CPI, while the MPA's offer is 5/6s higher.

The City said that it is necessary to include the value of Unanticipated Duty Allowance roll-in to the Union's base salary proposal in order to accurately reflect the base salary lift, salary-driven roll-ups, overtime cost and pensionability factors.

The City presented a 17 page rebuttal to the contention that it has problems recruiting and retaining qualified individuals. It noted that the new eligibility list for new recruits will become effective when the existing list expires on May 7, 2000. It said that there is no evidence that those people who originally applied for employment, and later did not accept it refused because of low compensation. It cited other reasons in the record. The City denied that most applicants have very little education, and pointed to testimony that there is a high level of education in the Department.

The City said that the "Pre-Employment Contract Argument is Hokum." It said that, that proposal was to put applicants on notice that if they had the City pay for their training costs (approximately $6,700) and left the Department within three years five months, the City would recoup at least some of the training costs. The City reviewed the step pay increases and annual salary increases that newly appointed police officers received from 1994 through 1999,

and argued that the level of pay was not the problem. The City argued that the principal reason that new recruits left Milwaukee was to return to their hometowns.

The City said that MPA arguments, which focus on base pay, understate the actual compensation that the City provides. It said that the total direct compensation data that the Union provided for 1997 did not reflect the 13% increase in longevity pay officers with 20 years of service will receive by agreement of the parties, or the 20% increase in uniform allowance that will occur through this proceeding. It said that a Milwaukee officer with 10 years service would rank fifth in total compensation among suburban counterparts in 1998. It said if the EMT pay that Elm Grove officers receive is excluded, a 3% increase in 1999 would result in a seventh ranking It said that there are insufficient settlements for "2000 to venture into these uncharted waters. The total compensation for that year should be negotiated by the parties, especially in light of the fact that the MPA's pension enhancements originally sought in these proceedings have not been pursued here in light of the parties resolution of the global settlement of those issues." The City said that the Union's 1997 data for state comparables is outdated, the City's data for 1998-99 shows Milwaukee's total compensation will remain fair and reasonable. The City said that when the funds that officers from national comparables contribute to their pensions are deducted from total direct compensation that the officers receive, Milwaukee's officers rank seventh out of nineteen.

The City noted a labeling error on a table reflecting percentages of roll-up costs in its initial brief. It said that the Union's costing resulted in lower roll-up costs than the City arrived at. The City said that while these differences do not materially affect the percentage of lift the differences cannot be ignored. It reviewed testimony relating to Medicare roll-up, ERS normal pension cost roll-up and the City's costing of ERS of the Local #215 settlement, and concluded that the Union improperly omitted a 1.62% roll-up cost on the base salary increase it proposed. The City said that the Union's failure to include costs for additional compensated time off and increased life insurance, resulting from high pay, results in understating the costs of both offers.

The City said that the $100 increase in longevity pay that the parties agreed to, and the Union's proposal to roll the $550 UDA into base salary will increase pensionable compensation. It said that the Union did not include these increased pension costs in its

costing analysis. The City responded to the argument that it should not assess a cost to increased vacation time because it did not assign a value to vacation time and because the cost will be offset by roll-call pay savings. It calculated that roll-call savings would equal only 3% of increased vacation costs. It argued that the reason that it didn't assign a value to vacation benefits is because the exhibit reflected direct earning comparison, not the cost to the City for non compensation fringe benefits like health insurance, pensions and vacation.

The City apologized for an error in its initial brief, where it neglected to assess the cost of the Union's proposed Educational Program for 1998. By failing to do so, it understated the program's costs by $890,676. The City reviewed the assumptions that underlay both parties' estimates for the cost of the MPA proposal, and argued that its assumptions are more realistic. It said that the MPA ignored significant factors that would result in additional program costs. The City noted that its offer would grant the City 60 days from the signing of the contract to pay the retroactive salary adjustment. "Under current Wisconsin law, the City has 30 days in which to make these retroactive payments." The City said that it needs some breathing room given the amount of the retroactive pay adjustment, their complexity, "and the vicissitudes of electronic data processing devices... ." It said that a computer breakdown could result in delays. The City said that most of its bargaining units have agreed to the 60-day time limit provision. However, when it filed to meet the 30-day payment requirement after an arbitrator's decision, the Police Supervisors' Organization brought legal action and prevailed in a retroactive pay lawsuit. The City said that it is trying avoid litigation that could "cost the City dearly." The City said its proposal is reasonable and, "given the MPA's penchant to litigate at the drop of a hat, justified."

UNION'S REPLY – The Union said that it did not imply that the caliber of recruits in Milwaukee has declined. It said more of the educated applicants turned down the job than took it, and "too many experienced police officers leave Milwaukee to take law enforcement jobs in other jurisdictions." The Union said that it recognized that there are many reasons, other than higher pay for officers leaving the City, but that pay may be a contributing factor. It reasserted its argument that the proposed pre-employment contract was in response to the MPD's retention problem. The Union said that it had demonstrated that increasing numbers of police officers are leaving the City with the City's exhibits. "The fact that so many who left

Milwaukee went to their hometowns is not an indication that they never intended to stay in Milwaukee." It said that the City "plays with numbers by taking the number of quits in the small group of new hires," and comparing it to the much larger MPA population. The Union said that the fact that there are a lot of applicants is not significant, because half don't take the test and one-third don't pass it.

The Union responded to the argument that there have not been significant changes in workload since the 1995-97 contract. It cited testimony that policing has become more difficult, dangerous and technical, that Milwaukee has a lot more crime and a lot more of the ugliest crimes and that Milwaukee's officers should be the highest paid in the state.

The Union said that the "City uses parity at its convenience." It "clearly was not bothered by the concept when it bargained with the firefighters." The Union said that while it would not have settled for 3% the City should have revised its offer to the police. "It's a bit late in the game to submit exhibits which present a different 'offer' and cost it anew."

The City understates total compensation by the treatment of holidays (in comparables)" It failed to include compensation pay for officers who chose to receive pay for time off. The Union said Milwaukee Officers' 104 days a year is substantially less time than all other departments, except one, who receive from 112 days off in Waukesha to 121 days off in 12 other departments. It said that the City was inconsistent in calculating the effect of split wage increases, in some municipalities, but using year end benefit levels in its total compensation data. It argued that the City's per capita income argument is not relevant. The Union said that the City's argument in comparing the effects of the two offers pretends that the City offered 3% when it fact its offer for 3% in 1998 and 2.5% in 1999 is well below national average increases of 3.7% and 3.8% respectively. It said that "even under the City's flawed definition of total compensation" the City loses one place in rankings with state comparables, and if cash for holiday pay is included seven suburbs move ahead of Milwaukee in ranking at the 10 year level.

The Union argued that cost per hour is a relevant comparison. "An employer who can put a cop out on the street at a substantially smaller cost than other comparable employers should not be hollering that it cannot afford to pay for a reasonable wage increase." It said

that it costs Milwaukee less per hour than 13 out of 16 state comparables, and 29 out of 30 suburban comparables. "This fact is relevant to Milwaukee's ability to pay.

The Union said that compensation increases in comparable communities are much higher than the City's offer both in pay and total compensation. "Many are significantly above the MPA's proposal" The Union said that the City's wage offer is below both median and mean increases in both suburbs and national comparables in both 1998 and 1999. The 3% offer is lower than national comparables for 1999. "The City's wage increase is low, relative to the median settlement in the 16 largest cities in the state and even lower relative to the average settlement in the state. The MPA's offer is reasonable at 3.25% each year.

The Union said that the argument that smaller jurisdictions can pay "a fair wage" because they have fewer officers is not borne out, because there is no evidence that a smaller portion of suburban budgets is spent on police wages than in Milwaukee.

The Union said that internal comparability should not be the primary comparison in this proceeding. It said the parties agree that § 111.77, Wis. Stat. Should guide the arbitrator. It cited § 111.77(6) which refers to external comparables and cited a prior decision where the undersigned found that "The statutory criteria require that the offers be compared to wages, hours and conditions of employment of these police officers first with wages, hours and conditions of employment of other public employees performing similar services and then with other employees generally." The Union cited Arbitrator Petri and scholarly texts by Bernstein and the Elkouris, which support intra-industry comparison as having "paramount importance among the wage-determining standards."

The Union noted that while deciding an interest arbitration between the City of Rhinelander and its Police Department, the undersigned said:

> This recognition by the Employer is its law enforcement officers are unique is the circumstance which would justify a greater salary increase for these police officers than increases granted other city employees. In applying statutory comparison, arbitrators traditionally determine whether the employee group involved in the arbitration proceeding is distinguishable by virtue of education background or job related skills and requirements from other public employees with whom they are being compared. If it is determined that such an objective distinction between employee groups should be made, an intra-industry comparison of wages, benefits and working conditions is deemed to be

> more significant than maintaining parity with other employees within the municipality. Arbitrators have recognized that those persons who pursue careers in law enforcement are distinguishable from other municipal employees by work related skills and job requirements.

The Union argued that the foregoing rationale is pertinent in this proceeding. "The uniqueness of a police officer's job is much more pronounced in Milwaukee than it is in Rhinelander. ... It is even more apparent that Milwaukee police officers should be compared to other police officers than to other Milwaukee City workers."

The Union said that while internal settlements are relevant, there must be a strong pattern of internal settlements. "In order to enforce an internal pattern of settlement there must be a good faith attempt by the City to achieve a consistent pattern of settlements during negotiations." It said there was no such effort in this proceeding. In addition, the Union argued that the City's settlements with its sanitation workers and plumbers are "outside of the pattern."

In response to the argument that Milwaukee's Police Officers have not ranked #1 in base wages since 1982, the Union said that its offer would not take it "anywhere close" to first. It said that it is trying to avoid its "downward slide from its current position in 21st to 23rd in 1998 and 25th in 1999 among suburban comparables under the City offer." It said that its offer would result in a rank of 22nd in 1998, with the UDA roll-in it would be 10th in 1999 and 11th in 2000. The Union said that historically Milwaukee ranked in the top six in wages. It admitted that the 1995-97 voluntary settlement contributed to its decline in the rankings, but argued that willingness to try a voluntary settlement should not doom Milwaukee to a permanent position at the bottom of the rankings.

The Union said that Arbitrator Kerkman's 1988 award recognized that "Milwaukee warranted top pay among suburban comparables... " It said that after the City's position had deteriorated after two voluntary settlements, Kerkman raised Milwaukee from 18th in 1985 to 5th in 1988. The Union said that its offer would not improve the City's ranking as much as Arbitrator Kerkman's award did. It said much of the improvement is illusory because it would result from the UDA roll in. The Union cited a series of comments from fact finders and arbitrators from 1971 through 1995 which recognized that the Milwaukee's base police salary

should be at or near the top of rankings with suburban comparables. It noted that was Arbitrator Fleischli's conclusion in 1995.

The Union noted that Arbitrator Fleischli was "very reluctant to break parity" but he acknowledged that parity has it limits. It said that the City admits that parity with Firefighters is limited to top step base wage. It argued that parity, which does not include other compensation including longevity, EMT pay or certification pay, is an artificial comparison which is not based on any comparative job analysis. It argued that if the City really followed parity, "the firefighters would be in arbitration now with a 2.5% offer in 1999." It repeated arguments made earlier that the City broke parity between Sergeants and Detectives in 1993 and in 1995, and with Firefighters by granting a new transfer policy in 1999.

The Union said that the City's proposal to add language to the contract, which would deny back pay to employees who resign, were terminated or discharged before the execution of the contract, should be rejected. It said that there is no evidence in the record to support this proposal.

RECLASS OF LATENT PRINT EXAMINER

UNION - As noted above, the Union offer would "reclass the position of latent print examiner (LPE) from pay range 805 to pay range 808, the same pay range that document examiner currently occupies." The Association said that, in 1975 the Department created the position of document examiner at pay grade 804, the position was upgraded to 805 in 1977. In 1987 the LPE position was created at pay grade 805. In 1989, the MPA attempted to have both the LPE and document examiner positions reclassified to pay range 808. They agreed to reclassify the document examiners at range 808, but did not reclassify the LPE. "Both document examiners and the LPE are promoted from the position of identification technician (ID Tech). Document examiners and LPE both learned how to identify fingerprints when they were ID Techs, but each then went on to a specialty within the identification division. Document examiners learned how to identify handwriting, while the LPE specialized in the identification of latent prints, and took on the additional responsibilities regarding the maintenance of the systems used to classify and retrieve prints."

The Union said that the LPE job description includes responsibility for the correlation and maintenance of fingerprint cases and files, both hard copy and the Automated Fingerprint Identification System (AFIS), the identification of latent fingerprints, case preparation, and expert testimony regarding same. It described how the LPE goes about performing those responsibilities, and emphasized the importance of accuracy. The Union noted testimony that 90% of a document examiner's job is handwriting analysis, the remainder is typewriting and other written analysis and some latent fingerprint analysis. It said that the document examiners do know how to identify prints, but they don't have the level of skill to corroborate print work. The LPE corroborates print work and instructs other employees, including document examiners, "on the input of information into the two AFIS systems." It described the LPE's responsibilities of preparing expert testimony and reports and reviewing the work that ID Techs prepare for their testimony about fingerprint evidence. The Union said that while document examiners do fingerprint analysis once a week or once a month in crimes involving forgeries or fraud, the LPE works on all other types of crime and has responsibility for over 2600 cases on which the MPD currently has files.

It said that both document examiners' and LPE work requires a high level of expertise and judgment, "although the work is comparable the jobs are not the same." The Union said that the LPE often worked under time pressure that document examiners don't have. It described in detail the steps that the LPE performs in tracing and processing latent fingerprints and putting fingerprint data into the AFIS system.

The Union cited testimony that LPE work is very important and that the incumbent LPE has virtually no supervision. She deals directly with division and district supervisors and with detectives, rather than going through a supervisor. It said that she has supervisory responsibilities to direct fingerprint work done by others. It noted evidence that the Captain in charge of the Identification Division recognized the supervisory duties of the LPE position when he designated the incumbent to act right behind the Chief Document examiner and ahead of a Document Examiner as the supervisor in charge if other supervisory personnel are not available. "When she performs that function, the LPE would be responsible for supervising document examiners, identification technicians, clerks and police aids."

