

BEFORE THE ARBITRATOR

In the Matter of the Petition of
MILWAUKEE POLICE SUPERVISORS'
ORGANIZATION

To Initiate Arbitration Between
Said Petitioner and

CITY OF MILWAUKEE

Case 546
No. 68813 MIA-2880
Decision No. 32859-A

Appearances:

Rettko Law Offices, S.C., by Mr. William R. Rettko, 15460 West Capitol Drive, Suite 150, Brookfield, Wisconsin 53005-2621, on behalf of the Union.

Office of the Milwaukee City Attorney, Mr. Grant F. Langley, by Mr. Thomas J. Beamish, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3653, on behalf of the Employer.

ARBITRATION AWARD

Milwaukee Police Supervisors' Organization, hereinafter referred to as the Union, and City of Milwaukee, hereinafter referred to as the City or Employer, met in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 2006 said agreement covered supervisory law enforcement personnel employed by the City of Milwaukee and represented by MPSO. Failing to reach such an accord, the Union on April 17, 2009, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration pursuant to Section 111.70(4)(jm) of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC after receiving a list of subjects that the parties had reached impasse on, issued an Order, dated August 25, 2009, wherein it

determined that the parties were at impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on September 29, 2009, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award determining the list of impasse subjects pursuant to Section 111.70(4)(jm) of the Municipal Employment Relations Act.

Pursuant to arrangements previously agreed upon, the undersigned conducted hearing in the matter on January 25, 26, 27, 28, 29 and February 1 and 2, 2010, at Milwaukee, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. Initial briefs and reply briefs were filed by April 29, 2010, at which time the record was closed.

Pursuant to the undersigned's request, the parties agreed to extend the time that the Award is to be issued and waive the statutory reference in regard thereto.

THE FINAL OFFERS AND STIPULATIONS OF THE PARTIES:

The MPSO and City final offers are attached and identified as attachments "Joint Exhibit 10" and "Joint Exhibit 11, respectively. During the hearing, the City withdrew its final offer on the following subjects: Interpreter/Translator Pay, Off-Duty Employment, Political Leaves of Absence, Drug Testing, and Early Intervention Program.¹

¹ Transcript p. 602

BACKGROUND:

The Arbitrator believes it useful to review the bargaining history between the City and the MPSO and MPA to better understand the parties' positions in this proceeding.

The MPA and the City have engaged in collective bargaining far longer than has the MPSO. Both the MPA and the MPSO are covered by Section 111.70(4)(jm) of the Municipal Employment Relations Act (MERA) which provides the parties with compulsory final and binding arbitration.

The MPA and City have had their collective bargaining agreements determined by final and binding arbitration several times, including the 1978-80 agreement (Anderson), 1987-1988 agreement (Kerkman), 1989-1990 agreement (Vernon), 1993-1994 agreement (Fleischli), and the 1998-2000 agreement (Oestreicher).

The first collective bargaining agreement between the City and MPSO was the 1979-1980 agreement. Their first agreement pursuant to interest arbitration was the 1987-1988 contract (Rice). The second, and only other, interest arbitration agreement was the 2004-2006 contract (Greco).

In the 1970's parity was established between police and fire personnel through arbitration. Sergeants were in parity with fire lieutenants; lieutenants in parity with fire captains; police captains with battalion chiefs; and deputy inspectors with deputy chiefs.

Parity was reinforced and maintained in the MPA Awards of Anderson, Kerkman, Vernon and Fleischli and the MPSO Award of Rice. Arbitrator Oestreicher broke parity in the 1998-2000 MPA/City collective bargaining agreement Award. In breaking parity, Oestreicher, in his decision, accurately summarized the history of the City's and MPA's bargaining as follows:

...

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

In his 1981 decision Arbitrator Anderson said that, "The City also has repeatedly stressed that I cannot render my decision in a vacuum and must consider the consequences of my award on the existing firefighters reopener agreement as well as the City's negotiations with out others. ..." At that time the Firefighters had a me-too salary reopener clause in their contract, which would have provided the firefighters two automatic wage increases if the arbitrator selected the Union's demand for two 11.5% increases. The MPA argued that the City had rushed to settle with the firefighters, and granted them a me-too reopener, in order to defeat the MPA's wage demand in arbitration. Anderson said the he "is persuaded that some of the MPA's complaints about the unfairness of the City's agreement with the [Firefighters] are justified." In that case the arbitrator found the City's salary offer was the most reasonable in part because Milwaukee's base salary earnings outranked all suburban comparables. Arbitrator Anderson said "I also want to state that my comments concerning the parity settlement, the reopener agreement, and the impact of these proceedings would not have prevented me from awarding a larger increase than proposed by the City, if the facts warranted such a conclusion."

