

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of
City of South Milwaukee
:
:
To Initiate Arbitration Between
Said Petitioner and
:
:
SOUTH MILWAUKEE
FIREFIGHTERS PROTECTIVE
ASSOCIATION
Local #1633 I.A.F.F.
:

Case 109
No. 65729
MIA-2733
[Dec. No. 31675-A]

APPEARANCES:

Joseph G. Murphy,
City Attorney on behalf of City of South Milwaukee

International Association of Firefighters Local 1633 by
Joseph Conway, Jr. on behalf of South Milwaukee Firefighters
Protective Association

ARBITRATION AWARD

International Association of Firefighters Local 1633 (Association, Local 1633 or Union) is the exclusive collective bargaining representative for all regular full-time employees excluding all officers above the rank of Lieutenant of the South Milwaukee Fire Department. The City of South Milwaukee (City or Employer) is a Fourth-Class City, and an Employer as defined by Section 111.77 Wis. Stats, Wisconsin Municipal Relations Act. The parties were unable to agree upon the terms to be included in the successor to their January 1, 2003-December 31, 2005 collective bargaining agreement. The city filed a petition requesting the Wisconsin Employment Relations Commission (Commission) to initiate compulsory and final binding arbitration pursuant to Sec. 111.77 (3) of the Municipal Employment Relations Act on March 22, 2006. The Commission assigned a representative to investigate an alleged impasse in the parties' negotiations. The Investigator certified that the parties were deadlocked in their negotiations on April 20, 2006. On May 2, the Commission instructed the parties to select an arbitrator from a

list of persons qualified by the Commission to resolve the dispute. The Commission appointed the undersigned to act as the arbitrator by order dated May 22, 2006.

After due notice to the parties the arbitration hearing was conducted in the City's Administrative Building on August 1, 2006. Both parties presented documentary and oral evidence into hearing record, which was closed at the conclusion of the August 1 hearing. The parties exchanged post-hearing briefs by mail dated September 15, 2006. On September 22, 2006, the City mailed notices correcting data for 2007 health insurance premium costs. The parties mailed reply briefs on September 30, 2006.

ISSUES IN DISPUTE

The two final offers propose numerous substantive changes in contract language. Some of the proposed changes are not disputed; some appear to have minimal financial impact. Since the parties did not attempt serious mediation, it is difficult to summarize all the areas of disagreement. The principal reason that the parties didn't attempt serious bargaining is because their positions on wages, payment of health and dental insurance cost increases and the level of the City's payment to continue benefits for retirees appeared to be irreconcilable.

THE CITY'S POSITION

The City said that in addition to the provisions of the criteria set forth in Sec. 111.77 Wis. Stats, three other provisions of law are relevant to the decision herein. They are: the levy limits included in the most recent state budget, limits imposed upon the City under the "Expenditure Restraint Program" in Sec 79.05 of Wis. Stats and the requirements of Sec 62.13 (5m) (a) that it said would require the City to dismiss all of its part-time firefighters before discharging any full-time firefighters.

It reviewed the logistics that South Milwaukee has a population of 21,374. Its Fire Department includes the Chief and three Captains and the members of this unit; three Lieutenants and 21 full-time firefighters. Seven on-call firefighters are not union

members. Union members include the Lieutenants, 15 certified paramedics and seven certified EMTs.

The City cited data that compliance with the Expenditure Restraint Program resulted in its receipt of \$385,340 in 2006. It said that the \$3,237,859 in shared state revenues reflects that state shared revenues have been decreasing since 1993. In order to cope with state-imposed restrictions and reduced state revenue payments, the City has been eliminating payroll positions:

2004: four full-time and 11 part-time

2005: two full-time

2006: two full-time firefighters and four part-time school crossing guards

"Between 2001 and 2006, the salary and benefit portion of the City's operating budget has grown from 79.28% to 85.62% despite the above reductions in the workforce."

Because of the Expenditure Restraint Program, the City will be required to limit its tax levy increase to 2% or \$178,682 for 2007. In 2004 the City borrowed \$2,850,000 to pay off its obligations for underfunding the Wisconsin Retirement System. The first of 18 annual repayments became due in 2006 in the amount of \$215,000. The City also has an unfunded retiree health insurance liability for this Union of between 1.3 million and 2.2 million.

The City proposes to increase its contribution for active employe health insurance by 2% in both 2006 and 2007. That would raise the City's payment for single plans by \$8.99 and for family plans by \$22.41 compared to employe increases of \$39.91 for single and \$114.79 for family plans in 2006. The Union offer increases its contribution toward health costs by \$5 for single and by \$10 for family plans during each year of the contract. The Union's offer would raise the City's premium cost for single plans by \$34.91 and for family plans by \$104.79 more than the City's offer during 2006. At the expiration of the prior contract, employees insured under both single and family

plans paid approximately 6.2% of premium cost. That ratio would increase very slightly under the Union's offer. Under the Employer's offer, the employees would pay 13% of premium costs in 2006.

