

BEFORE THE ARBITRATOR

In the Matter of the  
Interest Arbitration between

CITY OF SOUTH MILWAUKEE

And

SOUTH MILWAUKEE POLICE ASSOCIATION

Case 113 No. 66625  
MIA-2761  
Dec. No. 32102-A

**INTEREST ARBITRATION AWARD**

Appearances:

Attorney Joseph G. Murphy, Murphy & Leonard, LLC, on behalf of the City.

Mr. Benjamin Barth, Labor Consultant, on behalf of Labor Association of Wisconsin, Inc.

The above-captioned parties, hereinafter referred to as the City and the Association respectively, have been parties to a series of collective bargaining agreement throughout the years. The Association filed a petition to initiate compulsory final and binding arbitration pursuant to Sec. 111.77(4)(b), Wis. Stats., with respect to an impasse between it and City of South Milwaukee (Police Department). The undersigned was selected from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in South Milwaukee, Wisconsin on August 21, 2007. No stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on October 17, 2007. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

**ISSUE AND FINAL OFFERS:**

The Arbitrator is charged with selecting a final offer for incorporation into the parties' collective bargaining agreement.

With regard to wages, both of the final offers propose an across the board wage increase of 3% on 1/1/07 and 1/1/08. The Association also proposes a third year contract with a wage increase of 3% effective 1/1/09.

With respect to health insurance, the City offer divides the contributions to the lowest cost health insurance plan on a percentage basis where the employee will contribute 5% in 2007 and 6.5% in 2008, paid on a monthly basis. The Association offers proposes that the employees' monthly contributions for the lowest single and

family plans be \$40 and \$80 respectively in 2007, \$45 and \$90 in 2008, and \$50 and \$100 in 2009.

### **STATUTORY CRITERIA:**

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis. Stats., as follows:

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

### **POSITION OF THE PARTIES:**

#### City's Initial Argument

The City is in relatively poor financial condition both in comparison to its historical condition and in comparison to its neighbors and comparable communities. Prior to 2006, the City had never faced a levy limit but it is certain that there will be levy limits which will impact the ability of the City to fund future wage increases. Under either the Governor's or the Assembly's budget proposals which limit levies to the net new construction standard (or in the Governor's case 4%, whichever is greater), at the "net new construction" standard, the levy limit for South Milwaukee will be less than 2%. While the City's future ability to raise taxes to meet increases in wages and benefits is not known, it will be limited by legislation.

With regard to health insurance increases, since 2000, the average increase in the premiums has been 12%. For 2007, the increase was 5.1%, and projected increases for the next two years suggest that 5.1% per year is not a realistic estimate. The only certainty with respect to health insurance premiums is that, like the levy limit legislation, the size of future increases is unknown and the City's ability to fund them is unknown; however, the increases based on past performance will be more than 5.1%.

Pointing to the 3% wage increase in 2006 and the health insurance premium increase for 2006 at 11.6%, the City maintains that its total wage, health insurance, and WRS contribution for 2006 were \$513,855, or 4.6%. The levy limit restricted the City to a tax levy increase of \$178,681. Had the limit increase been 4%, the increase would have been limited to \$357,362. Given the unknowns for 2008 and 2009, it is obvious that the City is, and will continue to be, pinched between the legislative restrictions and the wage and benefit demands of its employees. In order to meet State-mandated budget limitations, the City has been reducing its workforce since 2003. It notes that in 2006, it eliminated 4 part-time school crossing guards and 2 full-time firefighter positions and that the total saving realized by these reductions was \$678,089. Despite the reduction between 2003 and 2006, the salary and benefit portion of the operating budget has grown from 82.5% to 83.15%.

Following receipt of the Firefighters arbitration award, in an effort to meet the fiscal demands of that award, the City reduced the minimum manning of its Fire Department by 1 firefighter as a matter of necessity, not choice. The citizens of South Milwaukee already spend a greater portion of their income to fund City operations than do their neighbors. In addition to the above financial circumstances, the City faces an unfunded retiree health insurance liability of \$13,706,084 with a recommendation to fund the unfounded liability at the rate of \$1,540 per year until it is fully funded, which the City will not be able to meet.

The total cost of the City's proposal for 2007 represents an increase of 3.51%, despite the 2007 2% tax levy limit and despite a CPI increase of only 2.5% annualized for the first half of 2007. For 2008, the increase is 3.98%, assuming an average 12% increase in health insurance premiums and a 3.06% increase if the health insurance increase is less than average and equal to the 2007 increase.

According to the City, the overall test to be applied is one of reasonableness and equity with the more reasonable offer to be preferred. Here, the City's offer is the more reasonable and equitable.

In reviewing the wage offer as it compares to the comparables in the five communities which the City believes are most comparable, the City stresses that for patrol officers it ranks 4<sup>th</sup> in 2007 and 3<sup>rd</sup> in 2008. It also notes that there is no difference in the two offers for either of these years. Even assuming the Association's comparables, the average increase for those comparables is 2.9% in 2007. Given the City's fiscal limitations, its wage proposal is above average and generous under the circumstances.

With respect to the internal comparables, the City's wage proposal is the same as that awarded to the Fire Fighters and more than that sought by the AFSCME in the bargaining unit of other City employees, their proposals being 2.5% for 2007 and 3% for 2008. In that bargaining unit, the City has offered 2% for each year. It has also offered the unrepresented a 2% increase for 2007. Therefore, the internal comparables demonstrate that the City's wage proposal is generous.