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

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

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

Arbitrator Gil Vernon said that a party seeking to break parity "faces a heavy burden." In Vernon's opinion arbitrators should adhere to parity unless it would result in an unacceptable level of compensation for the bargaining unit relative to external comparables. He said "there shouldn't be any significant erosion, and given the historical position among the comparables, the unit should reasonably fit within the comparables. Vernon compared the Union's offer for 5% ATB increase along with a new salary step to the City's offer for two split 2%/2% increases during the 1989-90 contract period. He found that the Union's offer would result in a number one rank and the City's offer in a number two rank among the largest 15 cities in Wisconsin. Milwaukee ranked fifth among the suburban comparables. The Union's offer would have resulted in a first rank compared to second under the City's offer. Vernon said that Police Officers in Milwaukee deserve to receive the top police officer salaries in Wisconsin. He noted that in terms of total compensation they were in fact number one – "they won by a nose." Vernon selected the City's wage offer.

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

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

...

Arbitrator Oestreicher discussed in detail the parties' final offers and their impact on the supervisor's rankings with the suburban and state-wide comparables. The slippage in ranking persuaded Arbitrator Oestreicher to break parity.

Arbitrator Greco, likewise, broke parity between police supervisors and their counterparts in the Fire Department in his Award for the 2004-2006 agreement. He too was persuaded by the slippage in ranking, especially compared to the suburban supervisor units.

Arbitrator Greco's Award covering the contract term 2004-2006 was issued November 28, 2008. Prior to said Award, the City reached voluntary settlements with the MPA and Local 215. The settlements were for three-year contracts providing for wage increases of 3% in 2007, 3.25% in 2008 and 3% in 2009 after first adding \$350 to pp.26 2008 rates of pay.

THE ISSUES:

The parties agree the term of the contract is three years, January 1, 2007 through December 31, 2009.

The Union has submitted two issues to be determined in arbitration: wages and residency.

1. Its wage proposal is:

	2007	2008	2009
Sergeants	3%	3.9%	4.25%
All other classifications	3%	3.25%	After adding \$360 to pp. 26 2008 rates of pay, 3% increase

2. **ARTICLE 60**

RESIDENCY

1. Employees covered by this Agreement shall be bona fide residents of the City of Milwaukee, except as otherwise provided in this Article.
2. Two-tier Residency
 - a. A two-tier wage scale shall be established for resident and non-resident employees.
 - b. Resident employee base salary rates shall be those amounts specified in Article 9 of this agreement.
 - c. Non-resident employee base salary rates shall be two percent (2%) less than those amounts specified in Article 9 of this agreement.
 - d. All other provisions of this Agreement remain the same for Resident and Non-Resident employees.
3. Residency restrictions / definitions.
 - a. Employees covered by this Agreement may elect to reside anywhere within the boundaries of Milwaukee County, or any other county adjacent to Milwaukee County (specifically Milwaukee, Ozaukee, Racine, Washington, or Waukesha Counties), in the State of Wisconsin.
 - b. When an employee elects to establish his or her bona fide residence other than in the City of Milwaukee, but as restricted in section 3(a) of this Article, the employee shall be considered a non-resident employee, and the non-resident wage scale shall apply to that employee.
3. Employees shall notify their immediate supervisor of any change of their residence within twenty-four (24) hours of said change.
4. For purposes of determining the applicable wage scale for each bi-weekly pay period, the employee's status as a resident or non-resident employee on the first day of the pay period shall control for the entire bi-weekly period.

The City submitted the following issues:

1. Base Salary, Article 9:
 - (a) Wage increases as follows:
 - PP1, 2007, a 2% ATB increase to all pay ranges
 - PP1, 2008, a 1.0% ATB increase to all pay ranges
 - PP 14, 2008, a 1.0% ATB increase to all pay ranges
 - PP 1, 2009, a 1.0% ATB increase to all pay ranges
 - PP 14, 2009, a 1.0% ATB increase to all pay ranges
 - (b) Within 60 days of execution of the Agreement, all employees shall participate in direct deposit of paychecks.
 - (c) Effective the first full pay period following execution of the Agreement, a District Captain shall receive a \$155.00 payment for each pay period in which he or she is in active service and assigned for the entire pay period to a District Captain position. No payment shall be made to a District Captain for a pay period in which he or she was in active service as a District Captain for less than the full pay period. Payments made under this provision shall not be construed as part of the employee's base salary and shall not be included in the computation of any fringe benefit enumerated in the Agreement. Payments made under this provision shall not have any sum deducted for pension benefits, nor shall such payments be included in any computation establishing pension benefits or payments.
2. Health Insurance, Article 17: See attached Health Insurance Proposed marked Attachment "A"
3. Parking Allowance Benefits for PAB Employees, Article 55: Effective the first full month following execution of the Agreement:
 - (a) Regular Benefit: increase to \$120
 - (b) Special Benefit: increase to \$120 for two-person carpool and \$140 for three or more-person carpool
 - (c) Daily receipts: increase total to \$45/\$125 for two-person carpool and to \$65/\$145 for three or more-person carpool.

The Union does not object to the City's Parking Allowance proposal, so it is hereby adopted by the Arbitrator with no further discussion needed.

The City had also placed the following subjects in issue, but withdrew them at the hearing:

Interpreter / Translator Pay
Off-Duty Employment
Political Leaves of Absence
Drug Testing
Early Intervention Program

STATUTORY PROVISION:

Section 111.70(4)

(jm) *Binding arbitration, first class cities.* This paragraph shall apply only to members of a police department employed by cities of the 1st class. If the representative of members of the police department, as determined under par. (d), and representatives of the city reach an impasse on the terms of the agreement, the dispute shall be resolved in the following manner:

1. Either the representative of the members of the police department or the representative of the city may petition the commission for appointment of an arbitrator to determine the terms of the agreement relating to the wages, hours and working conditions of the members of the police department and other matters subject to arbitration under subd. 4.

2. The commission shall conduct a hearing on the petition, and upon a determination that the parties have reached an impasse on matters relating to wages, hours and conditions of employment or other matters subject to arbitration under subd. 4. on which there is no mutual agreement, the commission shall appoint an arbitrator to determine those terms of the agreement on which there is no mutual agreement. The commission may appoint any person it deems qualified, except that the arbitrator may not be a resident of the city which is party to the dispute.

3. Within 14 days of the arbitrator's appointment, the arbitrator shall conduct a hearing to determine the terms of the agreement relating to wages, hours and working conditions and other matters subject to arbitration under subd. 4. The arbitrator may subpoena witnesses at the request of either party or on the arbitrator's own motion. All testimony shall be given under oath. The arbitrator shall take judicial notice of all economic and social data presented by the parties which is relevant to the wages, hours and working conditions of the police department members or other matters subject to arbitration under subd. 4. The other party shall have an opportunity to examine and respond to such data. The rules of evidence applicable to a contested case, as defined in s. 227.01 (3), shall apply to the hearing before the arbitrator.

4. In determining those terms of the agreement on which there is no mutual agreement and on which the parties have negotiated to impasse, as determined by the commission, the arbitrator, without restriction because of enumeration, shall have the power to:

a. Set all items of compensation, including base wages, longevity pay, health, accident and disability insurance programs, pension programs, including amount of pension, relative contributions, and all eligibility conditions, the terms and conditions of overtime compensation and compensator time, vacation pay, and vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance, uniform allowances and any other similar item of compensation.

b. Determine regular hours of work, what activities shall constitute overtime work and all standards and criteria for the assignment and scheduling of work.

c. Determine a seniority system, and how seniority shall affect wages, hours and working conditions.

d. Determine a promotional program.

e. Determine criteria for merit increases in compensation and the procedures for applying such criteria.

f. Determine all work rules affecting the members of the police department, except those work rules created by law.

g. Establish any educational program for the members of the police department deemed appropriate, together with a mechanism for financing the program.

h. Establish a system for resolving all disputes under the agreement, including final and binding 3rd-party arbitration.

i. Determine the duration of the agreement and the members of the department to which it shall apply.

j. Establish a system for administration of the collective bargaining agreement between the parties by an employee of the police department who is not directly accountable to the chief of police or the board of fire and police commissioners in matters relating to that administration.

k. Establish a system for conducting interrogations of members of the police department that is limited to the hours between 7 a.m. and 5 p.m. on working days, as defined in s. 227.01 (14), if the interrogations could lead to disciplinary action, demotion, or dismissal, but one that does not apply if the interrogation is part of a criminal investigation.