Financial data presented at the hearing assumed that the cost of health insurance would increase by 12.7% in 2007. Under the two proposals the results for the second year would have been similar to first-year results; the Union offer would retain approximately 6% employer contributions while the City's offer would reduce its liability to approximately 79% of premium cost. On September 22, after the filing of its initial brief, the City informed the Union and the undersigned that 2007 premiums would increase by 5.1%. That good news resulted in the need to for the City to revise its cost estimates for the impact of the two offers during the second year of the contract. The Union did not object to the City inserting the updated health insurance cost data into the record. The revised exhibits reflecting corrected 2007 cost information were mailed along with the City's reply brief. That data and the reply brief are summarized immediately following the summary of the City's position.

The City's proposed changes for health insurance contributions for disabled employees and retirees appears to be designed to cause retirees' premium contributions to mirror the changes the City's offer causes for active employees.

The parties' differing offers relating to dental insurance, paramedic pay increments, sick pay, vacations, emergency leave and Fire Inspector pay appear to pale in comparison to the health insurance and salary issues. The effect of all these issues is reviewed in the parties' arguments below.

The City said that the criteria "lawful authority of the employer" is particularly important in this case because of the layoff provisions of Wis. Stat 62.13 (5m) (a) and levy limits. It argued that the City "cannot raise taxes to satisfy an arbitration award in excess of the 2% limit."

The City said that the levy limit will limit the amount of new revenues the City can raise to \$178,000. The City is attempting to negotiate contracts with all three of its Unions at this time. If the City increases the tax levy by more than 2% it will lose \$385,640 of State Expenditure Restraint funding. The loss of that money would cause more layoffs. At \$71,571 average cost per employe, that's five new layoffs in addition to the elimination of \$675,589 worth of positions since 2003. The City has made identical wage and fringe benefit offers to this Union and to the AFSCME Union. It will make the same offer to the Police Union, whose contract expires on December 31, 2006. The other negotiations are at an impasse over the same issues. The outcome of this proceeding "will undoubtedly substantially affect" those proceedings.

The City cited arbitral authority that it is realistic to assume that the decision in this case will impact decisions by other arbitrators who favor uniform patterns of settlement. Based upon the assumption that the City's offer would be imposed upon the City for all employes, in 2007, the City will need \$79,458 more revenue than raised under levy limit restrictions. The Union's offer would result in a \$599,531 deficit, an 8.71% deficit, not counting lost Expenditure Restraint money. When Expenditure Restraint losses are included, a 13% tax increase would be required to fund the Union offer. The impact of the two offers if limited to this bargaining unit would be: City offer deficits of .05% in 2006, 3.4% in 2007; Union offer deficits of 4.31% in 2006 and 5.22% in 2007. The City said its offer best meets the interest and the welfare of the public and the financial ability of the City to meet the costs thereof.

The parties have traditionally used St. Francis, Greendale, Cudahy, Franklin, Greenfield and Oak Creek as external comparables in contract negotiations. The City said that because some of these communities had quite a bit more new construction than South Milwaukee and are permitted to increase tax revenues by more than 2% in 2006 they should not be considered comparable in this proceeding. Those communities

and their 2006 levy limits are: Cudahy: 3.039%; Franklin: 4.948%; Oak Creek: 3.746% and St. Francis: 4.6%. South Milwaukee has not had new construction in excess of 2% in the past ten years, and it will not have in 2007. The City pointed to data that shows South Milwaukee's fiscal capacity of \$66,588 is lower than any comparable's. Comparables' fiscal capacity range from \$70,731 in Greenfield to \$84,193 in Cudahy and average \$79,223. South Milwaukee's fiscal capacity is 84% of that of "comparable communities."

Only Greenfield has a 2% levy limit restriction and a paramedic program. Its firefighters had total compensation of \$73,693 in 2006 compared to the City's offer of \$74,221 for this year. Cudahy, Greendale and St. Francis have no paramedic programs. South Milwaukee levies \$817,158 to fund its share of the paramedic program. If it terminates the paramedic program, South Milwaukee would be served by Oak Creek. It could then eliminate the seven firefighter positions that were added when the paramedic program was started.

While the City doesn't think the other cities are comparable, it pointed out that the City's proposal would result in its starting firefighters receiving 106.79% and top-step firefighters receiving 95.98% of "comparable average pay" in 2006. The ratios would be 107.16% and 95.44% during the second year. Since the City's fiscal capacity is 84% of that of the comparables, its wage proposal is reasonable.

No comparable gave a 6% wage increase over a period of two days or a 9% increase over one year and two days. "Yet this is precisely the increase the Union proposes." Comparables' wage increases were: 7% over two years in 18 months in Cudahy; Greendale 6.5% over 13 months; Oak Creek 8% over 19 months; and 9% over three years in Franklin.

The city noted that in Greenfield, employees pay \$96.49 toward dental insurance and \$169 toward health insurance in 2006 compared to \$39 toward dental and \$174.79

toward health insurance under the City's offer. "Greenfield has no provision for any municipal contribution toward the health insurance premium of disabled employees;" it pays the same for retired and for active employees. Greenfield's 5% paramedics' pay is the same as the City's offer. No comparable has a 5.3% paramedics' premium as proposed by the Union.