With respect to health insurance, the City's dental benefits are equaled only by the City of Oak Creek. Cudahy and Greenfield employees pay the entire dental premium while St. Francis has capped its employer contribution at \$200 per year. Employees in Franklin pay \$52.00 per month as contrasted to South Milwaukee where the City pays \$1423.68 annually to provide this benefit with no employee contribution. The City does the same for its other internal employees except for the Fire Fighters where employees contribute \$20.00 per month for the family dental plan.

In comparing the Association's proposal on health insurance with that of the City, under the City's proposal the employees will pay \$10.73 per month less than the Association proposal in 2007. On a percentage basis, the Association proposal offers a 5.8% employee contribution as compared to the City's 5% for 2007. If the 2008 premium increase is a repeat of 2007, i.e., 5.1%, the Association proposal will be 6.2% of the premium and the City proposal will be 6.5%. The real difference between the two health insurance proposals is that the employees share the risk of premium increases under the City's proposal whereas under the Association's proposal the entire risk of increases falls upon the City. Of the comparables, Oak Creek employees share the risk of premium increases as do new employees in Cudahy, while the risk is capped in Greenfield.

In the same time period when the average increase in premiums has been 12%, the employee contributions have increased from \$0 to \$70. The total premium increase from 2000 to 2007 was 197%. The employee's share has increased a total of 5.31%. This type of division is neither fair nor equitable. Given the fiscal limitations the City faces, its proposal to share the risk of future health insurance premium increase on the minimal basis offered is reasonable and equitable.

When the private sector is included in the analysis, the City's offer is even more reasonable as the premium paid in southeast Wisconsin by employees in the private sector averages 21-25% for family plans and 16-20% for the single plan. The City proposals of 5% and 6.5% are reasonable especially given the fact that the City's proposal for 2007 will cost the employees less than the Association proposal; \$10.73 less for the family plan and \$12.22 less for the single plan. The cost for 2008 is speculative.

With regard to the variables regarding the consumer price index, the City notes that the annualized increase for the first half of 2007 is 2.5%, noting that the annual increases for 2000 through 2006 have been 19.4%. When this increase is considered in relation to the total increase the City has had in health insurance premiums, it is obvious

that any claim of status quo with respect to health insurance premiums does not and has not existed for the past 7 years.

If total compensation is taken into consideration, the average total wage and benefit package for 2007 for patrol officers is \$76,091. The City's proposal will provide \$75,491. Clearly the total compensation and benefit package is reasonable under the City's proposal. The totals for 2008 cannot be determined because the health insurance premium increase is not known and at least two of the comparables have not agreed upon a contract extending to 2008.

With respect to other traditional factors, the length of the Association's proposed contract is a factor. Given the City's lack of ability to raise sufficient taxes to meet its future obligations and the unknowns in health insurance premiums increases for 2008 and beyond, it is not reasonable to commit the City to a contract longer than two years. In the current circumstances, a one-year contract would be reasonable. The Association's rationale for advancing a three-year contract is inadequate. Binding the City to a 3% increase in 2008 and 2009 when the levy limits are not known is unreasonable. The Association offer requires the City to take the risk of significant unknown limitations and cost increases for a very small benefit to the Association, especially for the third year of the agreement. It is inequitable to force the City into a third year when a two-year agreement will put both parties in a position to know the levy limits and the insurance increase for 2009. If the City had significant fiscal reserves, the risks suggested by the Association's offer for the third year might not be so great. But here, the City has no significant reserves but has been eliminating positions and borrowing to meet unexpected liabilities of the unfunded retiree health insurance obligation. The importance of the duration proposals cannot be overstated. This proposal alone makes the City's offer more reasonable.

The wage proposals are the same except for the third year. The City's health insurance proposal is more reasonable and equitable given the circumstances known and unknown to the parties as of the litigation of this matter.

#### Association's Initial Argument

The Association notes that the parties have proposed different sets of external comparables. The City proposed Cudahy, Franklin, Greendale, Greenfield, Oak Creek, and Saint Francis which the Association agrees to but would also add Hales Corners and West Milwaukee. The basis for the Association's request is an arbitration award involving the police bargaining unit in Cudahy in which that arbitrator established the comparables proposed by the Association and the fact that the Association's comparables have been used in previous South Milwaukee interest arbitration proceedings involving City Hall employees represented by AFSCME. The Association explains that the arbitrator in the Fire Fighter arbitration's failure to use West Milwaukee as a comparable by noting that West Milwaukee does not have a fire department. The Association maintains that Hales Corners and West Milwaukee are geographically proximate to South Milwaukee and rely on similar tax bases, with West Milwaukee and Hales Corners

realizing 2% and 3% levy limit increases which fall closely in line with South Milwaukee's levy limit increase of 2%. Additionally, West Milwaukee is also comparable in that it is enrolled in the State Health Insurance Plan, as is South Milwaukee.

Irrespective of the comparables eventually selected, the Association believes that the controlling factor in this interest arbitration is whether or not the City has offered the Association an adequate *quid pro quo* in return for the significant modifications it seeks in the health insurance and the duration of the agreement. Not only has the City failed to offer a *quid pro quo* for the significant changes it proposes, but it also insults the Association by proposing employee health insurance contributions higher than those paid by comparable external police bargaining units and the internal Fire Fighters.

The Association stresses that historically arbitrators are reluctant to award changes in the *status quo* without a demonstration of a compelling need for the change and an accompanying *quid pro quo* to help offset the effects of the change. Without the presence of a meaningful *quid pro quo*, the change should not be made through arbitration but rather should be the result of bargaining between the parties. Here, the City is unfairly asking the Arbitrator to impose upon the Association significant changes in existing benefits by reducing the length of the contract to two years and by substantially reducing the percentage the City will contribute towards the lowest cost qualified health insurance plan.