5. In determining the proper compensation to be received by members of the department under subd. 4., the arbitrator shall utilize:

a. The most recently published U.S. bureau of labor statistics “Standards of Living Budgets for Urban Families, Moderate and Higher Level”, as a guideline to determine the compensation necessary for members to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and

b. Increases in the cost of living as measured by the average annual increases in the U.S. bureau of labor statistics “Consumer Price Index” since the last adjustment in compensation for those members.

It is noted that under Section 111.70(4)(jm), the form of interest arbitration is “wide open” and not total package final offer as provided in Section 111.70(4)(cm) 6 and 111.77 for all other municipal employees. Nor is it “issue by issue” arbitration where the Arbitrator is limited to choosing one of the two final offers on each issue presented. Here, pursuant to Section 111.70(4)(jm)4.a., the Arbitrator has the authority to “set all items of compensation, including base wages . . . health . . .”

Thus, under Section 111.77(3), the Arbitrator has the authority to craft a more reasonable settlement of the issues than proposed by the parties if needed.

The Record

The record which was developed over a period of seven days is voluminous. It consists of 1,180 pages of transcript, 194 exhibits totaling hundreds of pages, and 344 pages of briefs.

The parties did an excellent job presenting their case and arguing their positions with numerous case citations in support thereof. The Arbitrator has not set forth the positions and arguments of the parties in detail. However, the parties should be rest assured that the Arbitrator has thoroughly read and reviewed the record including the transcript, exhibits and briefs in resolving the issues in dispute.

Wages

The parties devoted a considerable amount of time presenting testimony and exhibits in support of their claim that their wage proposal for 2007, 2008 and 2009 is the most reasonable. A major consideration in determining the reasonableness of the two wage proposals is whether there is a need for catch-up for unit personnel, especially the sergeants, as argued by the Union.

In support of its position, the Union relies on external comparables claiming that such comparisons establish its offer as the most reasonable.

The City, on the other hand, primarily relies on internal comparables in support of its position citing its settlement with District Council 48, the City's largest represented unit. The City acknowledges that normally the more appropriate internal comparables are the police and fire units, but due to the change in the economy and financial condition of the City since those settlements were reached, it argues that the more recent AFSCME settlement is more significant.

Also, with respect to the need for "catch-up" as alleged by MPSO, it is the City's position that the MPSO unit compares well with its external comparables and, therefore, catch-up is not warranted.

First, it is a well-established principle of arbitration adopted by most arbitrators, including the undersigned, that internal comparables are more important than external comparables when it comes to wages and benefits unless there is good reason to go external.

The importance of this concept was convincingly explained by Arbitrator Rice in his 1988 Award involving the instant parties as follows:

...

Forgetting the concept of parity, the mainstream of arbitral opinion is that internal comparables of voluntary settlements should carry heavy weight in arbitration proceedings. The Employer's attempt to offer the same wage increase to all of its bargaining units in the protective services is a significant fact to be considered by an arbitrator in the absence of a factual situation that would distinguish one bargaining unit from another. The goal of collective bargaining is to have agreements reached by the parties through voluntary settlements as opposed to arbitral awards. Arbitrators should not issue awards that encourage the Employer's various collective bargaining units to seek to resolve their labor disputes through arbitration rather than at the bargaining table. If the Employer is to maintain labor peace with the many bargaining units with which it negotiates, changes in wages and benefits must have a consistent pattern. The worst thing that could happen to the Employer and the various collective bargaining units with which it negotiates would be to make the concept of arbitration so attractive that collective bargaining would be reduced to a series of multiple interest arbitration proceedings with different arbitrators issuing awards with no consistency between them. The Employer and the bargaining units representing employees in the protective services have been through that experience on more than one occasion and the result was turmoil. That turmoil only ended when consistency was reestablished in the wage patterns for the various collective bargaining units.

...

Here, there are 19 bargaining units within the City of Milwaukee including the MPA which represents police officers and detectives below the rank of sergeant, and Local 215, Milwaukee Fire Fighters Association, representing firefighters. The largest internal unit which is comprised of various blue collar, white collar and clerical employees is represented by AFSCME District Council 48.