The City argued that it has two other burdens that distinguish it. In 2004 it borrowed \$2,850,000 to pay its underfunded State Retirement Account, and it is now required to repay that loan by approximately \$215,000 a year through 2022. The city argued it was reasonable to expect its employees' to pick up the cost of increases in the employees' share of WRS contributions. Greenfield appears to not make any contribution toward the employees' share. The other unique financial burden arose out of the City's "unfunded post-retirement medical benefit disability." It said that liability would be \$2,214,234 if the Union's offer is accepted or \$1,371,119 if the City's is selected. Those numbers apply to the Fire Department alone; they will increase fivefold when applied to all city employees. The unfunded liabilities must be paid or the City's bond rating will be adversely affected. It currently budgets \$3,452,683 for debt reduction.

The City said there is no rational justification for eliminating EMT premium pay during times that EMTs perform as paramedics. It argued the Union's proposal to change the way sick leave is charged from ½ day to hourly increments will increase the cost of covering sick time. The Union didn't show any evidence how sick leave is handled in comparable communities.

The City said that though its proposal would require the firefighters to pay a greater portion of health insurance premium cost, given the City's 84% fiscal capacity and levy limit constraints, the increased cost sharing in the City's offer is reasonable.

The City compared the two health insurance offers under the criteria for private employment in comparable communities. Under the City's offer it would pay 86% of

premium cost in 2006 and 78% of cost in 2007. "By contrast under the Union proposal, the City will pay 95% of the premiums in 2006 and 2007." The City reviewed health insurance benefits provided by the three largest private employers in South Milwaukee. "The average weighted employer cost for lowest cost single plans per employe is \$291.58. This is \$158.02 per employe less than the City's proposed single plan contribution." Those private sector employes contributed an average \$724.54 towards family plan premiums compared to the City's offer to pay \$1,120.60 per month in 2006. The City reviewed Department of Labor data for East North Central states which showed average employer contributions for health insurance for single and for family plans for employer and for employe were respectively \$69.82 and \$243.24 single plans; \$251.58 and \$599.56 family plans. Milwaukee area employers contributed an average \$678.66 per month as reported on March 18, 2005 compared to the City's proposal to pay \$1,143 in 2006. These private sector comparisons favor the City's offer.

The City said that it conceded that the average increase in cost of living expenses is either 3.2% or 3.4%.

Regarding the overall compensation criteria the City referred to internal settlements for the period 2005-2007. It said, "The two proposals of the parties have significant differences with respect to the criteria entitled 'continuity and stability of employment.' The above discussion should by now have made it clear that if the Union proposal is awarded, a significant number of employes will find that they have NO continuity and stability of employment."

The City referred to the criteria requiring arbitrators to consider other factors traditionally taken into consideration in determining wages, hours and conditions of employment in collective bargaining and said, "the Union's quid-pro-quo objection to the City's health insurance proposal is unwarranted here." It argued that its offer to increase its premium contribution by 2% each year is the maximum increase it can lawfully fund.

It said the reduction of the City's contribution to health insurance premiums for retired employees past age 60 from 100% to 75% of cost is a minimal adjustment which makes sense and makes retiree health insurance more affordable.

The City repeated its belief that it had offered the maximum wage and benefit increase it is permitted to make under law considering levy limits and expenditure restraints. The City said that the Union ignored these restrictions. When asked how the City could fund the Union's proposals, "the Union president testified that was not his problem." The City said both parties share many interests. Neither party wants the City to terminate the paramedics program, unlawfully raise taxes or default on an obligation for retirees. Both parties expect the City to fully fund unfunded retiree health insurance. It argued that none of these objectives can be accomplished if the Union offer is selected.

The City cited a series of arbitration decisions in which it said arbitrators found that the absence of traditional quid-pro-quo was not an impediment to acceptance of a municipality's offer which includes "health insurance cost splitting because of pressing financial concerns and tax limitations." The City said it had experienced a 190% increase in health insurance costs over seven years. "In the circumstances here, the doctrine of quid-pro-quo has no legitimate application."

The City's reply brief notes the Union's argument that collective bargaining is intended to permit the parties to negotiate their disagreements "to bring the parties closer together. In this case, the employer never deviated from their (sic) initial offer, the question is why." It said "the answer, once again is simple; the City cannot lawfully fund the Union proposal within the tax levy restrictions and Expenditure Restraint Program limitations." The City denied that it was using terrorist tactics. It said that it had repeatedly asked the Union to show how its proposal could be lawfully funded. It said the failure of the Union to respond to that question is proof that its offer cannot be met

without additional layoffs. The City did modify its initial offer, however since there is no evidence of such in the record, the City will not attempt to discuss that herein. In any event, arbitral criteria do not permit an arbitrator to punish a party for its negotiating failures.

The City said the Union's position that the 3% pay raise firefighters received effective December 31, 2005 was "due in 2004" misstates the facts. All City employees took at least a one-year pay freeze between 2003 and 2005. "The Union is not 'due' a double pay raise for the freeze of 2004." The fact wage increase is not in dispute; its \$38,921 cost is included in the City's budget. That cost, together with the Union's offer of an additional 3% on January 1, 2006 at the additional cost of \$44,444, would consume 47% of the \$178,682 the City can raise under levy limitations. The prior contract changed the date of annual increases from January 1 to December 31. The City's offer recognizes that change; the Union's effort to go back to the old date is an effort to "double up."