In response to the City's argument that it is not required to make a *quid pro quo* because of rising health insurance costs, the Association points out that the City made that argument in the recent Fire Fighter arbitration proceeding, citing a 190% increase in health insurance costs over seven years. The City's statistics are incorrect. The increase has been 117.7%, not 217.7% as alleged by the City. Moreover, since 2003 when employees started contributing towards health insurance, police employees have increased their insurance contribution from \$20 per month for a family plan and \$10 per month for a single plan in 2003 to \$70 and \$35 per month as of January 1, 2006, an increase of 250%. As the proponent of change, the City bears the burden of proof that a change is needed, including the provision of an adequate *quid pro quo*. The Union asserts that the City has not met its burden.

The Association argues that the City has the lawful authority to accept and abide by the Association's offer. In pointing out that the City can, by law, exceed the levy limit by referendum, the Association asks the arbitrator to reject any arguments that the City's acceptance of an offer is limited to those at or less than the 2% levy limit.

According to the Association, the City has not proven it cannot afford the Association's final offer or that the interest and welfare of the public will be adversely affected. There is nothing in the record that firmly demonstrates the City will have difficulty in meeting the Association's final offer. While the City presented exhibits and testimony about the financial problems that the City will experience due to unfounded liabilities to the Wisconsin Retirement System and new accounting rules promulgated by

Government Accounting Standards Board Rule 45, during cross-examination, the City conceded that the issues presented by the unfunded liabilities are not unique to the City of South Milwaukee. Furthermore, the City answered in the negative to a direct inquiry as to whether it was making an inability-to-pay argument.

The Association believes that the public interest is well served if the citizens and taxpayers of the City of South Milwaukee are provided with public servants who are well paid and of high spirits and morale. Police employees are very aware of the wage increases and benefits enjoyed by their counterparts in other comparable communities. They interact daily depending on each other for mutual aid and backup. The City has the financial resources to meet the Association's request for wages in the third year and the public interest is best served by adopting the Association's final offer.

The Association claims that the health insurance premium contributions of employees in the comparable police departments should be given substantial weight. In the Association's view, Wis. Stats. 111.77(6)(d) does not direct the arbitrator to specifically take into consideration the wages, hours, and conditions of employment of employees within the same community as does Wis. Stats. 111.70(4)(cm)7e, the statute used in interest arbitration disputes involving non-protective employees. This difference indicates that the drafters of Wis. Stats. 111.77(6) recognized the need to distinguish the special characteristics and needs of law enforcement employees when compared to employees holding other positions within the same community. Arbitrators have for many years recognized this distinction between police and other units.

Throughout negotiations, the Association has consistently argued that its final offer is supported by settlements received by other law enforcement employees with the comparable communities. In light of this fact, the Association requests that considerable weight be given to the health insurance contributions made by employees in the external comparables.<sup>1</sup> Three of the comparables utilize the State Plan along with South Milwaukee, Cudahy, Greendale, and West Milwaukee. Cudahy and Greendale police employees enjoy the benefit of having at least 100% of the lowest cost qualified plan paid without any employee contributions. West Milwaukee police employees will pay more than employees in South Milwaukee for the lowest qualified plan, but at least those employees enjoy the security of having 105% of the lowest cost qualified plan paid for by their employer, a benefit the City is seeking to take away from the Association here. Having a higher percentage of the lowest cost qualified plan covered by an employer is a great benefit to those employees opting to take a health insurance plan other than the lowest cost plan.

The other comparables do not have the State Plan. Of these, the Association offer contains a greater health insurance contribution than Franklin, Greenfield, and Oak Creek. Only employees, in two of the comparables will pay more for health insurance,

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<sup>1</sup> At the time of the arbitration hearing, the 2008 rates for the State Health Insurance Plan were unknown, in its initial brief, the Association asks the arbitrator to consider the now official rates published under the authority granted by Wis. Stats. 111.77 (6) (g) "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings."

St. Francis and Hales Corners, but they are not exposed to contributing an uncapped percentage increase as is mandated in the City's offer. In fact, the employees in St. Francis agreed to a fixed contribution, higher than the comparables to avoid paying a percentage. The Association's offer is more reasonable in comparison to the City's offer relative to the external comparables. Assuming the arbitrator disregards the two disputed comparables, West Milwaukee and Hales Corners, the association's offer is even more reasonable than the City's.

Furthermore, the Association points out that its final offer increases the employee contribution to an amount that exceeds the City's requested percentage. In 2007, under the Association's offer, employees will pay \$80 per month toward the family plan increased from \$70 per month. This is \$10.70 more than the City's demand of 5% of the lowest cost qualified plan because under the City's proposal employees would pay \$69.27 per month. In 2008, the employee monthly contribution to the family plan is \$90.00, within \$6.86 per month of the City's demand for the Association to pay a minimum of 7.5% of the lowest cost qualified plan. Looking at the single plan, employees will pay \$40 in 2007, \$7.22 more than under the City's 5% offer. In 2008, employees opting for the single plan will pay \$45.00, \$6.17 per month more than the City's 7.5% offer.

The Association's offer recognizes the need for increased employee contributions given that employees who select the family plan will pay \$46.44 more over the first two years of the agreement while employees selecting the single plan will pay \$160.68 more over the first two years of the agreement. At least one arbitrator has ruled that there was insufficient *quid pro quo* for such a major change in the health insurance language under similar circumstances. Here, the employees in recognition of increased costs are proposing to increase their contributions unlike the employees in that case. The Association is willing to pay more for insurance over the first two years of the agreement to keep the longstanding practice of using fixed dollars rather than a percentage contribution. The City has failed to justify the need to change the status quo to a percentage.