The Union said that the LPE position became more complicated in 1992 when the second AFIS system was brought on line. There are new software programs for the LPE to use. She has to be motivated to learn the programs because the MPD doesn't provide any training. The incumbent has taken several courses to improve her expertise, much of which was at her own expense. "The LPE should be paid at a higher pay range because the job requires a higher level of expertise than in the past, but also because the LPE must obtain that training on her own."

CITY – The City noted that the LPE is a one-person classification, for which the appropriate job description was issued in May 1991. It said that the March 1999 job description document, that the MPA relied upon, has not been approved. It reviewed the employment classifications that the incumbent LPE has had during her 13 years with the MPD, first as a Police Aide; Police Officer at pay range 801 for six years; ID Tech at page range 804 for four years and LPE at page range 805 since July 1996. It said that the Union's demand to raise the classification for the LPE position to range 808 would elevate the position to the level of Document Examiner, Detective and Police Data Communications Specialist.

The City reviewed the incumbent's description of her job responsibilities as identifying 10-point prints, reviewing reports prepared by ID Techs for case preparation, using software that is not available to ID Techs, reviewing every print that is put into the AFIS database and testifying as an expert witness. It said that some ID Techs have also qualified as fingerprint experts. The City reviewed testimony that "she reviewed the work of ID Techs, she did not review the work of any other person on a regular basis, and that there really isn't anyone else to supervise." She testified that when other supervisors were absent she was responsible for supervision of others in the Identification Division, but "admitted that she did not act as 'supervisor' in this circumstance very often."

The City said that the LPE pay range being between the range of ID Techs and that of Document Examiners is appropriate. It noted that the incumbent has "just three years in a promoted position ... additional promotion at this juncture [sic] premature." It cited testimony that the LPE is "just now making use of some new computerized technology that had been available in the Identification Division for three years, and that she has not been certified by any international association as an LPE. The City cited testimony about the organizational

structuring of the Identification Division with two supervisors, three Document Examiners, the LPE, 15 ID Techs and clerical support constituting the day shift. It compared the responsibility of the LPE, exclusively fingerprint, with the responsibilities of Document Examiners, who perform handwriting identification and latent print examination in roughly 50/50 proportions. It cited testimony that there are only six qualified Document Examiners in the entire state, with four in the MPD Identification Division and two assigned to a state agency. "Document examination work is highly specialized, and these individuals could instantly obtain jobs tomorrow with other agencies and be very well compensated … Document Examiners [are] worth their weight in gold."

The City said that the fact that the two positions were equated in 1989 does not mean that they should be equated now. It said that a classification study of the LPE position should be conducted by the City's Compensation Service Manager. "This was presumably contemplated by the job description dated March 1999."

In its Reply the City argued that testimony in support of the reclassification by the LPE's former supervisor should be "disregarded as not relevant." It said that the former supervisor, who retired prior to July 9, 1997, spent less than a year observing her work. It said that the job description the MPA relies upon is a working document, not an official job description."

The City said that the memo circulated by the Captain in charge of the Identification Division, assigning supervisory responsibilities to the LPE when her two supervisors and the ID Systems Specialist and the Chief Document Examiner are all absent from the Division does not justify reclassifying the LPE position. It said that the four persons above the LPE in the hierarchy are not all absent at the same time very often. When they are absent the additional responsibilities that must be assumed do not take much time and do not involve much supervisory responsibility.

The City argued that reviewing the work that ID Techs do in preparation for court is not checking their work, and corroborating the latent print work of Document Examiners means that she "shares her thoughts regarding latent prints. It said that these activities hardly rise to the level of supervision within the usual and customary meaning of the term. The City

said that the official job description from 1991, "which does not contain language in the 'supervision exercised' area of the form for the LPE position "ought control."

UNION REPLY – The Union said that the fact that the 1999 job description has not been approved is not significant since it was signed by the Captain in charge of the Identification Division. It said that the LPE position has become more difficult because the LPE is responsible for two AFIS systems rather than one, and more software programs need to be mastered. It said that the City's argument, that since the incumbent has only been on the job for three years it is premature to promote her, mistakes the Union's demand. The demand is to reclassify the position not promote the person. The Union said that the parties have bargained to reclassify positions in the past and that it is an appropriate means to do so in this case.

DISCUSSION – BASE SALARY

The City of Milwaukee continues to confront problems which bedeviled many large cities which are surrounded by more affluent suburbs. Much of its residential tax base has stagnated or declined, because many of its former middle class residents have relocated outside of the City. The average wages of those residents who remain reflect the loss of industrial job opportunities. The City's current residents, its officials and administrators have been required to grapple with situations and problems that are indigenous to the largest metropolitan area in the state. Just one of Milwaukee's problems is that it has higher rates of nastier and more violent crimes than any of its suburbs and other cities in the state. The last fact is particularly significant, because the members of the Milwaukee Police Association are the people who the City relies upon to deal with the people who commit these crimes and maintain the residents' safety.

Milwaukee has an excellent Police Department. The fact that the MPA is the City's second largest bargaining unit reflects the City's policy makers' commitment to high levels of security and innovative policing techniques. The fact that the average member of the MPA has been with the Department for more than ten years demonstrates the Police Officers' dedication to the City and their job responsibilities. Despite argument to the contrary, the Milwaukee Police Department does not appear to have a problem retaining its police officers on the job.

The biggest challenge that large cities have experienced is raising the money to permit them to deal with indigenous problems. Milwaukee may have disadvantages that its national counterparts do not face, because the amount of money that the City receives under the State of Wisconsin's shared revenue formula will be reduced if the City increases its expenditures beyond the State imposed "cap." Officials in Milwaukee have had to work hard to control expenditures in order to hold the line on tax increases. It appears that they have been successful because property tax mill rate levies have been reduced. One of the methods that the City has employed to hold the line on spending has been hard bargaining with its 19 represented employee units. The foregoing resulted in the City being able to reach 1998-99 agreements with only four unions, none of which were "trend setters," at the time the arbitration hearing on the Milwaukee Police Association contract commenced.

It is not clear from the record why, but it is apparent that relations between the City and the MPA are strained. The fact that the parties' 1987-88, 1989-90 and 1993-94 contracts were all achieved after arbitration suggests that seeds of disharmony are rooted deep. The parties' salary arguments reflected in Arbitrators Kerkman, Vernon and Fleischli's decisions show that the parties' positions have not changed. The Union has consistently justified its offer by emphasizing external comparability, and much more significant, has been the City's adherence to "base salary parity" with Firefighters Local #215. Each of the arbitrators mentioned above, as well as Arbitrator Arvid Anderson in his 1981 decision found that base wage parity did exist. That parity has been maintained to the present through the parties' 1995-97 voluntary settlement. The city's emphasis on maintaining that parity during the is round of negotiations with a 1999 ATB 2.5% increase for the MPA, and its settlement with Local #215 for 3% in 1999 appears to have accentuated the strain in the parties' relationship.

In his 1981 decision Arbitrator Anderson said that, "The City also has repeatedly stressed that I cannot render my decision in a vacuum and must consider the consequences of my award on the existing firefighters reopener agreement as well as the City's negotiations with other Unions. …" At that time the Firefighters had a me-too salary reopener clause in their contract, which would have provided the firefighters two automatic wage increases if the arbitrator selected the Union's demand for two 11.5% increases. The MPA argued that the City had rushed to settle with the firefighters, and granted them a me-too reopener, in order to

defeat the MPA's wage demand in arbitration. Anderson said that he "is persuaded that some of the MPA's complaints about the unfairness of the City's agreement with the [Firefighters] are justified." In that case the arbitrator found the City's salary offer was the most reasonable in part because Milwaukee's base salary earnings outranked all suburban comparables. Arbitrator Anderson said "I also want to state that my comments concerning the parity settlement, the reopener agreement, and the impact of these proceedings would not have prevented me from awarding a larger increase than proposed by the City, if the facts warranted such a conclusion."

In his 1988 award, Arbitrator Joseph Kerkman rejected the City's argument that total package parity between the police and fire units should be considered.

> Consequently any discussions with respect to parity of Police and Fire as it relates to these proceedings will be confined to comparisons of wage rate to wage rate only. ... Having determined that this issue of parity is an appropriate issue for consideration in these proceedings, it remains to be determined what weight the parity issue shall have in resolving he issues before the parties.

Kerkman found that Milwaukee's officers deserve to receive top pay among all suburban comparables, but that it had dropped to 18th place by 1985. Kerkman found that the City's offer for two split 3%/2% increases in 1987 and 1988 would permit the Milwaukee Police to raise to number 5 in 1988. He found the City's offer to be more reasonable than the MPA's demand to be restored to first place in with two 6.5% ATB increases. Arbitrator Kerkman said that "there may be an occasion in the future when the parity issue will not draw as heavy weight as it does in the instant matter." He said that in the future, record evidence may show that police in Milwaukee, "in comparison to their neighbors, are underpaid to the degree that an award in excess of base pay parity should be fashioned."

Arbitrator Gil Vernon said that a party seeking to break parity "faces a heavy burden." In Vernon's opinion arbitrators should adhere to parity unless it would result in an unacceptable level of compensation for the bargaining unit relative to external comparables. He said "there shouldn't be any significant erosion, and given the historical position among the comparables, the unit should reasonably fit within the comparables. Vernon compared the Union's offer for 5% ATB increase along with a new salary step to the City's offer for two

split 2%/2% increases during the 1989-90 contract period. He found that the Union's offer would result in a number one rank and the City's offer in a number two rank among the largest 15 cities in Wisconsin. Milwaukee ranked fifth among the suburban comparables. The Union's offer would have resulted in a first rank compared to second under the City's offer. Vernon said that Police Officers in Milwaukee deserve to receive the top police officer salaries in Wisconsin. He noted that in terms of total compensation they were in fact number one – "they won by a nose." Vernon selected the City's wage offer.

The City's offer for 3½% in each 1993 and 1994 resulted in it being ranked first among big city Wisconsin comparables in 1993 and ranked third among that group in 1994. It resulted in a fifth rank out of 30 suburban districts in 1993, and was ten of 28 settled districts in 1994. Fleischli said "Like others before him, the unsigned cannot accept the proposition that the concept of parity precludes the MPA from ever justifying an increase greater than agreed to or awarded to firefighters which results in breaking of the parity relationship that exists in base salary. Fleischli did not find that there was compelling evidence to justify breaking Police/Firefighter parity in 1993-94.

The undersigned agrees with the rationale and decisions of highly regarded brethren discussed above. It appears, however, that there are two significant differences in the circumstances of the pending proceeding from facts that resulted in those earlier awards. The first difference resulted from the City's bargaining strategy, and the fact that the two salary offers are so close. The second is the effect that the two offers have on rankings with state and suburban comparables.

The City's final offer for 3% in 1998 would raise maximum base salary for police officers in Milwaukee from $42,934 to $44,222, and this would be a $1,288 base wage increase. The Union's 3.25% demand would result in a $1395 raise to $44,329 in 1998. The difference between the two offers is $107 in base salary only. The City's offer for 2.5% in 1999 would result in a $1,106 raise to $45,328 maximum base salary. The Union's demand would roll the $550 UDA onto it 1998 base resulting in $44,879, which would be raised by 3.25% to $46,337. While this would increase an officer's base salary by $2,009 in 1998, the officer would receive only $1,459 more money because of the UDA roll-in. The difference between the two 1999 offers is $460 in addition to the benefit roll-up and overtime pay costs

for the $460 higher offer and $550 UDA, which would now generate benefits. The total difference between the two wage offers over two years is $567 in base salary increases, plus those benefit roll-up costs calculated against $1,117 total increases in base salary. These are the numbers that have been used for the purposes of comparing the parties' offers with comparable salaries and salary increases.

It has been noted that the City has invited the undersigned to grant the MPA 3% ATB increase in 1999 in order to be consistent with the City's 3% 1999 settlement with Firefighters Local #215. If the City's final offer had been for 3% in 1999. the difference between the parties' offers that year would have been $239. The two-year difference would have been a total of $346 or .8% of the $42,934 maximum base salary that was in effect in 1997. That is the amount by which parity with Local #215 would be broken if the award in this proceeding adopts the Union's salary demand. The undersigned recognizes that if each of the 1800 MPA members receives the maximum base salary, the cost of the Union's salary offer would be $622,000 plus roll-up costs and over 1% lift in base salaries.

While not insignificant, those increases pale in comparison to the differences that were discussed in those previous arbitration awards. Arbitrator Anderson considered City offers of 8.79% in 1981 and 8.69% in 1982 and Union demands for 11.5% for each year. If he had held for the MPA, a me-too clause in the Firefighters' contract would have had their previously negotiated 1981-82 increases of 6.6% and 6.4% raised automatically to 11.5% for each of those years. Arbitrator Kerkman found the City's offer for split increases of 3% and 2% in each 1987 and 1988 would improve the City's relative wage ratings sufficiently. He did not grant the Union's demand for two 6.5% increases, which would have moved the City to first in wage rankings in one contract period. Arbitrator Vernon found that the City's offer for split increases of 2% and 2% in both 1989 and 1990 would increase Milwaukee's wage rankings, therefore the Union's demand for two 5% ATB increases and a new salary step were not justified. Arbitrator Fleischli reached the same conclusion when he compared the City's offers for 3½% in both 1993 and 1994 with the Union's demand for 4½% during each year.

The major difference between he parties' offers in this proceeding and their offers in previous arbitrations is in how they would affect Milwaukee Police Officers' base salary rankings with state and suburban comparables. Milwaukee's maximum base salary ranking

was first, among the suburban comparables, when Anderson issued his award in 1981. The rank was 16th in 1986. Kerkman approved the City's offer in 1988, raising their rank to sixth amount the 30 metropolitan municipalities in 1988. Vernon's 1990 award resulted in ranks of sixth and fifth in 1989 and 1990. The City's base salary was fourth in both 1991 and 1992. Its rank slipped to sixth in 1993, and dropped to twelfth in 1994 as a result of the Fleischli award. The parties' 1995-97 voluntary agreement resulted in placements of 17 in 1995, 20 in 1996 and 21 in 1997.