The City denied the claim that it hadn't met the criteria relating to "the interest and welfare of the public." It demonstrated that the public cannot afford the Union proposal. Because of budgetary constraints, "the Public, the Citizens of South Milwaukee, have been left with virtually no options."

The City responded to the claim that it had not "offered all that it could" by reviewing the dates of the submission of financial data, its receipt of retirement notices from three top pay-range firefighters and the dates of hire of new employees. It explained that the City's exhibits reflected its real costs and projections based on actual data. Those adjustments also account for the difference in 2007 wage calculations which the Union questioned. The City reviewed the two parties' offers relating to dental insurance costs with practices in comparable communities and concluded that its offer is generous.

The City corrected its previous cost estimates to reflect the correct 5.1% health insurance premiums for 2007. The previous estimate projected a deficit of \$599,531 in 2007 if the Union's offer is accepted. That deficit is now \$366,356. The tax rate required to fund the deficit is reduced from 8.71% to 6.1%; the real number of employees who would be laid off is three rather than five. If the City's offer is accepted, the deficit would be \$40,595 requiring a 2.89% tax increase. An additional deficit of 4.5% will occur if Expenditure Restraint funding is lost. The health cost correction would result in a 4.54% Employer cost increase under the Union's proposal. Under the City's offer, it would be paying 84% of the total health insurance premium in 2007. "This is a reasonable proposal."

The City noted the Union's claim that its offer for health insurance "is consistent with previous bargains." It said the Union wanted to "continue business as usual even though usual circumstances no longer exist." The Union's offer will increase the disparity between the Employer's contributions for health insurance with those in the private sector. The City denied that there is any basis for additional wage increases for paramedics.

The City noted the Union's argument that it should not bear the brunt of balancing the books for the City of South Milwaukee. It explained that the increase in City Attorney's pay was justified because he had not received an increase since 2001. The actual increase was \$8,475 and that was for assuming additional duties which saved the City \$44,853. It said that increases within the City Administrator's salary from \$67,920 over three years to \$81,400 in 2008 will result in her receiving 81% of the amount of the salary of the Administrator in one of the comparables.

The City said that the two offers present stark contrasts. "The Union proposal is based upon the same criteria and comparisons it has always used in the past." The City has "based its proposal on the financial limitations it is bound by." It said the Union has

chosen to pretend that the fiscal restrictions don't exist. "A proposal which cannot be lawfully funded is unreasonable."

THE UNION'S POSITION

Stating that the arbitration is clear cut, it noted the Employer's opening statement, "their final offer was 'sub standard' and was not a 'quid-pro-quo' offer." The Union opined that the City's position seems "counterproductive" since arbitrators select the most reasonable final offer. The City "never deviated from their (sic) initial offer, the question is why." The Union said that the City doesn't care if it prevails in arbitration; it is using "terrorist tactics." If the City doesn't prevail, "they (sic) will eliminate positions in the City and will blame the firefighters for the loss of positions." It said this tactic should not be rewarded, "the Union must prevail to send a clear message to this employer that they (sic) must be reasonable in negotiating..."

The Union said that its offer is most reasonable because it most clearly conforms to the statutory criteria. It said the first criteria, "lawful authority of the employer," is not in dispute and need not be addressed. With regard to the second criteria, the stipulations of the parties, "there is one very important agreement that should weigh heavily." The Union referred to Article XV on page nine of the parties' expired January 1, 2003-December 31, 2005 contract. The section set out the salary adjustments, negotiated during bargaining for the prior contract, January 1, 2003—3%; January 1, 2005—3%; and December 31, 2005—3%**.

In the note section the language provided "*** the wage increase of 12/31/05 was done as a concession by the Firefighters Local 1633 (I.A.F.F) and therefore is attributable to 2005." The Union said the intent of the parties was for the Union to receive no wage increase for 2004 in exchange for the 3% raise on the last day of the prior agreement. "As part of that exchange the Union did not want, and the Employer agreed, the 3% raise to be attributed to 2006."

The Union argued that the City, in stating that the Union is seeking a 9% increase over two years, is ignoring the agreement not to cast the December 31, 2005 increase against the total package cost for 2006-2007. It argued that the employer should be held accountable for previous stipulations that were bargained in good faith.

The Union noted the criteria "interests and welfare of the public and the financial ability of the unit of government to meet these costs" and said "this is the big argument of the employer." It said the City argued that because of cost constraints it had offered all that it can, "which amounts to nothing in the first year and 2% in pocket for the second year of the contract." *Since the City didn't discuss the welfare of the public the Union will not address that issue.* It said that the City's argument that it can't afford to give quid-pro-quo is misleading. It argued that its assessment of the City's data indicates the City could increase its offer to the firefighters an additional 3.85% over the "paltry increase of .05%....they inappropriately attribute the 12/31/05 raise to 2006." The Union presented its calculation of the two parties' offers which based the cost of the Union's wage offer on a total wage increase of 6%. It said in 2006 the City's offer was -.66% compared to 3.16% for the Union. In 2007 the City's offer was 2% compared to 4.04% under the Union offer. The Union argued that the City's offer "is possibly one of the most unreasonable offers brought into arbitration in the entire history of collective bargaining" in Wisconsin.