At the time the final offers were certified, the CPI was 2.8% consistent with the wage proposals of both parties. The CPI should not be a factor in this case.

The Association accounted for the overall compensation of its officers in the formulation of its final offer. Looking at the comparison of external comparable total benefit packages, the Association's offer is the fourth least lucrative among the six comparables used by the City. Therefore, the sub-par benefits in the Association's offer cannot be used as a basis to support more of a loss in benefits as proposed by the City.

As noted above, the Association requests the arbitrator to consider the 2008 health insurance premiums which have been made public since the date of the hearing. Both the Association and the Employer presented exhibits and testimony of prognoses of health insurance premiums increase for 2008 ranging from 5.0% to 12.1%. The rate increase for



the lowest cost qualified plan was 7.5% over 2007. Rates will increase to \$1490.10 for the family plan and \$597.50 for the single plan.

The Association asks the arbitrator to consider the interest arbitration award issued with respect to the South Milwaukee Fire Fighters since both units are protective service bargaining units governed by Wis. Stats. 111.77. That decision by Arbitrator Oestreicher placed employee contributions at \$80.00 for family and \$40.00 for the single plan for 2007. The Association's offer is consistent with this award.

The contract negotiations for the 2001-2003 contract resulted in employees voluntarily agreeing to make a fixed dollar contribution towards their health insurance effective January 1, 2003. Since then the parties voluntarily reached agreement for a 2004-2006 agreement continuing the employee contributions as expressed as a fixed dollar amount. The Association's offer merely continues the practice and keeps it in place. It reasonably addresses the costs of rising health care while maintaining a benefit that was obtained through the collective bargaining process. The City should not be allowed to change this past practice through arbitration especially where it has not supplied a compelling need to change nor a *quid pro quo*. The Association believes that a *quid pro quo* is necessary for any substantial change in a mandatory subject of bargaining and that the City has not met any of the prerequisites for satisfying the *quid pro quo* requirement. It failed to show that a significant problem exists to change the status quo and compel the arbitrator to eliminate fixed dollar health insurance contributions for a percentage based employee health insurance contribution. The City, being the proponent of the change, bears the burden of proof to necessitate the change. The Association insists that its final offer is more reasonable when evaluated in this light.

#### City's Reply

The City points out that the undersigned ruled that she would not consider any evidence not produced during the hearing other than the award involving other City employees represented by AFSCME, noting changes in the health insurance premiums would not be considered when those changes became known. Limiting the evidence to matters produced at the hearing served to recognize the importance of the arbitration award as reflecting the condition under which the parties bargained prior to arbitration and to limit the record to testimony and exhibits which each party was able to challenge by cross examination. The City objects to consideration of all references to the 2008 health insurance premiums and the claim that West Milwaukee contracts for its fire service and the statement regarding the motivation of the St. Francis police employees for agreeing to their settlement.

Citing arbitral precedent, the City frames the issues of *status quo* and *quid pro quo* in the context of interest arbitration. According to the City, when one side or another wishes to deviate from the *status quo* of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. There is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such a showing, the party

desiring the change must show that there is a *quid pro quo* or that other groups comparable to the group in question were able to achieve this provision without the *quid pro quo*. Additionally, the party requesting the change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other party or has provided a *quid pro quo*.

The City believes that it has met this extra burden of proof in the evidence submitted of the 117.7% increase (as calculated by the Association) in health insurance premiums over the last 7 years. South Milwaukee does not have the fiscal resources of its neighbors and there is a 2% tax levy limit for 2007 with unknown tax levy limitations for the next two years.

The City cites a number of recent decisions where arbitrators have found that the absence of the traditional *quid pro quo* proposal is not an impediment to the acceptance of a municipal employer's offer regarding health insurance cost splitting because of pressing financial concerns and tax limitations. One arbitrator found that a rise in health insurance premiums of 176% over 11 years was itself sufficient grounds to warrant a rejection of the Union's *quid pro quo* objection to the county's proposal to share the health insurance premium increases. Here the City of South Milwaukee has experienced an increase of 117.7% over seven years. It faces an unfunded retiree health insurance liability of \$13,706,084. That same arbitrator found that the County's 2% tax levy limit also impacted the reasonableness of the parties' proposals and rejected the union's offer in that case which simply ignored both the rise in insurance costs and the tax levy limit under which the county was forced to operate.

The City's proposal to limit the employee contribution in the future to 6.5% of the premium is a proposal which fits the description of "proposed language meets the identified need without posing an undue hardship on the other Party." All the exhibits demonstrate that there is little financial difference between the parties' proposals when the premium increases are in the 5%-6.5% range. However, if the City receives another 20% increase, its costs for health insurance for this bargaining unit will go from \$284,391.36 annually to \$341,269.63, an increase of \$56,878.27. This is not a risk the City should bear alone. In contrast, the 3% wage increase proposed by both parties for a two-year agreement will cost \$47,607.00. These figures should be viewed within the 2007 tax levy limitation of 2%, or \$178,681. Should the costs of health insurance for all City employees rise by 20%, the increase is double the amount permitted under a 2% tax levy limit.

In the City's view, the 3% each year of two years, despite the 2% levy limit in 2007, and an unknown levy limit in 2008 is an adequate *quid pro quo* to support the City's modest percentage based premium sharing proposal given all the circumstances.