Thus, the Arbitrator believes, if all is equal and there is equity between ranks in the Police Department, the controlling factor in deciding the merits of the instant offers is the MPA

settlement. There would be no need to consider external comparables. To do otherwise would inevitably create turmoil with the MPA and to a great degree with Local 215.²

Here, the MPA and Local 215 have voluntary agreements for 2007-2009 and therefore a wage pattern has been established relative to this unit. The settlements provide for wage increases of 3%, 3.25% and 3% (plus a lump-sum payment of \$360) for 2007, 2008 and 2009, respectively. MPSO is proposing the same for all unit classifications except the sergeants. The MPSO proposal for sergeants is 3%, 3.9% and 4.25% for 2007, 2008 and 2009, respectively.

The City's wage proposal is as follows: 2% in 2007, 1% 1st pay period 2008 and 1% 14th pay period 2008, 1% 1st pay period 2009 and 1% 14th pay period 2009. The City's wage proposal for 2007-2009 is identical to its settlement with District Council 48.³ The City acknowledges that normally MPA and Local 215 are the more appropriate internal comparables, but due to the downturn in the economy and financial condition of the City, it claims that the more appropriate and controlling internal comparable is District Council 48.

The Union dismisses the notion that District Council 48 is a comparable. With respect to MPA, the appropriate internal comparable, MPSO contends that a deviation is in order because there is a need for "catch-up" for the sergeants in this unit.

² This is not true in many Wisconsin cities because in many cities there is no internal comparable directly related or comparable to police work. The only represented unit of employees are the police officers. In those cases, external comparables are very important. That is not the case here except for catch-up.

³ However, the City and District Council 48 also reached settlement for 2010 and 2011. They settled for 0% in 2010 and 0% in 2011. The agreement provides for no layoffs for the term of the agreement.

As discussed earlier, wage patterns set by internal comparables may not be controlling in cases where a legitimate catch-up issue is established. In this regard, the Union argues the appropriate external comparables for comparison purposes are the suburbs, state comparables, and national comparables known as the Vernon 18.

The City disagrees arguing that the suburban communities measured by any number of factors utilized in establishing external comparables are neither legitimate primary or secondary comparables. They are simply not comparable to Milwaukee. The city argues that the same is true regarding the State's 15 largest cities. None have the urban characteristics of Milwaukee. Lastly, the Vernon 18 present the same problems. The list of Vernon 18 cities bears little relationship to Milwaukee other than the sole criteria of population size. The City argues that high cost cities on both coasts, such as Las Vegas, Portland, Seattle, San Francisco, Boston, Baltimore and Washington, D.C. bear little relationship to Milwaukee in the traditional measures of comparability. The City believes that the most appropriate group of cities with which to evaluate the compensation provided by the City to its police supervisors consists of the following Midwest cities: Cincinnati, Cleveland, Columbus, Detroit, Indianapolis, Kansas City, Minneapolis, Omaha, St. Paul and St. Louis.

A review of the many arbitration cases involving the City and MPA and MPSO units, it is apparent that the parties are in constant disagreement over what cities constitute the appropriate comparables as it relates to Milwaukee law enforcement personnel. At various times the positions of the parties on the issue has shifted.

The issue over the appropriate set of comparables in this case is a good example of why most arbitrators, including the undersigned, subscribe to what is now a well-established principle regarding external comparables. It is:

. . . that external comparables, once established, shall be maintained unless there is sufficient change in circumstances to warrant a change. It is not that arbitrators will not or cannot change an established comparable pool, but there must be compelling reason to do so. The reason is simple: to provide predictability and stability and guidance to the parties in their negotiations. This can only be done with a strict standard for change.⁴

What's clear from previous awards involving the instant parties is that suburban jurisdictions and the 16 largest Wisconsin cities have been determined to be comparable in the past. It is important to note that most of the arguments made in this case were exactly the same made in the Greco case. Greco concluded:

There is some merit to the City's position that Milwaukee should not be compared to suburban communities; that Milwaukee is unique among all of Wisconsin's cities; and that some of the national comparables in the Vernon 18 are significantly different from Milwaukee regarding the ability to raise revenues; population; wealth; diversity; distance; etc.

The City argued before Arbitrator Rice, however, that about 15-16 suburban comparables and 16 of the largest cities in the state supported its wage offer.

Having then relied on those suburban and state comparables, the City has not offered any persuasive explanation as to why it should not now be held to what it agreed to then. In addition, the use of those past comparables is the only way to measure whether there has been any erosion in the bargaining unit's compensation over the last 20 years, as Arbitrator Vernon stated that it is necessary to ascertain whether there currently is an unacceptable level of compensation given the "historical position among the comparables . . .," which means going back to 1988 to determine the level of compensation at that time. Suburban and state comparables thus must be used to at least make that needed determination. (Footnote omitted)
(pp. 16 and 17)

⁴ Waukesha County Technical Educators Association, Decision No. 32555-A (Torosian, 2009).