Comparing the two offers under the criteria for comparison with internal and external comparable wage and fringe benefit packages, "the Union's exhibit....says it all when applying the criteria." The Union's base wage offer keeps pace with external comparables; the City's offer would result in a fall for these employees to the bottom of the comparable pool. It said similar results occur in the private sector comparison.

The Union reviewed various CPI data and concluded that 2006 CPI increases will range from 3.2% to 3.5% in 2006. It argued that data in the record support the finding that the Union's offer more clearly reflects CPI index increases for the contract period.

The Union said that the City has proposed a significant change in the allocation of health insurance cost saving without giving back a quid-pro-quo. The Union's offer would increase the employees' share of premium cost "consistent with previous bargains." The Employer's proposal would more than double the employees' share of premiums. The City's offer is not supported by external comparables and would result in these employees paying an exorbitant amount (sic). There is no precedent for the City's offer; it is attempting to gain something in arbitration it would never get in bargaining without quid-pro-quo. It said the Employer's proposal changes in premium allocations for disabled and retired employees are similarly inappropriate.

The Union said that currently the City paid 100% of dental insurance premiums. The Union offer is a concession to begin sharing some of the cost. It said that the City's offer is similar to the Union's offer, "only \$789.36 difference." The City proposes to pay a flat amount, \$75 for family and \$30 for single plans. The Union proposes that employee contributions should be fixed at \$20 for the family plan. It argued that the Union's proposal was a \$4,084 concession, is supported by both internal and external comparables "and is a reasonable first step away from their previously full paid dental insurance."

The Union explained that the disagreement over fair compensation for paramedics under "a newly incorporated Flexible Paramedic Staffing Plan" arose out of the manner in which the plan was adopted in the prior contract.

The Union reserved the right to bargain the impact of that plan. The plan was implemented after the petition for arbitration was filed herein. The Union argued that its

proposal for an increase in premium pay from 5% to 5.3% is more reasonable than the City's offer which makes no provision for increased compensation for additional duties.

City employees are charged for the use of sick leave in 12 or 24 hour units. The Union proposed to change that premium to charge sick leave hourly. It argued that the proposed change is "reasonable, consistent with their comparables, and in fact may generate overtime savings for the employer." The Union argued that its proposal to accrue vacation time while an employee is on extended sick leave was de facto in the Fire Department for more than 20 years. "The City evaporated this past practice after a grievance was filed on behalf of an employee who lost 2.5 days of vacation while on extended leave." The Union dropped its grievance when the Employer threatened to "take vacation from employees who were previously allowed to accrue vacation while on extended sick leave....the Union must prevail in re-establishing a long standing practice that is consistent with other bargaining units."

The Union concluded by arguing that the City should not be permitted to argue that the shortage of funds requires the firefighters to take a pay cut. It said that wage increases for the people who sat across from them in the arbitration hearing are "not in line with the expenditure restraint program or the levy limits. The City attorney went from \$4,210 a month to \$6,250 a month, a roughly 48% raise. His hourly rate for litigation went from \$75 per hour to \$150 per hour, a 100% increase. The City Administrator in a two-year period will go from \$57,820 to \$80,400, roughly a 40% pay increase. Where is the fairness and equity?"

In the Reply Brief, the Union said the City is taking the "chicken little" approach." It wants "the arbitrator to believe that the 'sky is falling' in South Milwaukee." What the Employer did was lay out a "worst case scenario based on misrepresentation and threats." The Union agreed that before the City lays off a full-time firefighter it would have to lay off the paid, on-call firefighters first. It pointed out that the City has chosen

not to replace firefighters who have resigned, "The statute does not apply, even though the effect is the same." There is no evidence that the Union's offer would result in the elimination of on-call staff.

The Union reviewed salary data included in its exhibits including the City's 2006 operating budget, "The Employer's cost estimate for the Union offer is \$9,100 less than what they have budgeted for in 2006." The Union accused the City of trying to "cook the books' to mislead the arbitrator." The Union said that it had previously suggested that the City had overstated the impact of the two wage proposals. It calculated the impact of the final offer as follows: Union offer 3.16% in 2006 and 4.04% in 2007; City's offer a decrease of .66% in 2006 and a 2% increase in 2007. It said these amounts are below Expenditure Restraint in 2006. "As to 2007 the Expenditure Restraint numbers are not known, but what we do know, the levy limits sunset on January 1, 2007."

The Union said that there is no merit to the argument that the decision in this case will determine the decisions or settlements that the City has with its other unions. It distinguished the facts and arguments in this case from the facts and rationale of the arbitrators in cases cited in the City's briefs. It's unreasonable to eliminate those communities which have been historically considered comparable from consideration in this case. Just because South Milwaukee has "done a horrible job of promoting new construction and managed their (sic) financial affairs poorly is no reason to eliminate comparable comparisons."

The Union noted the City's suggestion that it might terminate the paramedic program. It reviewed financial data that the City is projecting an excess of \$118,118 in the paramedics fund balance. It reviewed other financial data that shows that the loss of County funds for the paramedic program would result in a net revenue loss for the City.