The award in the City's bargaining unit represented by AFSCME contains an erroneous factual determination with respect to the amount of increase in health care premiums over seven years which substantially influenced the outcome. Both of the contracts involving the bargaining units represented by AFSCME and the Fire Fighters

are two-year contracts. Other than the police bargaining unit, no other union has demanded that the City agree to the unknown fiscal risks involved in extending the contract to 2009. Moreover, there are substantial differences present in the proposals for the other two arbitrations. The City proposed 2% and 2% in wages in both of those arbitration proceedings. Here, the City has met the Union proposal of 3% in each of the first two years, and has not proposed any change in dental insurance or retiree health insurance nor has it proposed a final hike in health insurance contribution on the last day of the contract. At least with respect to the non-protected service City Hall employees represented by AFSCME, the arbitration factors are different. For these reasons, the other two awards should not be given any appreciable weight.

With respect to the contract duration, the City maintains that the Association's claim that the status quo applies is misplaced. None of the other bargaining units have proposed a three-year contract because they recognized that stretching the City's commitment to 2009 in the face of all the unknowns facing the City is not reasonable. The proposal by the Association is grossly unfair especially because the only reason for it is that in prior settlements the City had agreed to three-year terms and because a two-year agreement costs the Association nothing more than the obligation/opportunity to meet with the City and negotiate fair and reasonable terms for a new contract.

If the Legislature passes a budget with a levy limit of net new construction, the City will be limited to less than 2%. If the health insurance premium in 2009 is 20% and wage increases for all bargaining units are 3%, the City will not be able to pay the cost of health insurance and wages for all of its employees. The City did not and cannot make an inability to pay argument because it does not know what the Legislature will do and what the insurance companies will do. Limiting the contract to two years will give it an opportunity to negotiate with the Association when it has some idea of what its financial resources will be. The duration of the contract is critically important. The gain to the Association of avoiding negotiating a new contract after two years is minimal at best.

In response to the argument that the City does have the financial resources to meet the Association's request for wages in the third year, the City notes that the average municipal tax levy limit of the communities which the Association believes are comparable was 3.44% as compared to South Milwaukee's 2%. These communities obviously have more net new construction since that is the only realistic way a municipality could exceed the 2% levy limit. Therefore, these communities know that they will be able to fund wage and insurance increases regardless of what the Legislature does. The City insists that the Association's argument that the City can exceed the tax levy limit by referendum is disingenuous at best.

It is impossible for the City to produce 2008 and 2009 levy limits and insurance premium increases that will firmly demonstrate that it will not be able to meet the demands contained in the Association's offer. The City's current financial resources are very limited. To pay for the Fire Fighter's offer, it eliminated two fire fighter positions and reduced its minimum manning from 7 to 6. For the past four years, it has been

balancing its budget by eliminating positions. Despite these efforts, the wage and benefit portion of its budget has grown to 83.15%.

Despite its ignorance of what the Legislature and insurance carriers will do, the City has offered 3% in wages for each year of a two-year agreement and to pay 95% of the 2007 and 93.5% of the 2008 premium. This much it believes it can do. Since both parties will know these limits and increases at the end of 2008, it is unreasonable to require the City to now commit to expenditures in 2009 without that knowledge.

If the goal of arbitration is to attempt to achieve the most likely result the parties should have reached in fair bargaining, to find the more reasonable of the two proposals, the City proposal is favored for two very elemental reasons. First, its health insurance proposal is a fair and reasonable response to its history of 20% premium increases and similar to the agreements in place in Greenfield and Oak Creek and based upon the known past increases which will not unduly burden the employees. Second, there is no reasonable basis for the Union's demand for a third year given the City's exposure to unreasonable risks which can be ameliorated simply by bargaining a new contract when the information regarding premium increases and levy limits is known.

For both of these reasons, the City's offer is the more reasonable and should be accepted.

#### Association's Reply

The Association disputes the City's assertion that it is in relatively poor financial condition. It relies upon the assertion at the hearing that the City will be able to pay either offer. Wis. Stats. 111.77 (6)(c) requires an arbitrator to consider the taxpayers ability to afford the costs of the final offers submitted by the parties. While the City has introduced evidence and testimony regarding its financial status, it has not produced any creditable evidence that it cannot afford the Association's final offer. A prime example of the questionable evidence is how the City came up with the final cost for both offers. The city used a full staff of twenty-seven employees to cost the offers. However, the Police Department has not been fully staffed at twenty-seven employees for years. The average number of employees is twenty-three to twenty-five. The Association used the current list of officer to come up with its costs. There is no concrete evidence that the City cannot afford to pay the cost of the Association's final offer. It may not want to pay it or like having to pay it but no inability to pay argument was made and the City represented that it would be able to pay for either offer.

The Association submits that Wis. Stats. 111.77 does not contain the "greatest weight" or the "greater weight" factors to be considered by the arbitrator. The City's argument about state imposed levy limits must be ignored by the arbitrator. Although Wis. Stats. 111.70 may require an arbitrator to give the greatest weight to any state law or directive lawfully issued by state legislative or administrative officer, body or agency placing limitations on expenditures that may be made or revenues that may be collected by a municipal employer and to give greater weight to economic conditions in the

jurisdiction of the municipal employer in instances involving non-protective employees, this is not the case where protective service employees are involved. The arbitrator in the Fire Fighter case expressly ruled that neither of these criteria applied to arbitration awards under Wis. Stats. 111.77. This statute is silent and requires the arbitrator to ignore arguments citing these criteria.

The Association vehemently disagrees that the City's fiscal circumstances satisfy the requirements of Wis. Stats. 111.77(6)(c), but argues that this criteria also directs the arbitrator to consider the interest and welfare of the public as part of the decision-making process. Should the City's offer be selected, a message will have been sent to other comparable communities that major changes to benefits are obtainable through arbitration serving as a deterrent to meaningful contract negotiations. The Association believes that it is important for the bargaining unit employees to feel that they are receiving a fair and equitable package. The Association's offer more closely resembles the settlements granted in other comparable communities and to the internal bargaining units.