Three of four previous arbitrators found that Milwaukee's Police should rank at the top of the metropolitan area's salary ratings. In those proceedings the City's salary offers were sufficient to keep the City's ranking in the top half dozen out of thirty. Since Arbitrator Fleischli's award for 1993-94, and under the terms of the parties' 1995-97 settlement, the City's salary rank has dropped to seventeenth in 1995, twentieth in 1996 and twenty-first in 1997. The City's top police salary was higher than the Milwaukee County's top Deputy Sheriffs' salary from 1980 through 1994, when the differential favored the City's police by $1,755. The Deputies received a substantial salary increase in 1995 and 1996 when their annual salary edged ahead of the police by five dollars. In 1997, Deputy pay was $43,430 compared to $42,934 for the Police, a $496 differential.

Salary increases in comparable municipalities in 1998 and 1999 support the Association's demand. In 1998, fifteen of 29 settlements were equal to or exceeded the Union's 3.25% offer. The median and mean increases were 3.26% and 3.19% compared to the City's offer for three percent. The MPA offer would result in Milwaukee slipping one additional rank to 22nd compared to 23rd with the City's offer in 1998. The City's 2.5% offer in 1999 would drop Milwaukee two additional places to 25th. If the Association's 3.25% ATB offer for 1999 was added to the $44,329, its 1998 base, the result would be one step up to 21st, with the UDP roll-in the Association's offer would raise Milwaukee's base salary to eleventh. The foregoing assessment of 1998 and 1999 rankings are based upon 28 settled agreements in 1998 and 25 settlements in 1999, with the increases in the unsettled municipalities increased by the median settlement in the manner suggested by Professor Bellman. Those estimates appear to be reasonably reliable.

Milwaukee ranked six out of 15 large city state comparables in 1997. Both parties' offers would retain that rank in 1998. Eleven state comparables are settled for 1999 with median increases of 3%, the mean increase was 3.3%. The City's offer would result in a rank of 4 of eleven, the Association's offer would move Milwaukee to number 2, behind only Racine. However, Green Bay is not settled for 1999, its 1998 base salary was $47,060, which is $720 more than the Union's 1999 offer and $1,732 more than the City's offer. Based upon 1998 salary levels, it appears reasonable to assume that the Union's offer with UDA roll-in will result in a 3 or 4 rank among state comparable in 1999, and the City's offer would rank seven of eleven, a loss of one place.

Milwaukee ranked eleventh out of the "original" Vernon 19 national comparables in 1997. Both of the offers would retain that rank in 1998. Both parties' 1999 offers would get Milwaukee a rank of 8 out of thirteen settled national comparables. It appears to the undersigned that the primary value of data for the Vernon 19 is that it adds the dimension of a national perspective, sort of a reality check.

Though the national comparison validates conclusions that were arrived at when analyzing state and suburban comparables, little weight has been given to national comparisons in this proceeding.

The Union's 3.25% demand for 2000 is supported by settlements in both suburban and statewide comparables. Fifteen of the other 29 suburban comparables settled for between 2.5% and 4.49% wage increases in 2000, the median and mean increases are 3.23% and 3.26% respectively. Five departments received more than 3.25%, two received 3.25% and eight received increases ranging from 2.5% to 3.23%. The MPA's offer would result in Milwaukee being ranked fourth out of 15 settled metropolitan comparables. It appears reasonable to project, from the data in the record, that it will rank eighth or ninth after the other comparables are settled. Eight state large cities settled for salary increases from 2.7% to 6.1% in 2000, the median and mean increases were 3% and 3.4% respectively. The association's offer for 3.25% would generate $47,843 at maximum base salary in 2000, that would rank second of settled large city comparables. It appears reasonable to project that after the other large cities are settled Milwaukee will rank third or fourth of fifteen.

Evidence of settlements in Milwaukee's 29 metropolitan and 14 large city state comparables is compelling. The Association's three year offer for 3.25% each year would result in further erosions in its rankings with those comparables, were it not for the UDA roll-in. After rolling that "old money" into base salary, Milwaukee's Police Officers base salary will achieve modestly improved rankings. Awarding the MPA's demand will result in base wage rankings in or near the upper third of both sets of comparables. Evidence in the record of this proceeding and the decisions of arbitrators in previous proceedings indicate that they deserve better. Being aware of the fact that these parties may find it necessary to invoke Sec. 111.70(4)(jm), Wis. Stats. Sometime in the future, a gratuitous observation is appropriate. The reason that the MPA's salary offer is compelling is because it is reasonable. It is unlikely that the City given its financial constraints will be financially able to meet a demand for a top five ranking in police officer salaries, among the suburban comparables, in the foreseeable future. The Association appears to have recognized that fact. There is no justification for permitting Milwaukee's Police salaries to rank in the lower twenty percent of comparable metropolitan salaries. That is where they would be if the City's offer had been accepted.

Arguments that MPA members' total compensation exceeds that of most comparables has been noted. It is difficult to quantify the evidence supporting either side of that argument. In view of the fact that there is no evidence that there have been any extraordinary improvements in benefits during the time periods reviewed above, total compensation arguments are collateral to the salary issue. Milwaukee Police Officers' wages and benefits, acquired in bargaining and in arbitration over the past eighteen years, are reasonably comparable to that of their counterparts in the metropolitan area and in the largest cities in Wisconsin. The MPA's evidence relating to the hourly cost to the City per police officer was innovative, irrelevant and bordered on being insulting to the undersigned. It appears that annual salary increases have been predicated upon their impact on maximum base salary since at least 1981. The award of the Association's base salary demand in this proceeding is consistent with that standard analysis.

The City's argument that internal settlements support its offer is subsumed by its parity arguments. The discussion about the parity issue above neglected to mention the MPSO settlement, which does support the City's offer. The Milwaukee Police Supervisor's

Organization is most comparable to the MPA. The significance of the MPSO settlement is mitigated by the need to grant the MPA a sufficient salary increase to improve Milwaukee Police Officers' comparative rankings. The MPA argument that its offer should be accepted in order to restore parity between MPA Detectives and MPSO Sergeants has not been a factor in this decision. The fact that the Detective's wage ranking is more stable under the Union's offer has been a factor.

The City's argument that the existing salary rankings were voluntarily established during negotiations for the prior contract and therefore should not be changed in arbitration is a cynical argument. If that was the rule, no bargaining unit would enter into voluntary settlements. It is clear from the record that the Association has been consistent in arguing the need to either maintain or improve Milwaukee's base salary rankings over the last 20 years. It would be horrible public policy to find that the MPA forfeited the right to achieve that long stated objective because it entered into a voluntary settlement that resulted in deterioration in salary rankings.

The City argued that the Union misrepresented some comparables' wages because it failed to annualize salaries in those municipalities with split increases. Since the split increases have all gone into effect, except for 2000, the salary at year end is the appropriate number for comparisons. The City argued that the Union failed to accurately reflect the cost of benefit increases that the parties have agreed to, and omitted some roll-up costs. Those arguments are correct. However, it appears that the net financial effect, of the items that the City mentioned, will be minimal.

The City correctly argued that the statutory mandate to compare the two offers to increases in the Consumer Price Index (CPI), supports its offer. There are two reasons why that fact is not a decisive factor in this proceeding. The first has been recognized by most arbitrators in Secs. 111.70(4)0(jm) and 111.70(6) cases, and nationally. That is that increases in the CPI are not a good barometer during periods of low inflation. The second is the arbitral rationale based in part on the former. The best measure of change in the cost of an employee's living expense is determined by assuming that the employee's need is equal to that of similarly situated employees as determined by patterns of voluntary settlements in comparable communities.

The interests and the welfare of the public will be served best if Milwaukee's Police Officer salaries are increased by an amount that is sufficient to raise and maintain Milwaukee's Police salaries in the upper third of suburban comparable rankings, and in the upper 25% of large Wisconsin city comparables during 1999 and 2000. The City of Milwaukee has the ability to pay the Union's demand, which will achieve that rsult. For the reasons outlined above, the MPA's demand for 3.25% across the board salary increases, for pay period commencing on each December 28, 1997, December 27, 1998 and December 26, 1999, is awarded.

That part of the City's salary offer which would extend the period of time that the City will have to pay the wages due under the terms of the new contract for a period not to exceed 60 days after the new agreement has been executed appears to be reasonable, and will be included in the award..

DISCUSSION – RECLASSIFICATION

The strongest evidence that the Association presented in support of the reclassification, was based upon what it called the 1999 job description. Its argument that it doesn't matter that the 1999 document didn't make it through the approval process is whistling in the dark. The approved 1991 job description does not contain the language relating to supervisory responsibilities that the Union postulates from the unapproved 1999 document. The September 1997 memo establishing responsibility for administrative tasks doesn't appear to be any more than a housekeeping matter.

The City's assertion that Captain Ferrier's testimony should be disregarded because he only supervised the incumbent LPE during her first year on the job is absurd. It is clear that the officer in charge of the Identification Division until July 1997 knows what the job responsibilities of the people he supervised were. The evidence indicates that, except for more demands being made upon the LPE, the responsibilities have not changed during the past 2½ years.

It's not clear from the record that supervisory authority is a necessasry anticedent for the 808 page range classification. It is not clear what the status of that 1999 Job Description is. It seems clear that the Union's argument, that the incumbent's seniority on the job is

irrelevant is correct. It appears to be clear that the person who holds the position of LPE in the Identification Division of the MPD must have expertise, and is responsible to perform important and technical functions. It is not clear that the LPE position merits a wage classification of 808.

It appears that the City recognizes that there may be merit in reclassifying this position. Its suggestion that the City be required to conduct an in-depth job sudy to determine whether the LPE position should be reclassified is awarded.

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ARTICLE 12 SPECIAL DUTY AND TEMPORARY ASSIGNMENT PAY

Currently police officers assigned to underfill as Desk Sergeant receive additional compensation for each hour spent underfilling. The contract also provides that "effective pay period 11, 1995", officers assigned to perform dispatch duties, Police Alarm Operators ("PAO"), receive temporary assignment pay for time spent doing dispatch duty. Additional pay for underfilling and temporary assignment is not pensionable. The Union offer would extend the underfilling compensation benefit to Identification Technicians assigned to act as Identification Supervisor. The offer also provides that those persons who acting as PAOs or as Court Liaison Officers (CLO) must be appointed permanently to the position they are temporarily assigned at the time the parties' 1998-2000 contract is executed. The City's offer retains the existing provisions of Article 12.

THE UNION said that its proposal is consistent with the City's practice of promoting police officers to positions after they have served in the position for one year. It said that historically officers were assigned to the communications division for one year before being promoted to PAO. It noted that the City has not promoted an officer to the PAO position since 1986, instead it has been underfilling the position with police officers. One of these officers has served as a PAO for 9½ years while others have served for many years. Officers who underfill do not receive wages and benefits equal to those received by PAO. It said that the officers acting as CLOs are in the same predicament. The CLO position, with a pay range between police officer and sergeant was established in 1983. When the original CLOs retired, the City "assigned police officers to do the job, even though the positions still existed. The officers who work those positions did not receive additional pay, until underfilling pay was

awarded by Arbitrator Fleischli in the 1993-94 contract". They do not currently receive additional pay for overtime or pension benefits.

The Union reviewed testimony that officers underfilling as Police Alarm Operators and Court Liaison Officers have the additional responsibilities and they perform the functions which should entitle them to additional compensation and benefits. It noted that both the Circuit Court and Court of Appeals found the City had violated its contract by requiring police officers to work as PAOs on a permanent basis without promoting them to that position. It noted that the only remedy the Court provided in that case was back pay for the officers involved in that case. A second action to require the City to promote the officers was dismissed. An appeal of the dismissal of the second action is now pending.

The Union recognized that the City has "finally begun to civilianize the Communications Division." It argued that the City has not made a good faith effort to resolve the problems that have resulted from delaying this civilianization of the Division. It said that failure to promote the persons who are performing these valuable functions is unfair and bad policy. The Union said that "an award from the arbitrator directing the promotion [of these employees] is the only way to protect these workers from the MPD's corruption of the concept of 'temporary assignment'." The Union said that if the City moves ahead with the civilianization plan, there will be fewer officers affected by its proposal. If the City fails to implement civilianization, the underfilling officers will receive "the benefits they so justly deserve."

The Union noted testimony that civilianization will save the city $625,000 a year. It said the Association's demand will benefit only those officers "who have performed as PAOs over the long history of underfilling," those on the job more than a year and who are performing PAO duties one month after this award is issued. It argued that in light of $625,000 in annual savings, the City should not begrudge these officers the promotion that has been denied for so long.

The Union reviewed its demand that an Identification Technician underfilling as an Identification Supervisor receive the higher rates of supervisory pay, in the same way that police officers who fill in as Desk Sergeants currently receive the minimum pay for the Desk Sergeant position. It said that the City has reduced the ratio of supervisors in the ID Bureau

so that "it now needs MPA members to perform supervisory tasks." It cited evidence that the city acknowledged that there are insufficient supervisors to meet staffing requirements. Eight to ten times a month there is no ID Supervisor to work the third shift, in those instances the senior ID Technician is required to "perform some of the supervisory functions as well as his own work." The Union noted a Departmental rule that officers who are "temporarily placed in the position of a member of a higher rank by proper authority shall exercise the authority and perform the duties of said higher position, and shall be held responsible in like manner as if regularly appointed to such higher office." The Union analogized the situation of an ID technician performing supervisory duties with a police officer underfilling as a Desk Sergeant, and argued that the ID technician should be compensated in the same manner as the officer acting as a Desk Sergeant. The Union noted that the majority of suburban, state and national comparables provide underfilling pay when an officer in a lower paid job has to fill in for an officer in a high paid job title.