The Union said that since the City failed to provide any kind of comprehensive wage and benefit comparison, its private health insurance comparison is meaningless

and should be given no weight. The City's threat to lay off employees if the Union offer is selected is an attempt to intimidate the arbitrator. There is absolutely no reason that firefighters' continuity of employment should be threatened.

The Union said that the City's proposal to impose \$24,000 in health insurance givebacks with no 2006 wage increase in 2006 requires the Employer to provide quid-pro-quo. It noted the City's reference to arbitration cases cited in the City's brief. It said that those references were selective and misleading. It distinguished the two offers in this proceeding from the circumstances described in the cited cases. It urged the undersigned to read the decisions in their entireties and suggested additional authority for its conclusion that quid-pro-quo is required but lacking in this instance. It concluded by urging that the Union offer be adopted.

DISCUSSION

The Wisconsin Municipal Employment Relations Act is comprehensive legislation intended to ensure "negotiations of the terms and conditions of work should result from voluntary agreement between employer and employee." The Act is spread across 37 pages in Chapter 111 of the Wisconsin Statutes. The law "recognizes that there are three major interests involved: the public, the employee and the employer." Section 111.70 establishes the rules for arbitration hearings involving "school district professional employees or... municipal employees who are not school district employees." Section 111.70 (6) directs arbitrators to consider certain factors in making an arbitration award; those factors are referred to as criteria for decision making. Section 111.70 (7) instructs arbitrators making decisions under this section to "give the greatest weight to any state law or directive... which places limitations on expenditures that may be made or revenues that may be made by a municipal employer." Section 111.70 (7g) requires arbitrators to give greater weight to economic conditions in the jurisdiction of the

employer rather than any of the factors specified in subd. 7r," which consists of a list of ten other factors arbitrators "shall also give weight to."

Section 111.70 (5s) applies only to school district professional employes; it permits school districts to avoid arbitrating economic issues by making a "qualified economic offer" (QEO) on or after July 1, 1993. None of the foregoing provisions apply to this proceeding, because settlement of disputes involving law enforcement personnel and firefighters are governed under Section 111.77 Statutes.

Section 111.77, the only section applicable in this case, directs this arbitrator to give weight to only those ten factors listed in 111.70 (7) as the "other factors to be considered" under Section 111.70. Neither the "greatest weight" nor the "greater weight" factor is relevant to arbitration awards under Section 111.77. The rules governing collective bargaining and arbitration proceedings for protective service employes have always been different than those for other public employes in Wisconsin. The Legislature has recognized that Unions representing the police and firefighters should not be subjected to the same financial constraints as teachers under the QEO and other public employes because such constraints would make it difficult for municipalities to attract and to retain qualified professional protective service personnel. The public interest requires professionalism and continuity of service for municipal employes in uniformed service units.

In its opening statement the City said that its offer was "substandard." It explained that because of the financial bind it is in, its condition is not comparable to the other cities in the previously agreed upon comparable pool. The City said it recognized that if its offer was adopted by the arbitrator some of the firefighters who were present in the hearing room would leave the department. It said that would at least permit the City to allocate available funds rather than have those employment decisions be made by the arbitrator. That statement was not appreciated by the assembled spectators or by their

Union representative. The Union said that the City had refused to bargain over terms to be included in the parties' 2006-2007 contract. The City said that it had bargained, but since evidence of the parties' bargaining was not in the record, it could not discuss that matter, and arbitral criteria do not permit an arbitrator to punish a party for its negotiating posture. The City is correct on that point; however, it is clear that the City drew the line at package cost increases averaging 2% a year over the term of the new contract and refused to consider deviating from that position unless the Union showed how a greater increase could be paid for. That position may have been justified from the City's point of view, but it didn't meet the test of collective bargaining from the Union's point of view. It appears to have been an ultimatum.

The City explained how having to borrow funds to cover its underfunded Retirement System obligations and increase its financial reserves in addition to having substantial underfunded health insurance exposure put tremendous pressure on the City's limited financial resources. Decreasing state-shared revenue and tight budgeting have resulted in the elimination of eight full-time and 15 part-time positions from 2004 through 2006. If the City fails to restrain revenue growth in 2007 it will lose "Revenue Restraint" funding in 2008. The foregoing helps one to understand what the City described as a "stark contrast" between the position of the parties. The fact that the City of South Milwaukee perceives that it may lose Expenditure Restraint funds in 2007 if its employees' collective bargaining demands are met does not deprive the members of Local 1633 of their right to have the Union's final offer in this case evaluated under the "same criterion and comparison it has always used in the past." Those are the only criteria that apply.