The Association disputes the City's contention that the total increase in insurance premiums from 2000 to 2007 was 197%. According to the Association, the City is blatantly misrepresenting the facts because the real increase is 118%. On the surface, that number seems high. However, when you consider the employee contribution from 2000-2007, there is no comparison. Admittedly employees did not contribute towards the health insurance premiums from 2000 to 2002. Effective January 1, 2003, employees started making a contribution toward the health insurance: \$20 per month for the family plan and \$10 for the single. This was accomplished by voluntary agreement. In 2004, the Association voluntarily increased the amounts by 150%. In 2005, the Association again voluntarily increased the amount by 20% and again in 2006, the Association agreed to increase the amount by 16.7%. The Association has always been more than willing to pay a fair share in the cost of health insurance.

The Association argues that the private sector is not an appropriate comparable because there are no related fields in the private sector that perform similar services to that of a protective status employee. In response to City arguments that its health insurance proposal will share the risk of future health insurance premiums on a minimal basis, the Association responds that it has proposed an increase to the employee contribution for all three years of the agreement, thus effectively sharing the risk of future increases. Sharing the risk is not the issue. The real issue is changing the status quo in how employees contribute towards health insurance. The argument that fixed dollar contribution does not share in the risk is absurd. The bargaining unit employees have increased their contribution far and beyond what the actual premiums have increased since 2000. As the arbitrator in the Fire Fighter arbitration observed where the two offers with regard to health insurance and the position taken by the parties were very similar to the position in the instant case, "the differences between the two offers for active employees are so large that a substantial *quid pro quo* would have been required."

The sky will not fall if the Association's final offer is accepted. The City can still seek the change to a percentage that it desires in future negotiations. This will depend on

their willingness to negotiate and to provide an adequate *quid pro quo*. On the other hand, should the City prevail, there is very little chance that the Association will be able to regain the benefits the City is seeking to take away. As with the offer of the Union in the bargaining unit represented by AFSCME, the Association's offer garners a saving to the City. The City has tried to force a change in the way employee contribution toward health insurance premiums are calculated with all three represented units. All have sought arbitration to preserve the *status quo*. Based upon the two other internal decisions, that have kept the employee health insurance contribution as a fixed dollar amount, the Association's final offer is more reasonable and will place the parties on a more equal footing for future negotiations.

Insofar as the proposal for a three-year agreement is concerned, the offer is supported by past practice since 1986. Nothing contained in the record herein demonstrates a need for a change to that longstanding practice.

The Association submits that its offer is the more reasonable and should be adopted.

## **DISCUSSION:**

As has been observed by previous arbitrators, the difficulty in bargaining and ultimately fashioning the most reasonable offer stems from the problem that very critical factors such as whether and how much levy limits will be for future years and the cost of health insurance premiums in future years are unknown when the parties certify their offers and proceed to arbitration. To a lesser extent, this is also true about the outcome of interest arbitrations involving other internal bargaining units. However, a critical difference is that the parties are aware of the final offers, or positions of the parties in related arbitration proceedings, and can take that into account in fashioning their own offers. For that reason, the undersigned declined to consider new information on health insurance premiums which was made available after the arbitration proceeding, and any information on the new budget as it affects tax levy limits. The outcomes of the arbitration proceedings with respect to the other internal units have been considered with the analysis below.

Both parties, as argument in their briefs, have made representations which were not based strictly upon the evidence adduced at hearing. To the extent possible, the undersigned has limited herself to review of the exhibits and testimony produced at hearing.

### Appropriate Comparables

The parties were unable to agree upon the set of comparables to be utilized in analyzing the reasonableness of the offers. The City would not use West Milwaukee or Hales Corners in the comparables it proposes the arbitrator consider. It should be noted that Arbitrator Oestreicher did not include either Hales Corners or West Milwaukee as appropriate in his award with respect to the Fire Fighters bargaining unit. In the City

employees unit represented by AFSCME, that union argued that Hales Corners and West Milwaukee should be part of the comparable set. Arbitrator Hempe in that proceeding declined to extend the set to include either Hales Corner or West Milwaukee. Were there an insufficient number of neighboring cities to make fair comparisons or had compelling reasons been given for changing and expanding the existing pool, the Association's argument may have merit. Here, however, given both arbitrators' recent adoption of the appropriate comparables and the Association's failure to make a compelling case for expansion, I am adopting the comparables urged by the City and accepted by Arbitrator Hempe: St. Francis, Greendale, Cudahy, Franklin, Greenfield, and Oak Creek.

#### Lawful Authority of the Municipal Employer and its Financial Condition

The City stresses that financially, it is between the proverbial "rock and a hard place" given the 2007 limitation on tax levies, the unfunded employee retirement system obligations, and the unknown future with respect to uncontrollable variables such as health insurance premium increases and the limitations imposed in the state budget in the tax levy for 2008 and 2009. In response to a direct inquiry by the undersigned at the arbitration proceeding, the City acknowledged that it was not making an inability to pay argument but rather an unwillingness to pay argument given the unknowns in the future and its tight financial condition. It is true that South Milwaukee and Greenfield appear to be the only ones at a 2% levy limit for 2006 and 2007. It is not known what the limitations for the other comparables will be for 2008 and 2009. It is also not known which of the other comparables have incurred a substantial unfunded employee retirement obligation upon which they are paying or borrowing, but it is clear that other municipal employers have found that they too are in the same predicament as the City of South Milwaukee. The undersigned recognizes that the City of South Milwaukee may not be as well off as most of the comparable cities, Greenfield being similarly situated. However, it should be noted that the ranking of South Milwaukee police with respect to total package benefits going into 2007 reflects the City's relative financial condition vis-à-vis its comparables.