Greco relied on the suburban and Wisconsin cities comparables in determining whether there was a valid catch-up situation and whether parity should be broken. In evaluating the parties' officers in terms of total compensation he relied primarily on the Vernon comparables. He concluded there was a need for catch-up, there was justification to break parity and that the City fared well in total compensation.

In order to promote predictability and stability in the City and MPSO's relationship, the Arbitrator will not disturb Arbitrator Greco's determination of the external comparables. The City has offered some but not sufficient evidence to warrant a change. The arguments presented here were the same ones considered by Arbitrator Greco in reaching his conclusion.

Therefore, the undersigned finds relevant the suburban and 16 largest Wisconsin cities as comparables. Also, relevant are the Vernon comparables and Midwest comparables offered by the City. (Greco did not favor one over the other.)

The following is a summarized comparison of sergeants and lieutenants with that of 29 suburban communities, 16 largest Wisconsin cities, national Vernon comparables and comparable Midwest cities under each of the final offers. There are some differences between the parties in the ranking which is noted in the charts.

Comparison of Proposals

MPSO Surveys – Ranking

Suburbans (29)

Base Wages

	<u>1988</u>	<u>1991</u>	<u>1996</u>	<u>2002</u>	<u>2006</u>	<u>2009</u>
<u>MPSO</u>						
<u>Offer</u>						
Sgt.	2	3	17	18	16	12
Lt.	1	3	9	12	9	6
<u>City</u>						
<u>Offer</u>						
Sgt.	(no data 1988 - 2005)				16	22
Lt.	(no data 1988 - 2005)				9	10

		<u>Total Compensation</u>	
<u>MPSO</u>			
Sgt.	(no data 1998 - 2004)	<u>2005</u>	<u>2009</u>
Lt.	(no data 1988 - 2004)	15	11
		12	7

<u>City</u>			
Sgt.	(no data 1988 - 2004)	15	22
Lt.	(no data 1988 - 2004)	12	12

Wisconsin Cities (16)
Base Wages

	<u>1991</u>	<u>1996</u>	<u>2002</u>	<u>2006</u>	<u>2009</u>
<u>MPSO</u>					
Sgt.				5	5
Lt.	1	4	4	3	4
<u>City</u>					
Sgt.				5	7
Lt.	1	4	4	3	5

Total Compensation

	<u>1991</u>	<u>1996</u>	<u>2002</u>	<u>2005</u>	<u>2006</u>	<u>2009</u>
<u>MPSO</u>						
Sgt.				6		6
Lt.	1	4	4		3	4
<u>City</u>						
Sgt.				6		7
Lt.	1	4	4		3	6

Vernon
Base Wages

<u>MPSO</u>				<u>2006</u>	<u>2009</u>
Sgt.				15	14
Lt.	(no data 1991 - 2005)				
<u>City</u>					
Sgt.				15	16
Lt.	(no data 1991 - 2005)				

Total Compensation

	<u>1991</u>	<u>1996</u>	<u>2002</u>	<u>2006</u>	<u>2009</u>
<u>MPSO</u>					
Sgt.	(no data 1991 - 2008)				14
Lt.	(no data 1991 - 2005)			13	14
<u>City</u>					
Sgt.	(no data 1991 - 2008)				16
Lt.	(no data 1991 - 2005)			13	15

City Surveys – Ranking
Suburbans

The City does not dispute MPSO’s survey of the suburbans, but disagrees that they are appropriate comparables.

	<u>Wisconsin Cities⁵</u>		
	<u>Base Salary Wages</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
Sgt.	8	8	9
Lt.	5	5	5
	<u>Total Compensation</u>		
Sgt.	5	6	7
Lt.	3	5	6
	<u>Vernon⁶</u>		
	<u>Base Wages</u>		
Sgt.	12	13	13
Lt.	12	12	12
	<u>Total Compensation</u>		
Sgt.	13	13	13
Lt.	13	13	13
	<u>Midwest Cities⁷</u>		
	<u>Base Wages</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
Sgt.	6	5	6
Lt.	5	5	6
	<u>Total Compensation</u>		
Sgt.	5	5	5
Lt.	6	6	6

⁵ They are the same as MPSO’s, except Wausau is replaced by Brookfield. This is based on 2008 estimates rather than 2000 census.