The most reliable comparative data in the record relates to the two parties' offers for 2006 relating to base wages and health insurance premium payments. There is very little comparative data available for 2007. The first wage issue is the effect of the

December 31, 2005 wage increase that was granted in the prior contract. There is no dispute that that 3% wage increase is attributable to the 2003-2005 contract. The disagreement is over what weight that new wage increment should be given in comparing the two wage offers in this case. If the Union's offer is accepted, these employees will receive 6% more in wages in 2006 than they received in 2005 with an additional 3% commencing January 1, 2007. The effect of the 12/31/05 increase has to be considered: Only the two 3% annual increases and the 6% total lift are attributable to the Union's offer. The City's offer for 2% on each December 31, 2006 and December 31, 2007 calculates to 0% in 2006 and 2% in 2007 and 4% left over the term of the contract. Based upon City EX 28, the new hires earned \$1,594 bi-weekly in 2005. The City's 2006 offer would result in these employees receiving the 3% attributable to the prior contract, \$1,641 bi-weekly in 2006, compared to \$1,691 under the Union's offer. The increase for top paid firefighters would go from \$1,992 in 2005 to \$2,052 under the City's offer, or they would receive \$2,113 bi-weekly from the Union's offer. The differences amount to \$1,489 per annum for new hires and \$1,601 per annum at the top firefighter salary. Approximately one-half of these differences are attributable to the Union's proposed January 1, 2006 wage increase.

The other major disparity in the two offers arises out of payment of employee health insurance premiums. There are two issues in this dispute: first, the allocation of increased health care between the parties during this contract period. Second is the design or structure of the parties' responsibility for total health care costs, and the question whether quid-pro-quo is required in the circumstances herein.

Increasing health care costs have caused serious problems for employers, unions, individuals and government entities over the past many years. In South Milwaukee the City's contribution to family plans has increased from \$485 in 1998 to \$1,120.60 in 2005. City EX D4 shows that in 2005 the City contributed 95% of the total

family premium \$1,180.60 cost; the employees' share was \$60. Single plan contributions were \$449.60 or 94% by the City and \$30 or 6% by the employee. Total cost for family plans increased 11.4% to \$1,317.80 in 2006. The City proposal would allocate 83.7% of the \$137.20 increase, \$114.79, to the employee for a total employee contribution of \$174.79 per month in 2006. The City would increase its contribution by \$22.41, that being 2% of its 2005 cost, to a total 2006 contribution of \$1,142 for family plans. Single plan premiums increased by \$47.80 or 10% per month. The City proposes that the employees increase their contribution by \$39.92 and the City by \$8.79 a month to cover increased premium costs. The Union proposal would increase the employees' contribution toward total premium cost by \$5 a month to \$35 in 2006 for single employees and \$10 a month to \$70 for employees who select the family plan. The effect of the two offers parallels 2006 data except that the 2007 total premium increase of 5.1 % doesn't have quite as dramatic an effect upon the resulting total premium cost allocation between the parties.

The differences in the two dental insurance offers involve the same issues as are involved in the health insurance dispute; however, because of the far lesser cost for dental care, the magnitude of that dispute is less of an issue.

The appropriate comparable communities are those which have previously been determined: the cities of St. Francis, Greendale, Cudahy, Franklin, Greenfield, Oak Creek and South Milwaukee. Nothing the City presented provides justification for its conclusion that it is unique. All comparables face the same types of problems including: funding employe retirement, funding health insurance reserves and premium cost increases, maintaining adequate cash reserves, levy limits, Revenue Restraint incentives and reduced state shared revenues. Most relevant is the fact that they are all required to bargain collectively with employe bargaining units.

The first statutory factor requires the arbitrator to give weight to the "lawful authority of the employer." There is no question that the City has the legal authority to fund the cost of either of the two offers, in spite of the City's assertion to the contrary. The City has the authority to levy taxes to fund its operations. The responsibility for budgeting rests with the City Council in South Milwaukee as with the City Councils in comparable communities.

Those issues which are not in dispute: the two year term, increases in EMT compensation to \$887 in 2006 and to \$905 in 2007, increases in clothing allowance to \$435 in 2006 and to \$445 in 2007 and the \$500 increase in Fire Inspector pay in 2006 are considered "stipulations of the parties."

"The interests and welfare of the public and the financial ability of the unit of government to meet these costs" has been the primary focus of the City's argument. The merit of that argument has been discussed above. As far as this bargaining unit is concerned it is not in the interest of the public to have its Fire Department decimated by resignations because of an admittedly substandard contract offer.

The "comparison of wages, hours, conditions of employment" of these employees and "other employees performing similar services and with other employees generally" is the criteria for which the most objective comparative data is available. City EX C-15 shows that wage increases granted to the City's employees from 2002 through 2005 averaged between 2.75% for AFSCME and the police units to 2.94% for firefighters and 3% for non-represented employees. That is an accurate assessment of salary lift for the period. It doesn't reflect the salaries actually received, because the firefighters' second 3% raise didn't take effect until 12/31/05. They received actual salary increases averaging 2.18% over the period rather than 2.94%. The other salary increases are also somewhat overstated because the employees in question all received a second increment

on July 1, 2005. Non-represented employees' wage increases are a bit understated because the first 3% attributed to 2005 went into effect on 12/1/04.