#### Wages

Both parties propose across the board 3% increases for 2007 and 2008. It is tempting to conclude that because both wage offers are the same, there is no issue with respect to wages for 2007 and 2008. The City argues that notwithstanding its poor financial condition, it is offering the 3% for each year and that this very generous offer should be considered as a *quid pro quo* for its health insurance proposal. The Association points out that its ranking does not improve in comparison to the external comparables with the acceptance of the 3% for each year.

Association Exhibit 700 indicates that the City of South Milwaukee was sixth out of seven in 2006 with respect to top monthly pay for the patrol officer position, the majority of employees in the bargaining unit falling into this job classification. It ranked fifth out of seven for the top detective and top investigator positions and seventh out of seven for the sergeant position in 2006. One comparable, Franklin, was not settled for

2007 as of the date of the hearing in this matter. Of the settled comparables, the three percent offered for 2007, will keep South Milwaukee patrol officers' top monthly pay as fourth out of six, detectives' as fifth out of six, investigators' as sixth out of six and sergeant's as seventh out of seven.

The City's Exhibit No. 4 contains information for only the patrol officers and investigators. Under the City's analysis, South Milwaukee will rank fourth out of five comparables, (Greendale not being included in the analysis), for patrol officers in 2007, and third out of four settled comparables, two being unsettled and Greendale not being included in the analysis, in 2008. With respect to the investigator, South Milwaukee will rank third out of three in 2007 and two out of two, only one comparable being settled for 2008 and Greendale being excluded from the analysis.

If percentage increases in wages are considered, pursuant to the Association Exhibit 700, for 2007, increases in the settled comparables are 3% for Greenfield, 3.25% for Oak Creek, 2% for Cudahy, 2.9% for St. Francis, and 3.25% for Greendale. The 3% both parties are offering for South Milwaukee is slightly above the 2.88% average increase. Of the three comparables settled for 2008, all three are offering 3%. Given these percentages, .22% increase from the average in 2007 alone cannot be considered a *quid pro quo* for the City's health insurance proposal.

Looking at the internal comparables, the Fire Fighters will receive 3% effective 1/1/2007, pursuant to the Oestreicher award and the City employees represented by AFSCME will receive 3% effective 7/1/06 and 2.5% effective 7/1/2007 pursuant to the Hempe award. The City has given the unrepresented employees 2% effective 1/1/07. Only the police have agreed upon an increase for 2008.

When looking at the wage offers for 2007 and 2008, neither offer is preferred. The most that can be concluded is that the City's wage offer cannot be construed as a *quid pro quo* for its health insurance.

#### Duration of the Agreement and the Association's Third Year Wage Offer

The Association argues that past practice supports the extension of the collective bargaining agreement beyond the second year and its third year wage proposal. This argument is rejected. As the City has pointed out, there are too many unknowns for 2009. Health insurance premiums, tax levy limitations, the financial condition of the City, and the dearth of external settled comparables all make the Association's third year offer troubling. But for the findings with respect to the parties' health insurance proposal, the Association's duration and third year wage proposals would tip the scale towards the City's offer. The Association's offer of 3% for 2009 stands virtually in a vacuum. There is nothing to compare it to either externally or internally. The City's proposal for a two-year agreement is more reasonable and its proposal is preferred on this issue.



## Health Insurance

The City proposes to change the *status quo* language of reflecting employee contributions towards the health insurance premium as a fixed dollar contribution to a specific percentage for each year of the agreement. The Association does not object to contributing towards the premium but desires to retain the amount contributed as a fixed dollar amount.

The Association's specific offer is to increase employee premium contributions by \$10 for a family and \$5 for the single premium each year of the agreement. The City, on the other hand, proposes that each employee contribute 5% in 2007 and 6.5% in 2008. The Association's offer in 2007 is of greater fiscal benefit to the City than the City's proposal based upon the 2007 rates. Employees who pay \$80.00 per month will be contributing \$10.73 more than if they contributed the 5% pursuant to the City's offer. At the time of the arbitration proceedings, the 2008 rate increases for health insurance were unknown; therefore, the parties were not in a position to calculate the impact of the employer paying 100% of the lowest cost qualified plan with a 6.5% contribution by employees towards the premium.

Having the employee contribution reflecting a fixed dollar amount for each year, thus effectively capping the risk to the employee of exorbitant rises in the premiums, is a valuable and significant benefit currently enjoyed by the Association's members. It is the *status quo* and the undersigned believes that the arbitral precedent as developed under Wis. Stat. 111.77 should apply. The burden of establishing the need for the proposed change falls upon the proponent of the change. Citing its weakened financial condition and the rapid increase in health insurance premium costs, the City insists that it has demonstrated this need. It relies upon the 23.8% increase in premiums in 2002, 22.1% in 2004, 13.3 in 2003 and 11.6% in 2006 to support its demand for the change.

It is true that the increases in health insurance premiums have been exorbitant in nature and have caused serious fiscal problems for municipal employers, unions and employees over the last decade. The Association, however, during the same time period has attempted to address this problem by bearing some portion of those increases. While, admittedly employees did not contribute towards the health insurance premiums from 2000 to 2002, In 2003 the Association recognized that employees would have to make some contribution and voluntarily agreed to a fixed dollar contribution. In 2003, employees began to contribute toward their health insurance premiums at \$20 per month for a family plan and \$10 per month for a single plan. They have increased the fixed dollar amount paid in 2003 to \$70 and \$35 per month as of January 1, 2006, an increase of 250%. As the Association points out, employee contributions have kept pace with the substantial increases incurred.