⁶ Based on recent estimates of population, the City replaces San Francisco, San Jose, Jacksonville and Detroit with Las Vegas, Louisville, Oklahoma City and Tucson.

⁷ Cincinnati, Cleveland, Columbus, Detroit, Indianapolis, Kansas City, Minneapolis, Omaha, St. Paul and St. Louis.

Total Compensation Including Pension

Sgt.	4	4	3
Lt.	5	4	4

Based on the above comparisons, the Union argues that the City's final offer does nothing to get the MPSO sergeants back to its deserved number 1 ranking, its 2nd ranking in 1988, and does nothing to help get sergeants closer to the top 9 ranking, let alone closing the gap to the average top step base wage paid to suburban sergeants. In fact, the City's offer drops MPSO sergeants from its 16th ranking in 2006 to an all time low ranking of 23rd out of 28 suburban comparables. Moreover, the City's final offer causes its sergeants to lose an additional \$2,503 to the average top step base wage paid to suburban sergeants over the 2007-2009 time period. As such, the City's offer would leave its sergeants \$3,759 behind the average top step base wage being paid to the comparable suburban sergeants.

In comparison, the MPSO's proposal would move sergeants from their current 16th ranking in 2006 up to a 12th ranking among the suburban comparables in 2009. Even though the MPSO's proposal moves its sergeants up four ranking positions on top step base wages with its suburban comparables during the 2007-2009 time period, it still leave sergeants \$246 behind the average suburban top step base wage and nowhere close to its deserved 1st ranking, its 2nd ranking in 1988, or even close to the upper one third (9th) ranking that, at the worse case scenario, would be in the public's best interest.

Moreover, with respect to comparison to the top 16 largest Wisconsin cities based on the 2000 census and comparing those sergeants' top step base rankings to the MPSO's top step wages, the MPSO's proposal would merely leave sergeants at the same 5th place ranking they

started the 2007-2009 contract period out with. In comparison, the City's final offer drops sergeants from the 5th ranking they began with to a 7th place ranking by the end of the 2007-2009 contract period. The City's offer is inequitable as it causes MPSO sergeants to continue to drop in their statewide top step base comparables. Moreover, the City's offer is inequitable and must be rejected because it leaves the MPSO even further from their deserved number 1st ranking, from their historical 2nd ranking in 1988, and outside of the upper ¼ or 4th place ranking that Arbitrator Oestreicher found to be in the best interest of the public. As for the Vernon national comparables, the Union argues the City's offer would lower the sergeant top step base wage ranking from 15th to 16th out of 19 in comparison to the MPSO's proposal that would move sergeants up to 14th out of 19. Therefore, even based on national comparables, the City's final offer continues a decline in the sergeant top step base wage rankings, but the Union's offer slightly improves that ranking.

The City argues otherwise, claiming that sergeants and lieutenants, even under the most trying times affecting the City's finances, will continue to do well compared to their Midwest peers. It notes that Milwaukee is generally out-ranked by either Minneapolis or St. Paul or both. But, measured by median household income or per capita income, these are two well-to-do cities compared to Milwaukee. Milwaukee manages to rank sufficiently high, given its more limited resources, to confirm that its proposed increase in base salary in this proceeding is reasonable.

With respect to the Vernon 18 jurisdiction, the City argues that even with the high cost cities on the west and east coast, Milwaukee, nonetheless fares well by comparison when total compensation including pension is taken into account. MPSO members pay \$1 per year compared to approximately \$9,500 paid by Seattle members and \$14,500 paid by Austin

members. Greco came to the same conclusion that Milwaukee supervisors receive an outstanding pension benefit compared to the 5% - 11% pension contribution found in most national comparables.⁸

Also, Milwaukee enjoys a much better pension multiplier 2.5% versus 2.0% for most other suburban and state supervisors and are eligible to retire with full pension after 25 years instead of waiting until 57 years of age.

In base salary, MPSO ranks 12 or 13, but no one should expect that Milwaukee will be paying more in base salary to its police supervisors than at least half of the Vernon 18 cities.

With respect to the 15 largest cities in the State, sergeants rank 8th or 9th and lieutenants 5th. But, most of the cities are not comparable either in size or urban characteristics. The most comparable are the 2nd and 3rd largest cities, Madison and Green Bay. Milwaukee is ahead of both in base salary and total compensation.

As for the suburban comparables, the City argues that it makes no sense to compare with the suburbans because they don't qualify under any of the factors normally considered in developing comparables. Their residential values and income per capita are much higher than Milwaukee and have much smaller departments.