THE CITY said that the demand to promote officers to the position of Police Alarm Operators "would effectively derail the Department's implementation of [the] civilianization effort and impose unnecessary costs upon the City." It said that the Chief of Police is "responsible for the efficiency and general good conduct of the Department," and argued that he needs to have flexibility in assigning personnel in order to meet his responsibilities. It said that the Chief of the Milwaukee Police Department and the City's policymakers "have determined as has just about every jurisdiction for which there is evidence in the record, that the civilianization of dispatching functions in the police department is appropriate and that assigning police officers presently underfilling vacant police alarm operator positions to areas where their law enforcement powers are needed and can make a difference is appropriate." It cited evidence that the first step in civilianization, in 1986, removed officers from telephone call taking functions. "The civilianization of the Department's dispatching functions now underway is the completion of that initial undertaking."

The City reviewed some of the controversy that has surrounded various efforts to civilianize PAOs since the mid-1980s. Most recent efforts, supported by the present Chief and the City's Police and Fire Commission resulted in the City's incorporating the civilianization of

PAOs into the City's 1999 budget. It pointed to evidence that adoption of the Union's demand would delay the implementation of civilianization for at least a decade.

The City noted that the Union previously requested Arbitrator Fleischli to grant "mandatory promotion to police alarm operators and others." It said he denied that request and adopted the City's proposal to award underfilling officers the flat dollar difference between the officer's pay and the PAO pay range. There are currently 51 officers underfilling as PAOs. The City said that the current budget provides for replacing 33 of these officers with civilian dispatchers. This would be the first step so that ultimately all 51 sworn officers could be reassigned to police work. It pointed to evidence that the Department has reason to believe that its first step objectives can be achieved starting with placement of the first civilian dispatchers in January 2000. It noted that 28 of 30 suburban comparables, 16 of 18 national comparables and 14 of 15 large city comparables employ civilian dispatchers.

The City argued that the Union's summary of the history of events leading up to the present dispute is inaccurate and mischaracterized the circumstances. It said that though the Union has repeatedly supported promoting police officers into permanent position as PAOs, there has been a clear indication since September 1992 that officers who underfill as PAOs "should have had no expectation of a promotion." The City criticized the language of the MPA's proposal and argued that it is ambiguous and unworkable. It said that "A number of civilian telecommunicators in the division have been frustrated with the lack of opportunity for career advancement." A sizeable number of them have applied to become civilian dispatchers.

The City noted testimony that the MPA's proposal to promote "each employee underfilling the position of Court Liaison Office" is limited to the two individuals currently serving as CLOs. It noted that both of these officers are currently receiving temporary assignment pay as a result of Arbitrator Fleischli's 1995 award. The City said that the wording of the proposal is problematic because it is not limited to the incumbents, therefore, it would restrict the administration's efforts to assign officers to the CLO position in the future. It noted testimony that the manner in which the Department processes cases has changed over time and will continue to change. "The Department should continue to have flexibility to determine how long and in what fashion the court coordinating functions will take place, rather than being locked into one or more persons promoted to a position for a long period of time.

The City said that when a senior ID technician is assigned to perform "a few minimal tasks in the absence of a Police Identification Supervisor, … the bulk of these tasks would be tended to … in the first few minutes of the start of any work shift." It said those few duties are neither burdensome nor time consuming. The remainder of the shift is spent performing the ID Tech's customary duties. The City argued that there is no comparison between the responsibilities that the ID Tech's assume and the time and responsibilities that an officer underfilling as a Desk Sergeant assumes. It reviewed testimony, which it argued, established those facts. The City denied the Union's argument that there is comparable support for the proposal. It reviewed evidence that distinguishes the Union's proposal with the extended periods of time that other municipalities require before a person is entitled to additional compensation for underfilling.

In its Reply Brief, the City argued that the Union's proposal to require the promotion of officers to PAO positions ignores the policy decision that the City has made to fill these positions with civilians. It argued that this decision is within the management rights provision of the parties' contract. The City disagreed with "the MPA's intimation that dispatchers must or should be police officers." It said that it has implemented the temporary assignment pay and made a good faith effort to deal with the PAO issues. It argued that the Union's attack is not supported by facts. It argued that the Union is attempting to undo Arbitrator Fleischli's decision that officers underfilling for PAOs should not be promoted. The City denied the contention that there is uncertainty about its intention to complete the civilianization program. It said if there is any delay it is because of "MPA's intransigent resistance." The City noted that the Union stated that Senior ID techs "performed some of the supervisory functions" of an Identification Supervisor. It said that for more than 15 years the Senior ID techs have been performing administrative and clerical functions when a supervisor was not on duty. Those duties have not changed as a result of Captain Valentino's 1997 memo, they are not supervisory duties.

In its Reply Brief, the Union argued that is proposal would not thwart civilianization of the Dispatchers. It argued that if the administration chooses to continue to use police officers with more than one year's experience one month after this award is entered, "it is only fair that the MPD promote those officers in recognition of that experience." The Union denied

misrepresenting the history of the PAO issue. It said that it had not represented that its summary was exhaustive. It argued that comments by the Police and Fire Commission that underfilling officers should not expect promotions are not relevant because the Court of Appeals determined that the refusal to promote is a contract violation. The Union denied that its proposal is ambiguous, and argued that the City's claim that it had not understood the mechanism for the proposed promotions if disingenuous. The Union denied that it would be wasteful to promote officers who are acting as PAOs when they will no longer be performing as PAOs. If they have earned the promotion, it should be granted. "The City's concerns about promoting to CLO apply to all promotable positions, and do not form a valid basis for denying the CLO promotions."

DISCUSSION – SPECIAL DUTY AND TEMPORARY ASSIGNMENT PAY

The Association's demand affecting PAOs and CLOs would require that the approximately 51 police officers who are underfilling as PAOs, and the two officers who are underfilling as CLOs, be permanently promoted to the higher positions, if they are still underfilling those positions when the present contract is executed. The history of the PAO problem is unique, it will be reviewed first. There is no need to review the reasons why that when these parties were in arbitration over their 1993-94 contract there were 28 police officers underfilling as PAOs. Arbitrator Fleischli noted that "A stalemate has developed, within City government, concerning what action to take with regard to the possibility of civilianizing the PAO positions." It was, and is, the MPA's position that the City had dragged its feet by failing to fill authorized higher paying PAO positions, by assigning police oficers to perform dispatch duties without receiving PAO wages. The City argued then, as it does now, that as a result of an adverse decision in Federal equal rights litigation, it was unable to make permanent appointments to the positions. And that by the time the litigation was concluded, the City was planning to reorganize the dispatch position responsibilities in the Communications Division. The planned reorganization would result in replacing the higher paying PAO positions with civilian dispatchers, who would be in a lower wage scale.

Arbitrator Fleischli's award provided that police officers who underfilled as POAs and as CLOs would receive temporary assignment pay while underfilling. Temporary assignment

pay is not pensionable. Awarding the MPA's offer would result in the underfilling officers being reclassified from pay grade 801 to pay grade 804. The Association's argument that the City has used police officers who are qualified for permanent appointment as PAO's without promoting the officers is even more unfair than it was when Arbitrator Fleischli recognized "the continuing inequity," is at least partially correct. Fortunately, the officers have received temporary assignment pay as a result of Fleischli's 1993-94 award.

The City presented convincing evidence that the stalemate that previously prevented the Chief of Police from implementing civilianization has been resolved. Evidence that 40 applications for the new civilian dispatcher position had been received by October 20, 1999, and that there were reasons to believe tha the FPC would approve the eligible list for new hires on November 18, 1999, demonstrates that the civilianization program is going forward. The Department's goal to hire 33 civilian dispatchers during 2000 and replace the remaining 18 underfilling officers by 2001 appears to be optimistic after all of the years of inaction. As the underfilling officers have been replaced by civilian dispatchers, the officers will resume regular police officer responsibilities. The City estimated that there will be substantial savings from replacing the higher paid PAOs and underfilling officers with civilian dispatchers over time.

It would be improper for an arbitrator to order the City to promote officers to a permanent position after the City's policy makers have made the decision to phase out the position, and the officials who are responsible for implementing the policy are doing so. It appears that the officers who were assigned to PAO positions were not required to stay in those positions if they requested reassignment. Since the 1993-94 arbitration award was implemented, they have received a pay differential of between $1,900 and $2,000 per annum. While it does not appear to be fair that the officers did not, and will not, receive pension benefits and overtime benefits for the pay differential, it appears that Arbitrator Fleischli's award made the temporary situation as equitable as possible.

There isn't even a suggestion that the City considers the situation of the two Court coordinators or CLOs to be temporary. It is clear the police administration intends to permanently underfill these two authorized positions. Its explanations or justifications for doing so were pathetic. The Union observed that the same arguments could be made,

unconvincingly, to underfill half of the positions in the MPD. If any of the City's concerns have merit, they should not apply to the incumbent CLOs who have been doing the job for years. The City may be correct in arguing that the language of the proposed union demand lacks artistic merit and could result in administrative problems in the future. Since it is clear from the record that the demand is limited to the two incumbents that should not be case. If the City disagrees with that conclusion, it should take the time to devise a strategy before there is need to replace the incumbents.

The Union's arguments for awarding Identification Technicians (ID Tech) temporary assignment pay for underfilling for an absent ID Supervisor would be compelling if there was any evidence to support it. It was abundantly clear from the testimony that there is no comparison between the administrative duties that ID Techs are expected to perform in the absence of their supervisor and the supervisory role that acting Desk Sergeants are responsible for. There was no evidence that expectations for the senior ID Tech have changed over the past 15 years, except for that September 1997 memorandum. The Association is repeatedly relying upon that innocuous housekeeping memo has attempted to elevate its significance to that of a papal encyclical. An encyclical defining the role of laymen in the Catholic Church would not make laymen priests. Nor did Captain Valentino's memo make ID Techs and Latent Print Examiners responsible as supervisors.

The parties' 1998-2000 agreement shall include the provision:

> Effective at the start of the first full pay period following the execution of the 1998-2000 agreement the two individuals who are currently underfilling the position of Court liaison Officer shall be appointed through the appropriate procedures set forth by law to that position.

ARTICLE 21 HEALTH INSURANCE, MAINTENANCE OF BENEFITS PROVISION

The parties' contract provides retirees health insurance after service retirement, deferred retirement and duty disability retirement. It also provides coverage to the spouse of an officer killed in the line of duty. There is no coverage after the beneficiary reaches age 65. The Union proposes to modify one section of Article 21, to correct the problem in the current contract which has durational limits, the benefit is guaranteed only during the term of the

contract under which the retiree retires. The proposed change would do away with the durational limit and guarantee benefits until eligible beneficiaries reach age 65.

THE UNION said that the language it proposed continues the status quo of providing health insurance benefits beyond the expiration of the contract under which an employee retired. It noted that the Mayor supports granting retirees assurances that their health insurance benefits will not be cut off after they retire. It argued that it is "meanspirited" for the City to withhold reassurance that police retirement benefits will not be terminated. The Union said that these parties 1974-76 and 1976-78 contract did contain durational limits. "In 1975 the common council and MPA recognized the problem and acted to fix it. The Council passed a resolution clarifying that it was not the intent of the parties to insert durational limits on retiree health benefits.

The Union noted that the limits were subsequently deleted from the parties' 1981-82 contract. The limits were returned in the party's 1983-84 contract, "there is nothing to indicate that the inclusion was intentional." The City costs the health insurance benefit as if there are no durational limits. The Union said that because of the foregoing there are durational limits affecting some retirees, but not others. "This inconsistence … is both irrational and inconsistent with the Common Council's clear statement of its intent." The language that the Association is proposing is currently included in contracts between the City and 11 of its 19 bargaining units. The proposal would not change the cost allocation for retirement premium contributions.

THE CITY, after noting that the maintenance of health benefits is the only issue, reviewed the testimony of the MPA witness who supported the proposal. It said that "health insurance benefits described at Article 21 are very complicated because they outline various different benefit levels and eligibility criteria for these benefit levels. The City is concerned that these variants … are not readily discernable from the wording of [the MPA proposal] alone," The City said that it was concerned that adopting the Union's proposal would invite grievances and litigation.

In its Reply Brief the City argued that the Union's proposal is not necessary. It said that it is not opposed to the concept of the Union's demand, but it is concerned about the present wording of the proposal. The City said that many of its bargaining units have "an

analogous provision," along the lines of the provision contained in the City Attorneys' contract for 1995-97. It noted that the City Attorneys' contract contains a fundamental difference from the MPA proposal, because it applies only to normal pensions "and does not relate to … disability retirements, deferred retirements, etc." The City said that its concerns with the Union's proposal would be eliminated if the Union's proposal was changed in order to clarify that the effect of the new language is limited to the clarification outlined by the MPA's witness during the arbitration hearing. The City spelled out its proposed modification of the Union's proposal. The City said it recognizes that it is unusual to introduce new contract language at this late date in these proceedings, but it is offered to address the MPA's legitimate concern regarding durational limits on retiree health insurance.

DISCUSSION – HEALTH INSURANCE

The parties' final offers contained a number of serious differences relating to health insurance benefits. All of those differences, except for durational limits for retiree benefits, have been resolved. The City's twelfth hour clarification to the Union's proposal to eliminate durational limits would probably have been acceptable to the MPA. It is unfortunate that the Association was not given the opportunity to review the language, which appears to accomplish the intended result. For that reason Article 21, Section 10 of the parties' 1998-2000 agreement shall be modified as follows:

> 10. An employee who retires on pension ~~(as this term is defined under that applicable provisions of Chapter 36 of the City Charter, 1971 compilation as amended)~~ during the term of this agreement, shall be entitled to the benefits provided during the term of this Agreement so long as he or she is ~~they are~~ less than age 65. ~~Thereafter,~~ After this Agreement expires, such an individuals, so long as he or she is ~~they are~~ less than age 65 shall be entitled to:
>
> (1) The same health insurance benefits concurrently provided employees in active service covered by the effective Agreement between the City and the Union Association as is in effect from time to time ~~so long as they are less than age 65~~ (it is understood that the exclusion of retirees from coverage under dental insurance benefits, as set forth above, shall continue unchanged). If a retiree eligible for these benefits dies prior to age 65, the retiree's surviving spouse shall be eligible for

these benefits until the last day of the month in which the deceased retiree would have ~~obtained~~ attained age 65; and

(2) The same City/retiree health insurance cost sharing formula that was provided for such retiree by this Agreement.~~; and~~

This paragraph shall only cover the kinds of retirements for which health insurance coverage is provided by this Agreement.