The undersigned understands the City's desire to remove the caps to increase the share of risk born by the employees in health insurance premium contribution, especially in light of the unforeseeable future. It is this insecurity about future increases which makes the cap to their contributions expressed in fixed dollars so valuable as a contract

benefit. It is so valuable that to keep it, the Association's offer proposes more of a contribution in actual dollars for 2007 than the City proposes. The Association is willing to pay more for insurance over the first two years of the agreement to keep the longstanding practice of using fixed dollars rather than a percentage contribution.

In light of the Association's past contributions to the high health insurance premiums, this desire to amend the language does not translate into a compelling need sufficient to justify changing the *status quo* without a substantial *quid pro quo* offered. This is the very type of change that the parties must achieve through negotiation at the table or through offering a substantial *quid pro quo* after necessity has been demonstrated.

The necessity for the change is not supported by either the internal comparables, as reflected in Arbitrators Hempe and Ostreicher's awards, or the external comparables. Similar to the conclusion reached by Arbitrator Oestreicher in his award, the City could have addressed the need for greater contribution on the part of the employees by designing its offer to require this for each year rather than to change the dynamic of how the parties share the risk. Arbitrator Hempe considered a City proposal almost identical to the one before the undersigned in converting from a fixed dollar amount to a percentage on 1/1/07 and expressly rejected it, favoring a union proposal which retained the fixed dollar contributions. Thus both internal represented bargaining units will continue to enjoy the benefit of fixed amount contributions toward their health care.

The external comparables do not support the City's proposal either. Of the six comparables, one is not settled for 2007 or 2008. Two, Cudahy and Greendale, do not require any contribution on the part of the employees towards the premium for the lowest cost qualified plan, although new employees in Cudahy are required to pay 5% towards their health insurance premiums. Two, Oak Creek and Greenfield require a 5% premium contribution for both years expressed as a percentage (Oak Creek requiring a higher percentage contribution if the employee does not participate in a risk assessment program). St. Francis requires employees to pay a fixed dollar amount contributions.

Cudahy and Greendale join South Milwaukee as participants in the State Group Health Program, while the remaining do not. The City has not demonstrated that its health insurance costs are appreciably higher than those of these external comparables. Monthly premiums in 2007 under the State Group Health Plan for Cudahy, Greendale, and South Milwaukee are \$1385.50 and \$555.70 respectively. Oak Creek paid \$1353.02 and \$523.11. Greenfield paid \$1,420 and \$500. St. Francis paid \$1086.00 and \$417.91. Franklin paid \$1584 and \$696.00. Only St. Francis paid less, and those comparables not in the State Group Health Plan paid more.

Health insurance contributions as a monthly cost to the employee in each comparable irrespective of whether this is reflected as a percentage or fixed amount, for 2007 are also relevant. In Cudahy, employees hired before 1/1/07 make no contribution while those hired after that date will pay \$69.60 for the family plan and \$27.00 for the single plan. Greendale police employees make no contribution. Oak Creek employees

who agree to risk assessment participation pay \$67.65 and \$26.16 respectively, while those who do not participate pay \$135.30 and \$52.31. Those in Greenfield pay \$71.00 and \$25.00. Employees in St. Francis pay \$130.00 and \$65.00. While Franklin employees pay \$26.00. Under the City's proposed 5% contribution, South Milwaukee employees would pay \$69.27 and \$27.78, while under the Association's proposal employees will pay \$80.00 and \$40. At least for 2007, the Association is willing to have employees pay more monthly than any of the comparables to keep the fixed dollar amount contribution. Comparisons for 2008 and 2009 without the data for premium increases submitted at hearing are speculative in nature.

With respect to private sector employees the undersigned does not find the data particularly relevant to the instant dispute given the nature of protective service public sector employment.

With regard to the health insurance proposals, from the evidence adduced at hearing, it is concluded that the Association is sharing the risk of increased premiums, that the City is not experiencing greater costs than its external comparables and that the City's proposal is neither necessary under the circumstances nor supported by an adequate *quid pro quo*.

#### Overall Compensation

Overall compensation must also be considered. According to City Exhibit, C12, the City's total package proposal of \$75,491.20 for patrol officers in 2007 would rank South Milwaukee fourth out of six with respect to the comparables (with no data on Greendale provided.) The Association's offer for 2007 will be less because the employees assume a greater amount of the health insurance premium.

#### **CONCLUSION:**

The wages of 3% across the board for two years of the contract are slightly in excess of the CPI for the applicable time and are reasonable. The wages proposed for 2007 and 2008 do not favor either party's offer. The City's offer on duration, that of a two-year agreement is preferred over the Association's offer given the uncertainties in future financing for municipal employers. But for the parties' health care proposals, the Association's proposal of a third year would have resulted in the City's proposal being preferable. However, the parties' health insurance proposals are the determinative factor in this particular case. Because the City has advocated for a change without establishing its necessity or providing a substantive *quid pro quo* for the change, the Association's offer is preferred.

#### **AWARD**

For the reasons set forth above and considering all of the factors set forth in Wis. Stat. 111.77(6), the Association's final offer is adopted as the award in this proceeding

and incorporated into the parties' three-year collective bargaining agreement for 2007, 2008, and 2009.

Dated this 3<sup>rd</sup> day of November, 2007, in Madison, Wisconsin.

/s/Mary Jo Schiavoni  
Mary Jo Schiavoni, Arbitrator