Only the police unit is settled for 2006 at 3%. The City said it was offering 2% wage increases for the police, firefighters and non-represented employees. An exhibit showed increases of 2% for non-represented employees in 2006; however, actual data reflects substantially larger increases have already been granted to the City Attorney and to the City Administrator. The City has offered AFSCME a 1% increase in 2006. If the increases represented on EX C-15 are implemented, the average wage increase received by the employees over the five-year period including 2006 would be: firefighters 2.18%, police 2.8%, AFSCME 2.4% and non-represented 2.8%. The Union emphasized comparison of its position with that of the South Milwaukee police unit. In 2004 and 2005 average police wages exceeded firefighter wages by \$1,005 and \$1,032 respectively. Under the Union's offer that disparity would increase slightly to \$1,063 in 2006; the City's offer would result in a disparity of \$2,659. The Union's offer is a bit higher than is warranted under the difficult circumstances that exist in South Milwaukee. It appears to be more expensive than it really is, because it was backloaded with the 3% increase "for 2004." The other units and non-represented employees also received a second increment in 2005, albeit not equal to the 3% that the firefighters received on 12/31/05. Internal comparisons favor the Union's wage offer.

The Union presented base wage data for highest paid motor pump operators in South Milwaukee and in each of the six external comparables for a ten-year period. Up to 2000, South Milwaukee base wages at that wage level were slightly below (between \$9 and \$114 per annum) the average comparable wages. In 2005 South Milwaukee's annual \$53,356 was the second lowest base wage and was \$710 below the average of all comparables. These firefighters will maintain their rank 6th of seven but drop to \$874 and \$901 below the average during 2006 and 2007 under the Union offer. If the City's

offer were accepted they would have the lowest comparable base wage and would fall below the comparable average by \$2,466 in 2006 and by \$3,074 in 2007.

Comparative data for total compensation in 2005 shows the average employer contribution toward family plan health insurance is \$15,947 compared to \$14,167 in the City of South Milwaukee. The City's total compensation costs exceed the average \$74,431 to \$72,210. The disparity is caused primarily by high holiday pay, \$3,048 compared to \$242 and by employer-paid dental insurance, \$1,368 in South Milwaukee compared to the \$384 average. The Union's offer would maintain the City's relative position among the comparables. The City's offer would reduce its total cost from 2005 to \$74,221 in 2006 primarily by reducing its health insurance expenses for ten year motor pump operators from \$14,167 to \$13,716. This reduction is an anomaly caused by retirement at this salary level. The data presented by the Union shows that its offer is most comparable to maintain wages and benefits for the members of Local 1633 with those received by firefighters in comparable communities.

Private sector comparisons are of limited value in this instance. The only evidence in the record establishes that three private employers' contributions toward employe health insurance range from 54% to 92% of premium cost. Consumer price data support the Union's offer.

The primary "other factor...normally or traditionally taken into consideration..." relates to the quid-pro-quo. In this case the question is, does the City's proposal to limit its contribution for increased health insurance cost to 2% during each year require it to offer something substantial in return for the concession that its offer would require the Union to make? The concession would redefine primary responsibility for health care premium cost increases from the Employer to the employe. That change would not have been agreed to in bargaining without a buyout. In this case the differences between the two offers for active employes is so large that a substantial quid-pro-quo would have

been required. The City's proposal to change its responsibility for health insurance for disabled and retired employees appears to be even more troublesome. The burden of establishing the need for the proposed changes lies with the party proposing the change. In this instance, except for its generic arguments that financial constraints do not permit it to meet the Union's offer and that rapidly increasing health care costs are a significant expense, there is no justification for the changes requested by the City. The City could have designed its offer to require the employee to pay a greater portion of insurance cost increases without reassigning primary responsibility to pay for those increases to the employees. *It is that reassignment of responsibility for future health care cost increases that would require quid-pro-quo.*

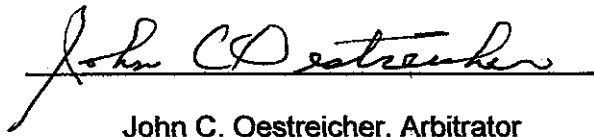
Based upon the foregoing, a simplified comparison of the two offers follows. The City's offer would require firefighters with family plan insurance to contribute \$114,79 a month more toward health insurance commencing January 1, 2006, a total of \$1,377.48 for the year. Those employees' 2006 wage increase would become effective on December 31, 2006. The total benefit to the employees for 2006 would be the Employer's increased contribution toward the insurance premium of \$22.44 per month, \$268.92 for the year.

The Union offer would result in employees receiving a 3% wage increase commencing on January 1, 2006. They would also receive a substantial benefit through the Employer contributing an additional \$127.20 a month for family plan health insurance. Similar results would follow during the second year of the contract.

This arbitration award has to incorporate the Union's offer because only that offer is supported by the criteria in Wis. Stat. 111.77. The undersigned would have preferred to approve an offer that was less costly to the City: by either recognizing that the City's increased health and dental insurance contributions required the employees to accept a lesser pay increase than 3% each year of this contract, and/or by redefining how future

health care cost premiums will be allocated by the two parties. Unfortunately, no such offer was available. While the Union's offer is somewhat excessive, the undersigned finds that the interest and welfare of the public will be best served if the Union's offer is incorporated into the parties' 2005-2006 collective bargaining agreement.

Dated this 23rd day of October, 2006, at Monona, Wisconsin.


John C. Oestreicher, Arbitrator