ARTICLE 22 SICK LEAVE

The parties' contract provides that when an officer is injured in the line of duty he/she receives injury pay, which provides 80% of base pay (not subject to tax) in lieu of workers' compensation benefits. The contract also provides a Sick Leave Control Incentive Program (SLIP). Under this program employees who meet certain eligibility requirements earn an incentive reward of either eight hours extra pay or eight hours off each trimester annually. Employees who use paid sick leave or injury pay during the trimester, or are disqualified for any of six other enumerated reasons, are not eligible for the incentive reward. Under the present contract, the SLIP program sunsets at the expiration of the contract.

The Union proposed to remove the sunset provision, remove injury pay as a disqualifying factor for SLIP and change language in order to freeze the rules applying to sick leave to those rules and regulations that were in effect on September 20, 1995.

The Union said that the SLIP program, first created in the parties' 1987-88 contract, would have disqualified an officer from benefits if he/she had been injured for the entire trimester. SLIP was not included in the parties' 1989-90 contract.

The Union noted that police officers are required to "forge ahead into situation fraught with possible injury" by virtue of the nature of their positions. "The result is that police officers are likely to be injured in the performance of their job." It said that of the 141 officers who were injured on the job in 1998, fifty-six were injured performing tasks routinely performed by police officers. It reviewed evidence that, in 1997, forty-three per cent of 1054 injury incidents resulted from officers controlling and arresting suspects. More than 10% of those 1054 injuries were caused by assaults on officers. It cited testimony that policing "is an inherently risky job, and injuries are to a large extent an inevitable aspect of it."

The Union said that while other municipal employees are injured on the job, only officers are likely to suffer injury by assault. It said that if a public works employee is injured in an accident, the denial of SLIP might make the employee more careful in the future. "If the police officer slows down, the suspect gets away." The MPA reviewed the testimony of six officers who were injured in various ways in the performance of their duties, who, but for the time they were off because of those injuries, would have been eligible for SLIP benefits. It argued that to deny these officers and others who are injured on the job is not fair. "[T]o begrudge them 8 hours pay when they have risked their lives, and have suffered the consequences for 24 hours a day is pathetic."

The Union said that even though officers receive 80% of their regular wage tax free as injury pay, they lose money when lost roll call and overtime are considered. The six officers who testified said that their losses ranged from $200 to $2700 not counting the loss of deferred compensation contributions. The Union said that of the eight suburban comparables, six state comparables and ten national comparables who have SLIP programs only one disqualified a police officer for having been injured on the job.

"The City does not need SLIP to combat injury pay abuse. The current contract provides adequate protections against an officer's abuse of sick leave." The Union noted that only 12% of officers' injuries resulted in time off work even though almost one-half of the incidents warranted immediate medical attention. The MPA argued that state law which enforces victim's rights demonstrates legislative support for the Union's proposal.

The Union said that the City has SLIP programs with other units and it "apparently likes them. If the City finds them useful, they should be continued without having to re-bargain the status quo each contract period "The sunset provision should be removed."

The Union said that the rules and regulations affecting Article 22 should be the rules and regulations that were in effect on September 20, 1995, rather than "on the execution date of this agreement. It said the purpose of that proposal is to maintain the status quo. If this language is not changed to freeze the rules "the chief could modify the rules between the time the undersigned issues this award and the date the new contract is signed."

THE CITY'S offer would maintain the status quo with regard to sick leave through the end of the 1998-99 contract period. The City said that the sunset provision in the prior

contract had been agreed to by the parties. All of the City's labor agreements contain a similar provision. It argued that the Union failed to meet the burden to show that the proposed change is necessary and reasonable. "As long as the incentive program appears to attain its objectives, the City may with to continue the program. … if the program at some point no longer appears to be achieving its objective the City may exercise its right not to continue the program." Granting the Union's request would break the uniform internal pattern of settlements which the City established with all of its unions.

The City said that the proposal to eliminate the injury pay exclusion from the SLIP program should be rejected because it is an "Attendance Incentive Program". Noting that officers receive injury pay, the City said that the MPA "overstated the financial cost" to officers who receive this benefit, and inaccurately described circumstances that make officers ineligible for SLIP benefits.

The City said that most comparable jurisdictions do not offer a similar benefit at all. It said no other city employees receive the benefit that the MPA is requesting. The right of firefighters to receive SLIP benefits if the firefighter uses injury pay, as long as that usage is not abused was awarded in arbitration that was not decided on an issue by issue basis. "[T]he unreasonable features of Local #215's contract language should not be determinative in this proceeding given the clear overreaching nature of the MPA's proposal."

The City reviewed evidence that compared data relating to work related injuries in the Police Department, Fire Department and the Department of Public Works (DPW) during 1998. The incidence rate (reported injuries per 100 employees) was 21.58 for the Fire Department, 17.01 for DPW and 8.85 for the Police Department. The City refuted the assertion that an officer who sought hospital treatment for one hour during his/her shift would receive injury pay, even if the officer returned to work before the end of the duty day. It cited evidence that officers who were treated at a hospital and returned to work prior to the end of their shift did not receive injury pay and did not become ineligible for SLIP benefits.

The City said that the proposal to assure that it would not take some action affecting sick leave benefits between the issuance of this award and the execution of the new contract is not necessary. It said that the interpretation of this contract provision by Arbitrator Yaffee will govern the application of this provision.

In its Reply Brief the City denied that "police officers are likely to injured in the performance of their job." It cited testimony that in 1997 there were "only 40 instances of injury" out of 100,000 arrests. It said that even the MPA's expert acknowledged that this .04% was "a very small percentage". It said the MPA argument "that police officers are 'routinely' injured finds no basis in the record." It argued that the MPA had misstated the number of injuries that occurred in 1998, referring first to 151 then 141 when "in reality 123 members were in fact injured" according to the Union's exhibit. The City noted that many police injuries did not result from police going into "dangerous situations." It cited a Union exhibit that listed circumstances of injuries "while lifting trunk lid weighted with snow, checking for evidence, slipped on ice in parking lot, tripped over rug in police garage, moving TV and VCR in preparation for G.R.E.A.T. program, sustained numerous bites to stomach area due to 'infestation of fleas', taking photographs and misstepped on rock, tripped and fell on sewer grate and removing air valve cap from squad car."

In the Reply Brief the Union denied the City's arguments that the changes proposed by the MPA would disrupt the "uniformity of the City's SLIP programs." It said that there are "significant differences between the MPA's program and all others in the City, with the exception of the MPSO." It said 11 out of 17 contracts are less restrictive than the MPA's contract. It said that SLIP incentives are not required to provide officers' incentives to return to work, because the loss of overtime and roll call pay is an inducement to return to work.

DISCUSSION – SICK LEAVE

The Association based its demand, to remove injury pay as a disqualifying factor for SLIP pay, on an equitable argument. Namely, officers who are injured in the line of duty should not lose a benefit they would otherwise be entitled to. The problem with that argument is that the benefit is defined as "a special attendance incentive payment." The incentive is a reward for not missing work. The Association admitted that if its demand is adopted an officer who was injured in the line of duty and didn't go to work for a four-month trimester would have "earned the award" intended for employees who don't miss any work time in a trimester. That just doesn't sound equitable. It appears that the rationale that would reward employees

who don't work because of work related injuries is contrary to the policy of rewarding employees who don't miss work for any reason.

The Association's effort to distinguish injuries suffered by police officers as most likely to occur "when pursuing, or being attacked by, a suspect is not supported by evidence. Nor is the assumption that police officers don't need encouragement to be more careful in performing routine functions of their employment. There is evidence in the record that work related injuries to officers occurred: slipping on a rug, lifting a snow-covered automobile trunk, riding a bicycle over a beer can and slipping on ice. There would be no equity in extending SLIP pay to police officers who miss work while performing routine functions while denying the payments to other City employees, like the Department of Public Works, whose employees suffer a much higher incidence of job related injuries. If the MPA's proposal was adopted, there would be no good reason to deny the same exemption to other bargaining units.

There is a good reason not to undermine incentive pay for employees who don't miss work. That reason is disability pay for employees who are injured on the job. The City has that program for all of its employees. There is no reason to believe that the uniform (no pun intended) benefits provided to all City employees is any less fair to the police than it is to other employees. Arguments that officers don't need incentives because they miss roll-call pay and overtime compensation would be just as convincing, except for roll-call pay, when made by other employee groups. The argument that they deserve SLIP payments because they can't earn overtime and roll-call pay while they are injured is not germane.

The Union also failed to show that there is a need to either remove sunset provisions for the SLIP program or freeze rules and regulations relating to sick leave to the terms of the expired contract. For the foregoing reasons the Association's demands relating to modifications in Article 22 are denied.

ARTICLE 28 VACATIONS

Currently Milwaukee's Police Officers receive four weeks of vacation after 15 years of service, and five weeks after 23 years. Both parties' offers would reduce the time required to earn five weeks, the City's offer would reduce the time to 20 years and the Union's to 17 years. The City does not propose to change the years of service that are required to earn four

weeks vacation, the Union's offer would reduce the time requirement from 15 to 12 years of service.

THE UNION explained the present benefit:

> An officer earns vacation according to his anniversary date. In an officer's first year of service he earns vacation at the rate of 8 hours per month, but cannot take it. An officer earns his entire vacation in a 10-month period. The officer can take his entire 2 weeks of vacation any time after the calendar year following his first anniversary. For example, an officer hired on July 1, 1975, can take his first two weeks after July 1, 1976.
>
> An officer is eligible for a one-week bump in vacation eligibility after his 7th anniversary. An officer hired July 1, 1975, for example, will begin earning his 3rd week of vacation after July 1, 1982, and will be able to take the 3rd week in the remainder of calendar year 1982 after his July 1 anniversary. The same method will be followed when he becomes eligible for his fourth week of vacation after his 15th anniversary on July 1, 1990, and again when he become eligible for his fifth week of vacation ... on July 1, 1998.

When an officer retires, he/she can either take accumulated vacation in cash, or he/she can stop working and remain on the payroll until the vacation time runs out. Vacation not used by the end of the year is lost unless the officer is on injured on-duty status.

The Union explained that because of the lapse provision, its offer would not provide any additional vacation in 1998 or 1999 for officers who are still on the job. Those officers who have left or leave the Department after January 1, 1999, by resignation, retirement, lay off, death or military leave, would be paid for vacation time earned after January 1, 1999, because of Article 28 ¶5. "All other officers will not benefit from enhanced vacation eligibility until 2000, when they can take the vacation that they began earning after reaching their anniversary in 1999."

The MPA said that Milwaukee's vacation benefits need to be improved to stay in line with comparable police departments. The Union noted evidence that 17 of 29 suburban comparables, 12 of 15 state comparables and 5 of 18 national comparables provide a fifth week of vacation earlier than Milwaukee. It said 12 of 29 suburban comparables, 8 of 15 state comparables and 8 of 18 national comparables grant a fourth week earlier than Milwaukee.

The Union noted that the City caps vacation time at 25 days, while 11 of 29 suburbs, 8 of 15 state comparables and 3 of 18 national comparables provide more than 25 vacation days for their most senior police officers.

The Union said that the City has not done much to improve vacation benefits since 1983-84. It argued that because of changing times, there is greater need for enhanced benefits. The Union said that because of increased violence and officers' perception of violence and their reaction to it, including both physical and psychological injuries, officers need additional time off the job. It said that officers also need additional time off because of their rotating work schedules, changes in scheduling and cancellations of days off.

Noting testimony that the City had concerns that the MPA's vacation proposal would violate a pattern of internal settlements, the Union said, "every single union except staff nurses already has the same or lower eligibility requirement for both the 3rd and 4th week of vacation than what the MPA is seeking. Staff nurses have an additional 5 days of time off as personal days." The MPA said its 4th week offer is clearly in line with internal equity. It said six other union contracts require the same or less time on the job for 5 weeks than the Union's offer.

The Union said LIUNA Local 61 (garbage workers) recent contract included a 3.25% wage increase and a 5th week of vacation after 17 years commencing in 1998. It said the LIUNA contract for 1999 provides "garbage workers 4.4 weeks of vacation at 6 years of service, 5.4 weeks at 11 years of service and 6.5 weeks at 17 years of service." The Union said that the City's explanation that other unions gave quid pro quo for enhanced vacation benefits is a "red herring." It said no union, except LIUNA, that obtained vacation benefits gave quid pro quo. It argued that the police provided a similar quid pro quo when its members "lost their paid lunch hour."

The Union said that the language the City proposed to add:

> Effective the calendar month following the execution of this Agreement, sixteen (16) hours for each calendar month of active service up to a maximum of one hundred sixty (160) hours per calendar year for an employee with at least fifteen years but less than twenty (20) years of active service. Such vacation shall be earned from the affected employees' anniversary date in 1999 and shall be for use in calendar year 2000.

would "steal vacation accumulated after an officer's anniversary date" if he left City service. It said that the City proposed this change in contract language, though it did not propose any other change relating to eligibility for the fourth week of vacation. It argued that as a result of the change, when an employee leaves City service, the employee loses all of the vacation he has accumulated if he has not taken it. It said that an employee with a July 1 anniversary date would lose 5 months of accumulated vacation if he retired in December 1999. The Union said that since the City did not propose any other changes relating to eligibility for the fourth week of vacation, it appears that the City intended to limit vacation benefits of those employees who left City service. Noting that the City included the same new language in its enhanced fifth week offer, the Union said that, employees eligible for a fifth week of vacation who leave City service in 1999 will lose the benefits they have accrued after their anniversary date.

THE CITY, noting that its 1999 offer would reduce the active service required to qualify for 5 weeks vacation, said that "consistent with the enhancement of the senior employees' vacation benefit, the City proposed that effective in 1999, MPA members with at least 15 years of service and less than 20 years of active service would be eligible for four weeks of vacation [sic]." The City said its offer is more reasonable than the Union's offer in light of statutory criteria requiring that the public interest be considered in interest arbitration proceedings. The City said that evidence shows "that liberalization of the vacation benefit has a real and adverse effect on the ability of the Department to serve the public." It said that its proposal to grant four weeks vacation after 20 years "will constrain the Department's ability to adequately meet the needs of the public for police services." It said the MPA's offer will erode staffing levels and the Department's ability to serve the public.

The City said that it recognizes the Union's interest to improve vacation benefits, that is why it agreed to four weeks after 20 years. It said that the Union should not expect deep cuts in years of service for lengthy vacation periods for both four and five weeks all in one contract. "Nor should the MPA obtain such drastic increases in vacation benefits all in one interest arbitration."

The City reviewed a Union exhibit which compared vacation benefits in comparable municipalities. It noted that the majority of suburban comparables require more years of service than Milwaukee's 15 years for four weeks vacation. It said that while 17 of 29

suburban comparables award a fifth week for less than 23 years, four of these seventeen require more than the 20 years of service that the City offered. The City said that among statewide comparables only 6 of 15 require less than 20 years of service for 5 weeks vacation. Among national comparables only 7 of 18 granted four weeks vacation earlier than the City, and only 5 of 18 grant four weeks for less than twenty-three years of service. The City argued "the data introduced by the MPA on the comparable police departments does not establish that Milwaukee is so out of line as to warrant the MPA's proposed drastic reduction in years of service necessary to obtain either four weeks or five weeks of vacation in Milwaukee." The City reviewed the vacation data it presented, which varies somewhat from the data outlined above. The City's data showed that only 3 of 18 national comparables provide 5 weeks of vacation for less than 20 years of service.

The City said that "the vacation schedule for the City's firefighters was consistent with the present vacation schedule afforded MPA members." It said that members of LIUNA Local #61 gave a tangible quid pro quo for recent enhancements in vacation benefits. The City said that the Union's assertion that it has agreed to concessions over lunch periods in this proceeding which are comparable to the LIUNA employees giving up an unrestricted lunch period is without merit.

The City reviewed testimony about the adverse effects of having reduced staff available because of increased vacation benefits. It said that less service would be able to be provided and backlogs will result. Reductions of available detectives, because of increased vacations, will delay investigations. "The sooner the case can be investigated, the better the chance of the solvability factors of getting the case solved." The City said for these reasons, the Union's vacation offer is not in the public interest. It argued that the problems outlined above would be exacerbated, because, the MPA proposal would permit officers who completed between 17 and 22 years of service in 1998 to claim an extra week of vacation from 1999 in 2000. It said that any vacation enhancement "must explicitly provide for extra vacation no sooner than calendar year 2000."

In its Reply Brief the City reviewed the terms of its settlement with LIUNA Local 61, which resulted in Local 61 members receiving 4 weeks of vacation after 17 years of service and "a slightly higher accrual [sic] at the fourth and fifth week vacation levels." It argued that

Local 61's lunch hour concession gave the City "an additional 6.67% increase in productivity for sanitation workers assigned to field operations, and a 5.27% decrease in the hourly base salary rate paid sanitation workers." The City reviewed the record relating to the MPA's contention that its members lost their paid lunch period "as a result of an action by the Chief and a decision by a "WERC hearing examiner". It said that the MPA was arguing about the reigning in of excessive travel time to and from the lunch period site, with no change in the paid lunch period itself.

In response to argument that there is comparable support for the Union's vacation request, the City aggregated the data for the three comparable groups and then compared the average number of years that are required to earn the comparable's average number of vacation days with equivalent data for the City of Milwaukee under its current contract and under each party's offer. (Note: The City erroneously assumed that the Union demand is for 4 weeks after 11 years of service – Reply Brief p. 167) The City said that the data showed that among suburban comparables the City's offer is much closer than the Union's offer after 11 and 17 years of service. At 15 and 23 years, the parties' offers are about equal. The City's offer exceeds the average number of vacation days by a "substantial margin at 20 years of service. "The City said the foregoing analysis supports its offer. The City's analysis of the aggregated average data for 15 large Wisconsin cities and the national comparable group provided results that are similar to the results of comparisons with suburban departments.

The City revisited many of it previous arguments about LIUNA Local 61's settlement and operational concerns. It denied that the Department's vacation benefits have been stagnant.

The City denied the assertion that employees who left the Department prior to December 31, 1999, will lose vacation credit under the City's proposal. It explained that the City had constructed its proposal in anticipation of the difficulty of administering improved accrual benefits from 1999 when the arbitration award is issued in 2000. The City noted that Article 28 ¶ 5 guaranteed that employees will be paid for accumulated vacation time. The City denied that officers who leave the Department in 2000 would forfeit vacation credit under the City's offer. It noted that there is testimony from both parties' vacation experts which support the City's position in this matter.

In its Reply Brief, the Union said that there is no evidence that the Department will be unable to cope with "operational difficulties." The City witnesses who testified that the City "will cope" with difficulties caused by the City's offer failed to distinguish between the "difficulties which result from" the two offers. It said that the City "copes just fine" when Police Clerical workers and Police Supervisors received the same fourth week of eligibility that the MPA is seeking. The Union said that all other City departments, except the nurses, have coped with the benefit. The Union said that the City admits that more than half of the comparables grant a fourth week of vacation earlier than Milwaukee. It said that the impact of the Union demand will lessen as officers retire earlier under the terms of the "global settlement." The Union repeated its earlier argument that it should receive enhanced vacation benefits in return for the loss of official "paid lunch."

DISCUSSION – VACATIONS

The Union said that there have not been many changes in police officer vacation benefits since 1983-84, and that it's necessary to improve benefits to stay in line with comparables. The City said that it recognized the need to improve vacation benefits, by reducing the time required to earn three weeks of vacation from eight to seven years, in the parties' last voluntary agreement. The City's offer to reduce the seniority required for five weeks vacation from 23 years to 20 years would constitute a moderate improvement in successive contracts, which the City says is reasonable and prudent. There is merit to the City's position.

The Association's assertion that its rather extreme reduction of numbers of years in service for 4 weeks of vacation from 15 years to 12 years (20%), and 5 weeks of vacation from 23 to 17 years (26%), is neither supported by the parties bargaining history nor comparable comparison. The City's current vacation benefits are on the average more generous than Milwaukee's suburban, and large Wisconsin city comparables. The 23-year requirement for five weeks vacation, which was least competitive, will be reduced to 20 years under the City's offer.

The City's concerns about the cost of the Union's vacation demand would have to be accounted for in the future, and that additional vacation time for police officers will result in reduced service to the public in the short run appear to be reasonable.

The Association failed to demonstrate the need for what appears to be an excessive improvement in vacation benefits. The Union's concern that the City's proposal to change Article 28, Paragraph 3a(3) would steal vacation from officers who left City service in 1999. It appears to the undersigned that the offensive language was picked up in a word processing exercise. The MPA's concern about this language appears to be a bit of a stretch, which should be alleviated by the City's assurances.

The City's proposed modifications to Article 28 are preferred and shall be included in the parties' 1999-2000 agreement.

ARTICLE 33 UNIFORM AND EQUIPMENT ALLOWANCE

Under the current contract the City issues new Police Officers certain uniform items and equipment as determined by the Chief of Police. They also have received one silver badge patch for their windbreaker since September 1987. Uniformed Personnel receive a replacement allowance (Quartermaster system) under which, subject to designated annual limitations, the articles which were initially issued are replaced at no cost to the officer. Uniformed officers also receive an annual stipend of $250 which is designated "uniform and equipment maintenance allowance."

All other employees in the bargaining unit receive an annual clothing allowance of $430.

Both parties have proposed changes in the uniform and equipment allowance. Their proposed changes are outlined in the summaries of their positions below.

THE UNION'S proposal would add two turtleneck shirts and one sweater to the items that are replaced through the quartermaster system. It would increase uniformed officers' maintenance allowances from $250 to $300 per annum. The Union said that in 1997 the Department began issuing a turtleneck shirt and a sweater to members at training sessions. It has refused to replace these items under the quartermaster system. It said that system which provides for the replacement of worn out long and short-sleeved shirts should replace worn out

turtlenecks and sweaters at no cost to the officers. The Union said that Article 40 [sic] b(1)(a) of the contract and a clarifying note, which lists which items shall be reissued under the quartermaster system, recognizes that the items will change over time. It argued that "the turtleneck and sweater replaced other items of clothing which the MPD has routinely replaced under the quartermaster system." It gave examples of items of clothing, leather jackets and dickeys, which are no longer issued, that the City has routinely replaced with other items when the original issue became worn. The Union argued that the turtleneck has replaced the dickey and the turtleneck, "and the sweater can be used instead of the old spring jacket." It cited evidence that, it said, shows the City included the turtleneck and sweater on the list of original equipment which should be replaced. The Union cited testimony that the Chief told officers that these items "were on the quartermaster system." It said that since the Department replaces two shirts annually, it should replace two turtlenecks "since they are worn under the shirt or sweater … and look ratty after about 5 months of everyday wear."

The Union noted that uniformed officers also receive a uniform maintenance allowance of $250 a year and "members who are not in uniform get a $430 clothing allowance, since they must buy and maintain the clothes that they wear to work." It said that uniformed officers who are assigned to non-uniform positions for at least 14 days in a calendar month, detectives, ID technicians, latent print examiners, document examiners, dispatchers, and officers assigned to the gang squad, the sensitive crimes division and vehicle maintenance, receive the clothing allowance. "The value of the $250 benefit set in 1991 has decreased due to inflation; the same benefit in 1997 dollars is $295."

The Union reviewed a list of clothing, glasses and "their own flashlight" that must be paid for by the officer. The maintenance allowance also is used for dry cleaning or laundering.

The Union noted that comparables have adopted various ways to compensate for uniform and equipment costs. It said the City is low compared to national comparables that provide monetary reimbursement. "Because of the numerous variables, it is difficult to compare jurisdictions." It said that Jacksonville and Columbus, who replace uniforms and provide monetary payment, pay $636 and $700 respectively.

The Union criticized the City's uniform allowance proposal, which it said would increase the uniformed officers' allowance at the expense of some non-uniformed members. "It's simple. It's ingenious. It's wrong." The Union reviewed the testimony of a City's witness who said that the City's offer was flawed. He testified that "those who are required to maintain 'the business clothing attire'" should receive the higher clothing allowance, and admitted that the Latent Print Examiner should be eligible. The Union argued that "virtually all of the 383 employees who would lose the plain clothes allowances: are required to wear business attire. It noted that a City's witness testified a "small number' of officers would lose money under the City's offer, "when in fact 383 employees would lose plain clothes benefits, and 193 of those were entitled the higher benefit the entire year."

The Union cited testimony that the present uniform allowance system presents administrative problems that the City's offer would address. It argued that those problems are not caused by its members but by the system. It noted that a City witness acknowledged that there are alternatives which have not been implemented.

THE CITY noted that its offer would increase the Uniform Maintenance allowance from $250 to $300 a year. Commencing with 1999, all employees except detectives, chief document examiner and document examiners would receive this allowance. At that time the clothing allowance received by detectives, the chief document examiner and document examiners would be increased from $430 to $450 per annum. The City said that while a majority of MPA members would receive a $50 increase in their allowance, some officers who have been eligible for some clothing allowance payments would lose from $10 to $180 a year under the City's offer. The City said that its offer should be accepted because it increases benefits for the majority of MPA members, "while streamlining the benefit and structuring it" more rationally with its intended purposes.

The City explained that, when uniformed personnel are assigned to non-uniformed assignments for more than 14 days in a calendar month, they receive a clothing allowance instead of a uniform maintenance allowance for that month. It said that "during 1996, 1997, and 1998 more than 419 adjustments were made to the allowances received by uniformed MPA members who worked in non-uniformed assignments for part of the year. In 1998 the 419 adjustments ranged from 4 officers who received $15 for one month to 193 officers who

received an extra $180 for twelve months. The City said that the latter group consists primarily of officers who were assigned to dispatch or other duties where they did not typically wear a uniform at all.

The City said that pro rating uniform allowance benefits has posed administrative problems. For that reason, the City offer would "restructure the payments such that they [are] based on the classification of an employee. The City said that its offer would result in 1,448 (seventy-nine percent) of MPA's members receiving a 20% increase in benefits, while 383 (twenty-one percent) would receive decreased benefits. It argued that the greater benefit paid to the majority of MPA's members is a quid pro quo for those who would receive a reduced allowance. The City noted that the reason non-uniformed personnel received the higher allowance is because they buy their clothes. It cited testimony that many of those who received adjustments don't wear suits and ties at work, some wear jeans and t-shirts, and others cotton clothes and sports shirts.

The City said that the Chief of Police included a turtleneck and sweater in the initial uniform issuance because many officers wanted them. It said that the Chief did not agree to replace those items because they had not been budgeted for. "It is undisputed that the Department does not require" officers to wear either the turtleneck or the sweater. The city said that if the Union contends that the City is obligated to place these items because they were issued, it should have grieved the matter, which it did not do. The City said that each turtleneck costs $24.25 and the sweater costs $42.80. If officers want to replace these items, they can do so through their uniform maintenance allowance.

The City said that the cost of the issue it provides each recruit exceeds $1,800, the City spends $420,000 a year replacing these items. If the Union wants the City to absorb the additional cost of replacing the turtleneck and sweater it should have offered a quid pro quo for its proposal.

In its Reply Brief, the City said that it certainly had no obligation to replace two turtleneck shirts when it had only issued one. It said that the Union's request would not maintain this status quo. The Reply said that turtlenecks cost $25.46 each, and said that the cost of replacing items under the quartermaster system totaled more than $333,000. The City said that the Union had not included the cost of replacing turtleneck and sweaters in its cost

estimates. The City argued that the itemization of shoes, socks, gloves and mittens as items that an officer must pay for "even if he wears them on the job 'borders on the ridiculous'." It said that uniform allowance benefits in Milwaukee are not low. It cited evidence that only 5 of 29 suburban comparables have a benefit that is similar to Milwaukee's. It noted that only 4 of 15 state comparables provide a cash allowance in addition to uniform replacement benefits. The City said that the proposed $300 allowance is equal to 130% of the average provided by state comparables. It said only 3 of 18 national comparables provide a cash benefit in addition to uniform replacement.

The City said that the Union had mischaracterized the testimony of a City's witness, and denied that he called the offer "half baked." The City argued that the Union overstated the amount of reduced benefits 383 officers would receive. It said 24 members would lose $10 a year; 21 would lose $25 a year; 25 would lose $40 a year. "Thus 25% of the 383 affected MPA members would lose $55 or less per year under the City's proposal. It said a large number of the 183 members who would lose $180 "have not demonstrated need for the additional pay in light of their not being required to work on any regular basis in "business attire."

In its Reply Brief the Union argued that the City's proposal" makes no attempt to determine who actually needs the higher plain clothes allowance based on their job assignment." It cited Departmental Rules which require officers assigned to plain-clothes duty to "keep a full uniform and all required equipment at their assigned work location at all times when on duty." It argued that the City hasn't offered to amend this rule to reduce costs of maintaining a uniform while on plain-clothes duty.

The Union cited a work rule which requires non-uniform members to wear business attire when appearing in court or the District or City Attorney's offices. It noted that this rule applies to those members who are not otherwise required to wear business attire in the performance of their Departmental duties. It argued that the cost of maintaining both sets of clothing justified the need for the higher clothing allowance.

The Union said that the real basis for the City's offer is to get rid of the pro rata payments because they are difficult to administer. It said that the City's claim that a higher

allowance for the majority is quid pro quo for its offer doesn't justify the decreases that 383 officers would experience. It called the offer inequitable.

DISCUSSION – UNIFORM ALLOWANCE

Uniform and Equipment Allowances (UA) are often the cause of disagreements in both interest and grievance arbitrations. The UA is an established benefit which is a vestige from the time that police officers were not paid enough to purchase and maintain their uniforms in the manner that measured up to the public's expectations for a sharp looking police force. The quartermaster system had the advantages of maintaining the uniformity of the apparel at reduced cost from competitive bidding and volume discounts. Police Officers liked the system because the UA was an untaxed benefit. That feature resulted in non-uniformed police officers bargaining for clothing allowances. Those features have continued to make UA a hot button item even though the relative value of the benefit has declined as police salaries and benefits have improved dramatically over time. As an aside, some laymen consider uniform allowances as oppressive as a 9½-month school year. "Teachers don't have to work in the summer, and Policemen don't even buy their own clothes."

The UA disagreements in this proceeding reflect both the officers; attachment to the allowances and the City's frustrations arising out of administering the UA program in Milwaukee. Both parties recognize that there are problems inherent in administering the present system. The MPA criticized the form that is required for recycling items through the quartermaster system, and the City complained about the amount of time that is spent processing those claims. The City is most frustrated with administrative detail that is required to make 419 adjustments each year to the allowances for officers who qualified for a clothing allowance by working in a non-uniform position for 14 days in one or more months during a year. It appeared from the testimony of witnesses that personal interactions over some of the situations discussed above resulted in some irritation or even personal hostilities which could be avoided if the system is simplified.

The only hesitation one has to adopting the City's proposal is the effect that it will have in reducing the UA benefits received by 383 officers who will experience reductions in their clothing allowance through lost plain clothes pro rata payments. The City said that 98 of these

will lose between $10 and $55 a year, 105 will lose from $55 to $165 a year and 193 will lose the entire $180 differential. The City said that a large part of that 193 are people who typically wear civilian clothes but do not wear suits or jackets and ties in their work. The Union did not dispute the City calculations. The City's rationale that it has offered a quid pro quo for the change, 1448 MPA members will received a $50 a year increase while 383 will receive the reduced payments discussed above (offset by the $50 increase) makes the offer more appealing to the undersigned.

The Union criticized the City for not discussing the City's problems with the system during bargaining. It has been noted that the parties' final offers were on the table for a long time before the hearing herein. The parties discussed a number of issues, and resolved their disagreements over some of them during the course of the 4½ months of hearing. There is no evidence that the Union ever attempted to discuss the UA proposals with the City. It seems unlikely that discussion would have been fruitful, because some MPA members will receive reduced benefits under the City's offer. Empirical evidence exists that that result is not bargainable.

The decisive factor in favor of the City's UA proposal is the fact that it provides a reasonable and balanced UA benefit to its uniformed officers. Both parties recognized that comparing UA benefits in comparable communities is problematic. Recognizing that fact, it does appear that Milwaukee's UA benefits are better than those provided in most comparables. The City's offer will simplify its administration of the program and result in modest improvements for the majority of MPA's members, while at the same time resulting in reduced benefits for approximately 311 officers. It is questionable whether most of the officers whose benefits will be reduced under the City's offer meet the criteria which justify the higher UA, namely the requirement for suits or jackets.

Resolution of the great turtleneck debate appears to be simple enough. One assumes that Chiefs of Police are not authorized to magnanimously make gifts of $67 turtlenecks and sweaters to over one thousand uniformed officers. That being the case, one assumes that when the officers received these items for the first time, they constituted an initial issue of uniform apparel. There is no dispute that officers were expected to wear these items in place of shirts with ties. Therefore, the officers should have the right to recycle their sweater and turtleneck

through the quartermaster system. However, since these items were intended to replace uniform shirts, at the officers' option, the City should be responsible for replacing one sweater and one turtleneck instead of two shirts not in addition to them.

For the reasons stated above, the terms of the parties' 1998-2000 agreement shall include the language proposed by the City in Article 33 except that the language of paragraph 1.b.(1)(a) shall be modified as follows:

> (a) The City shall replace articles of initial allowance of uniform and equipment prescribed by the Chief of Police and in addition up to two shirts or one sweater and one turtleneck shirt or any combination thereof totaling two items. ... At his/her option, the employee may have either a summer short sleeve shirt or a winter long sleeve shirt or a turtleneck shirt replaced. ...

ARTICLE 37 UNANTICIPATED DUTY PAY

The current contract requires that all employees be paid "an Unanticipated Duty Allowance (UDA) equal to $550 per annum." Employees who work less than an entire year receive pro-rata payments. UDA is not considered part of base pay, it is not included in calculating employees' pensions or other benefits.

The City's offer would extend this present benefit through the party's 1998-1999 contract. The Union's offer would roll UDA into employees' base pay effective the first pay period in 1999, and delete Article 37 from the parties 1998-2000 contract.
The Union said that, "moving UDA into base wages allows Milwaukee's base wages to be almost respectable, without imposing the costs which would be incurred if it were all new money." The City said that the Union's proposal involves more than the transfer of old money. The focus of both of the parties' arguments about the Union demand are about the costing and cost impact of the proposal. Those arguments are included in the summaries of the parties' positions about wage issues, at Article 10 above.

Because the Association's salary offer, which included a provision to roll UDP into base salary, was adopted, Article 37 shall be removed from the parties' 1998-2000 agreement.

ARTICLE 40 EDUCATIONAL PROGRAM

The Educational program currently provides MPA member's additional annual cash payments in recognition for the members having earned college credits in enumerated fields and for earning a BA or an advanced degree in enumerated fields of study. The annual payments start at $75 a year for employees with at least 16 credits and less than 21 credits. There are eight graduated payments with the highest being $750 a year for a BA Degree in the Social Sciences, Business Administration or Public Administration. Both parties have proposed changes in the Education program.

THE UNION'S proposal would remove the requirement that earned credits and BA degrees must have been earned in enumerated fields of study. It would recognize all credits and BA degrees that have been earned from educational institutions accredited by regional accreditation associations. The Union offer would change the annual payments received by members at the four highest levels, effective January 1, 1998. Members with:

- 64-89 credits or an accredited associate degree would receive 2% of base salary rather than a flat $275 payment.
- 90-119 credits would receive 3% of base salary rather than $350.
- 120 or more credits but no BA degree would receive 4% of base salary rather than $450.
- BA degree would receive 5% of base salary rather than $750.

The Union said that the level of education benefits have been the same since 1971, except for the addition of the $450 payment after 120 credits which was added in the 1972-74 contract. The Union noted that Wisconsin's Law Enforcement Standards Board (LESB) requires that all law enforcement officers in Wisconsin must have 60 college credits within five years of employment. It reviewed reasons for promoting the professionalism of police officers through education nationally and in Wisconsin over the past 70 years. The Union said that neither national commissions nor the LESB limit fields of study. It cited testimony that the LESB encourages degrees in all fields of study.

The Union said that the Department and the FPC have "determined that an officer can be a field training officer with three years of experience and an accredited associate degree in any field of study." It argued that the current benefit is flawed because it does not reward

credits or degrees that are directly related to officers' duties. It argued that degrees in Spanish, nursing and hard sciences contribute to officers' ability to relate to a diverse community and provide for the safety and welfare of people in their custody. It noted that while the Chief may elect to approve "other approved courses for employees assigned to certain jobs, such as communications and payroll" there are no guidelines for what fields will be recognized. The Union said that since extra compensation is provided for the period of time that an officer is assigned to a particular position and is lost if the officer transfers, there is little encouragement for an employee to get an education. "Once the employee has earned the education, he should not lose the reward merely because the Department chooses not to use what the employee learned, and transfers him to another assignment." The Union said that the current system is difficult to administer, because college administrators determine whether the contract language applies to course of study. "The MPA's proposal is simple and easy to administer. If the school is accredited, and the officer earned a degree it counts."

The Union said that the amount of educational pay that officers would receive under its demand is a smaller percent of total pay than was provided when the benefit originated in 1971. "The 1971 education benefit has been eaten up by inflation." The Union noted that only one-third of the suburban comparables and 11 of 16 state comparables have an education program and some of them are phasing the programs out. It said that larger cities are more likely to have a program, and cited Madison's "cadillac" plan, La Crosse's new program and the fact that a majority of national comparables have educational programs as examples. The Union said that its plan is reasonable when compared with plans in effect in comparable communities. It cited programs in Boston and Madison as examples, where college credits and degrees receive substantially increased compensation expressed in terms of a percent of base wages, to support its position.

The Union noted evidence that higher education makes better police officers, and said that the City wants its officers to have a college education. It said the City has to provide a financial incentive for officers to continue their education beyond the 60 credits that are required by the LESB. It cited evidence of the personal sacrifices, financial demands, and lost overtime pay that officers experienced continuing their education. The MPA demand will encourage these officers to continue their educations beyond the 60-credit minimum to finish

their degree goals. The Union cited testimony that the City has a hard time recruiting minority applicants with college degrees. "The MPA's demand would provide a financial incentive to all officers, including minority officers who might enter the MPD without a college education."

The Union said that the provision in the contract which limits recognition of associate degrees to those which were earned prior to 1971 should be eliminated. It noted that the City had paid incentives "for all AA degrees, regardless of when the degree was earned, [from 1971-72] until the 1996 payment." It cited testimony from officers whose educational benefits for their associate degrees were denied or interrupted, and later resolved. "The problem arose again in 1997, and a grievance is pending." The Union said that its proposal should be granted because it "merely cleans up language which periodically causes problems." It said there is no logic and the City did not suggest any reason, to distinguish between pre and post 1971 AA degrees.

THE CITY'S offer would expand existing benefits by paying a $450 benefit for any BA degree for which the maximum $750 benefit is not paid. It would expand current benefits for earned credits by eliminating the requirement that they be earned in Law Enforcement, Applied Science in Police Technology or Criminal Justice, Social Science, Business Administration, Public Administration. All college credits from accredited institutions would be recognized.

The City said that the MPA's proposal is extraordinarily costly. It said the Union did not justify its demand either by showing need or by offering a quid pro quo. It said that the City's offer is significant and more reasonable. "[i]t should be recognized at the outset that under either ... proposal, a larger percentage of the Department will receive education pay with each passing year."

The City said that the majority of comparables either don't have any educational program or are phasing their programs out. It noted that 20 of 29 suburban departments don't have any program. Three of nine that do have programs are phasing them out. It said that the few suburban departments that have programs have more restrictive eligibility requirements than Milwaukee. Three programs limit their benefits to credits earned in law enforcement fields. One suburb requires two years of service and the Milwaukee County Sheriff's Department required five years of service for eligibility, compared to the City's one year.

Officers in the only two suburbs who have higher educational benefits than the City receive less total compensation than MPA members do. Though 10 of 15 state comparables have educational programs, Fond du Lac, Kenosha and Wauwatosa are phasing their programs out. Oshkosh, Appleton and Madison require 2, 3 and 3½ years of service, respectively, for eligibility. Programs in La Crosse and Racine only recognize credits in police science. Only Madison expresses its benefit as a percent of salary. The City said that, after 10 years of service Milwaukee Police Officers receive between $3,100 and $6,600 more in direct compensation than officers in Appleton, Eau Claire and Madison.

One-half of the national comparables do not have educational programs. San Francisco, San Jose, Austin and El Paso all require additional training and experience for increased education benefits. After 10 years of service, officers in Jacksonville, El Paso, Charlotte-Mecklenburg, Indianapolis, Austin and Memphis, which have educational programs, received between $1,000 and $6,500 less direct compensation than officers in Milwaukee. The City argued that its proposal compares favorably with programs in effect in comparable municipalities.

The City said that the history of these parties' collective bargaining doesn't support the Union's demand. The program was established in 1971-72. "The record is silent as to any effort by the MPA to modify the program since that time." It pointed to the four arbitration awards which resolved the parties' 1981-82, 1987-88, 1989-90 and 1993-94 bargaining disputes, and noted that educational program benefits were not mentioned in those proceedings. The City reviewed improvements in the plan that it initiated over the years. The City argued that the Union has failed to establish the need to have an arbitrator impose the drastic alterations that the Union is demanding.

The City reviewed evidence in the record relating to the number of college credits that MPA members have accumulated. It noted that neither the City nor the MPA know how many credits there are that will be counted under either of the proposals, because the officers don't presently notify the City about credits unless the credits satisfy a contractual requirement. It noted that the lack of knowledge about how many credits have been accumulated by MPA members makes it difficult to estimate the cost of either of the offers in this proceeding. The City believes that its costing is based upon a reasonably accurate estimate based upon a study it

conducted, but its estimate may be conservative at $97,600 annually. The City noted that the MPA estimated the cost of its proposal to be $867,292.

The City noted that when the City of Boston initiated a substantial change in its educational program, its officers provided the quid pro quo of freezing their salaries for two years. The MPA has not offered any quid pro quo.

In its reply the City said much of the Union's argument about the need for change does not account for the improvements that the City is proposing. It said that after the City's proposals to improve the program are adopted, the Milwaukee program will compare favorably with programs in comparable jurisdictions. It noted that the majority of comparables do not have any similar program.

The City said that the LESB requirement of 60 credits within five years of hire doesn't lend support to either offer. It said that the City has been promoting improved education since long before "LESB came late to the game in 1993."

The City said that the demand for top dollar pay for a BA degree in any area of study is wide of the mark. It said, while it "recognizes there is value to education in general, it contends that the greatest amount of financial compensation should be reserved for those whose education is most closely related to their job." The City said that Union's arguments about the need to recognize degrees in Spanish, nursing and hard sciences do not justify its demand that would pay top dollar to one and all, without recognizing the difference in benefits to the public and to the Department between degrees in Astronomy and Criminal Justice. The City said that the majority of those comparable programs that do exist pay for degrees that directly enhance the policing skills of officers.

In its Reply Brief, the Union argued that the City's offer, which rewards credits regardless of the area of study, but refuses to recognize many of the resulting BA degrees, is "internally inconsistent." It said that the City should "make up its mind."

The Union said that the City's offer to pay $450 for a BA degree in any area of study is not a significant improvement. That benefit is driven by the City's recognition of credits in all fields of study.

The Union said that the record does not show that the Union hasn't proposed changes in the educational benefit program. It argued that "The fact that not every contract since 1971

has contained an educational improvement or demand does not establish a bargaining history which undermines the MPA demand." The Union said the improvement it is seeking is long overdue. It argued that quid pro quo does not apply to regaining losses to inflation.

DISCUSSION – EDUCATION PROGRAM

The fact that the LESB now requires 60 credits within five years of hire may account for the fact that three larger cities, Kenosha, Fond du Lac and Wauwatosa, and two suburbs are phasing their education programs out. Similar trends in other states may account for the fact that only one-half of the national comparables have a program in place. Increased emphasis on education has clearly resulted in the professionalization of police forces over the years. That in turn has led to improved compensation for police officers.

Recognition that Milwaukee's Police deserve to receive competitive base salaries was discussed in the analysis for Article 10. It was also noted there that Milwaukee provides its police officers a comprehensive and competitive total compensation and benefit package. Much of the parties' argument about the alleged retention problem revolved around the need to hire educated as well as otherwise qualified applicants. The Association'[s emphasis was that Milwaukee needs to pay higher salaries in order to attract better educated applicants. The fact that the City's base salary and total compensation package have been competitive, though it has not done much to improve its education program, demonstrates that the City has put its money into improving base salaries and other benefits. The Union has been party to developing those priorities in bargaining and in arbitration. Though some comparables like Boston and Madison appear to have chosen to front load their wage scales or benefit packages by recognizing educational achievement, Milwaukee is among the majority which have not.

Facially the Association's proposal to go from dollar stipends to percentage of salary increments looks very expensive. Going from $750 to 5% of base salary for the average Milwaukee officer would cost an additional $1,400, plus roll-up costs for all benefits on the entire $2,150 which would now be included in base salary. Someone probably knows how many such officers have BA degrees, but there is no evidence of that fact in the record. In fact, except for the "huge study" that the City conducted with available data there is a dearth of information about how many officers would benefit and how much additional education pay

they would receive if the MPA's demand was awarded. Even the data from the City's "huge study" is lacking because the City doesn't collect data about officers' college credits or degrees unless those credits or degrees resulted in either meeting LESB requirements or resulted in officer qualifying for a benefit under the City's restrictive program. The MPA based upon very limited data estimated that its program would cost $867,292. That appears to be a very conservative and very risky guesstimate.

The two reasons that the Association's offer is out of the question at this time is, first because no arbitrator in his/her right mind would require an employer to swallow the unknown cost of modifying a 30-year old program when need for the change has not been established. Second, the undersigned believes that the record supports the conclusion that Milwaukee's Police Officers' increased professionalism has been recognized in improved base salaries and other benefits that they currently receive, and will receive as a result of this award. There are some features in the Association's offer that are attractive which will be discussed below.

The City's offer to recognize all earned credits from accredited institutions, while limiting the maximum $750 payment to BA Degrees in Law Enforcement, Applied Sciences in Police Technology or Criminal Justice, does not go far enough. The Association's observation that it is inconsistent to recognize all college credits but refuse to recognize all resulting BA Degrees is correct. It is also inconsistent to limit recognition for approved associate degrees to those earned prior to January 1, 1971.

There is evidence in the record that establishing too high of an educational achievement requirement for new hires impairs minority recruiting efforts. That is a reason that Milwaukee requires only a GED for applications to take a competitive exam for employment with the MPD. After an applicant has been hired, he/she must obtain at his/her own expense 60 college credits in any field within five years to stay with the MPD. Most accredited institutions require core courses during the first two years of study. After some police officers meet the 60-credit requirement, they will stop going to school. They will have secured their jobs and be deemed to be better police officers for having made the effort.

Other officers will continue to study at their expense and on their own time for a variety of reasons. Under the City's educational program, those officers who obtain BA

Degrees in the fields of study enumerated above will receive the maximum $750 benefit. Other

> employees occupying any positions in the Communications Division, Identification Division, Automated Data Processing Division and Personnel/Administration Bureau, Payroll Section may elect to count courses that have been determined by the Chief of Police to be directly related to their assignments as approved courses. These courses shall count as approved courses only so long as the employees remain in such positions and perform such assignments.

Other officers who earn a Baccalaureate and/or Advanced Degree with a major in a social science, Business Administration or Public Administration appear to be in a special category, however the City's proposal appears to limit this group to $450 in education pay.

Finally, those who go on to get their BA Degree in foreign languages, the arts, education, sciences or in any other of the many fields of study that are available in accredited colleges and universities would be rewarded by an annual stipend that is only $275 more than the $175 they received for the 60 credits mandated by the LESB. This stipend is neither adequate recognition for the cost and effort that the officer expended to receive the $450 annual payment nor is it adequate increased compensation for the additional professionalism that a college education with a BA Degree in any field can reasonably be expected to contribute to the Department.

The City said that a conservative estimate of the cost of its proposal is $97,600 annually. Increasing the benefit to $750 per annum for all baccalaureate degrees should not add too much cost. If there is any reason that officers who possess an AA degree that was awarded after January 1, 1971 should not receive the $275 annual payment, the reason is not reflected in the record. For the reasons set forth above, the parties collective bargaining agreement shall be modified to provide that beginning with the first pay period 2000 (December 26, 1999) the City will make annual payments to employees upon the completion of an approved Associate degree in the amount of $275, or upon the completion of a Baccalaureate Degree in the amount of $750. The degrees must have been earned from an institution accredited by an accreditation association named in paragraph seven of the parties'

expired contract. The City is requested to revise the provisions of Article 40 to make it comply with the intent of the award described above.

ARTICLE 72 CHARITABLE GIVING

THE UNION'S proposal would add the following provision to the parties' contract.

ARTICLE 72 CHARITABLE GIVING

1. Members of the bargaining unit may authorize the City to deduct from their payroll checks an amount of money which the City will remit directly to the PODF. If a member has so authorized a payroll deduction, the City will deduct such payments from his bi-weekly paycheck and remit these sums to the PODF, c/o MPA within ten calendar days after the payday from which the deduction was made. This agreement remains in effect only so long as the PODF remains as an IRS-approved 501c(3) non-profit charitable organization.

2. The MPA will reimburse the City for the costs of this check-off at the rate established by the City of Milwaukee per year per member of the unit who authorizes the deduction from his payroll check to the PODF.

The Union said that the Police Officer Defense Fund, a 501c(3) organization, engages in activities related to funeral expenses of police officers killed in the line of duty, litigation regarding legislative action or civil litigation which reduces police officer's benefits, Summer Fun Olympics for kids who live in poor parts of town, Little League Baseball, police officer safety, education and equipment.

The Union said that this demand is for the purpose of giving MPA members an alternative to the United Way combined giving campaign. It said that the United Way publicly took positions adverse to MPA members on one occasion, and changed its rules in a way that prohibits PODF from participating in the combined giving campaign.

The Union said that "it is a practical reality that fewer members will contribute if there is not a payroll deduction." It said that the PODF needs the same access to contributions that the United Way and the United Performing Arts Fund have. "The City currently provides payroll deductions for a variety of organizations and tasks." The Union cited examples of deductions for insurances, charitable purposes and a political action committee (PAC). The

Union explained that in 1982 the City Council authorized AFSCME members' payroll deductions for a federal PAC. The MPA currently participates in this program, and reimburses the City for the cost of administering it. The MPA's present "demand uses the identical process for the PDOF."

THE CITY said that the Union failed to show that there is any need for the provision, or that any other City union or any comparable has such a provision. It said that a substantial percent of "PODF funds are used to sue the City of Milwaukee." It noted testimony that some MPA members sought rebates of their fair share agreements. "Particular functions that we wanted to perform and primarily those functions that I've identified outside of the Union dues that would not be subject to rebate" from a PODF check off. The City said that the Union is looking for a source of funds to fund its extracurricular activities. "In short there is no basis to award the MPA's proposal." It said that MPA informs its members about PODF through it publications, interested members and members of the public can contribute without the Union's proposal. The City said that approximately one-half of the funds that PODF has raised have funded six lawsuits that the MPA brought against the City or the Chief of Police. The City said that it should have the right to limit the number of payroll deductions it processes. It asked that the MPA demand be rejected.

DISCUSSION – CHARITABLE GIVING

Testimony in support of the Association's Police Officer Defense Fund (PODF) proposal was uncharacteristically sparse. The comment that PDOF withholding is necessary because some United Way members made public comments that were critical of MPA members after the Dahmer case lingers. It is hardly a good reason to compel the employer to undertake the administrative procedures that are involved in establishing the check-off, nor were the other reasons that were given, even if the MPA is willing to reimburse the cost. Testimony that few members of the Association make the effort to contribute to PDOF is stronger evidence that the check-off is unnecessary than the contrary.

The City's undisputed assertion that one-half of the funds raised by the PDOF were used to fund litigation against the City and the Chief of Police is sufficient reason to not impose the burden upon the City. The Association's request is denied.

AWARD

The parties Collective Bargaining Agreement shall be for the period January 1, 1998 through December 31, 2000. It shall contain the terms of the parties expired 1995-1997 agreement as modified by the agreements of the parties and the following revisions which are awarded in this proceeding:

ARTICLE 10 – BASE SALARY. The Association's wage offer shall be included in the contract. The City's request that, notwithstanding the provisions of Section 109.03(1)(a), Wis Stats., it be granted a period of time not to exceed 60 days after the new contract has been signed to pay the wage increases granted herein is awarded. The City is ordered to conduct an in-depth study to determine whether the LPE position should be reclassified within six months after the date of this award.

ARTICLE 12 – SPECIAL DUTY AND TEMPORARY ASSIGNMENT PAY. The parties' contract shall include the provision that effective at the start of the first full pay period following the execution of the parties' agreement, the two individuals who are currently underfilling the position of Court Liaison Officer shall be appointed, through the appropriate procedures set forth by law, to that position.

ARTICLE 21 – HEALTH INSURANCE. Article 21, Section 10 of the parties' 1998-2000 agreement shall be modified as follows:

> 10. An employee who retires on pension ~~(as this term is defined under that applicable provisions of Chapter 36 of the City Charter, 1971 compilation as amended)~~ during the term of this agreement, shall be entitled to the benefits provided during the term of this Agreement so long as <u>he or she is</u> ~~they are~~ less than age 65. ~~Thereafter,~~ <u>After this Agreement expires,</u> such <u>an</u> individuals, so <u>long as he or she is</u> ~~they are~~ <u>less than age 65</u> shall be entitled to:
>
> (1) The same health insurance benefits concurrently provided employees in active service covered by the effective Agreement between the City and the Union <u>Association</u> as is in effect from time to time ~~so long as they are less than age 65~~ (it is understood that the exclusion of retirees from coverage under dental insurance benefits, as set forth above, shall continue unchanged). If a retiree eligible for these benefits dies prior to age 65, the retiree's surviving spouse shall be eligible for these benefits until the last day of the month in which the deceased retiree would have ~~obtained~~ attained age 65; and

(2) The same City/retiree health insurance cost sharing formula that was provided for such retiree by this Agreement.~~; and~~

ARTICLE 22 – SICK LEAVE. The Association's proposal is denied.

ARTICLE 28 – VACATION. The proposed modifications to Article 28 that are contained in the City's offer shall be included in the parties' 1998-2000 Agreement.

ARTICLE 33 – UNIFORM AND EQUIPMENT ALLOWANCE. The parties 1998-2000 Agreement shall include the language proposed by the City in Article 33, except that the language of paragraph 1.b.(1)(a) shall be modified as follows:

> (a) The City shall replace articles of initial allowance of uniform and equipment prescribed by the Chief of Police and in addition up to two shirts or one sweater and one turtleneck shirt or any combination thereof totaling two items. ... At his/her option, the employee may have either a summer short sleeve shirt or a winter long sleeve shirt or a turtleneck shirt replaced. ...

ARTICLE 37 – UNANTICIPATED DUTY PAY. Article 37 shall be deleted from the parties' 1998-2000 Agreement.

ARTICLE 40 – EDUCATIONAL PROGRAM. The City's proposed modification to Article 40, modified to provide that employees with approved Associate Degrees shall receive $275 annually, and employees with a Baccalaureate Degree shall receive $750 annually, commencing with pay period 1, 2000 shall be included in the parties' 1998-2000 Agreement.

ARTICLE 72 – CHARITABLE GIVING. The Association's request for a new Article 72 is denied.

The undersigned will retain jurisdiction for a period of 30 days after date hereof, for the purposes of responding to unanticipated questions arising out of this arbitration award.

Dated at Madison, Wisconsin, this 10th day of March, 2000.

John C. Oestreicher, Arbitrator