Apart from the statistical comparisons, it is the City's position that the Union has picked the wrong time to extract greater dollars from the City. It proposes a jump in base salary from

⁸ Joint Exhibit 3, p.30. Greco also found: "Hence, when total compensation accounts for employee pension contributions, the sergeants here would rank tenth nationwide out of the Vernon 18 in 2004 and ninth in 2005 - 2006 after being granted the additional ATB wage increase above (City Exhibit 49). Among the City's Midwest comparables, the sergeants here would rank second in 2004 - 2006 after being granted the added ATB wage proposal (City Exhibit 50).

16th to 12th and total compensation from 16th to 11th place among the suburbans, this in the midst of a deteriorating economy. The Union should be looking to hold its own rankings rather than moving up.

Also in claiming catch-up, it should be noted that since the 1988 Rice Award, MPSO has voluntarily entered into seven collective bargaining agreements until the Greco arbitration. They had an opportunity in each agreement to seek more compensation or proceed to arbitration. Each was fair compensation for members of the bargaining unit.

Lastly, the City argues that both total package cost and CPI favor the City. The Union's package is exceedingly costly whereas the City's proposal is reasonable and more in line with the CPI.

CPI for 2007, 2008 and 2009 was 4.06%, 0.09% and 2.71%, respectively, for a 3-year total of 6.86%. The City's offer most conservatively is 5% for 3 years and the Union's 10.55% (unit-wide). In just comparing the wage increases, the City's offer is closer to CPI than the Union's. When taking into account total package, the City's offer is clearly more reasonable at 7.34% versus MPSO's 12.23%.

The Union counters that CPI is a consideration, but in cases of catch-up arbitrators have held that it is not determinative.

Both the Union and City make good arguments in support of their positions.

It's fair to say what began as a dispute over catch-up has, due to passage of time, evolved into a dispute over the appropriate internal comparable as well. The City argues that the economy and the City's financial condition has deteriorated since the settlements reached with the MPA and Local 215 (late 2007 and early 2008, respectively), a fact recognized by District Council 48 and other unions representing City employees. Thus, for this contract the District

Council 48 settlement is the appropriate internal comparable and not the earlier settlements reached by the traditional comparables.

First, with respect to the catch-up issue, much evidence was produced regarding the merits, or lack thereof, of same. Much of it can be short-circuited for the simple fact that Arbitrator Greco, in the parties' most recent interest arbitration case resulting in the 2004-2006 collective bargaining agreement, concluded that there was sufficient reason to break parity, that catch-up was warranted, and that no quid pro quo was needed. He stated:

Hence, if there is a great need to catch up with the external comparables because of declining rankings in base wages which is the situation here, there is no need to offer a quid pro quo. (P. 24)

Accordingly, Arbitrator Greco selected the Union's final offer which was in excess of the MPA and Local 215 settlements.

Quite simply, nothing has changed since Greco's Award regarding catch-up. In fact, the City's offer places sergeants and lieutenants in a position worse than they were in in 2006 because the City's offer is 3.25% less in rate build up than the MPA settlement. Under the City's offer, as reflected in the above charts, sergeants and lieutenants will slip in rankings and in average salary externally, and internally they will lose ground to the detectives and police officers.

The City argues, however, that the economy and financial condition of the City, the MPA and Local 215 wage settlement is no longer the most reasonable and, further, this is not a time that MPSO should be asking for catch-up.

The City raises a valid point that irrespective of the merits of comparisons of rank and level of salary, the state of the national, state, and local economy and the City's financial

condition cannot be ignored in determining the reasonableness of the parties' offers. As pointed out by the City, wage increases have declined from 2007 to 2009 based upon when those contracts were settled (City Exhibits 46 and 51).⁹

MPSO argues vehemently that the City financial and budgeting situation does not prevent it from granting what MPSO feels is due to the supervisors. But, as is the problem in many similar cases, the parties in arguing their case overstate their position and understate the opponent's.

The parties presented in great detail, facts and figures relative to the City's budget, outlook and predictions.

MPSO, after analyzing all of the budgetary figures, bases its case on the following: (1) that the City does not have an "inability" to pay, it simply is "unwilling" to pay; (2) that it can and should meet MPSO's wage offer because it has the money, \$20 million, in the Wage Supplement Fund; and (3) the City is no worse off than its comparables.

At the outset, the Arbitrator notes that nowhere in its brief has the City argued it is unable to pay the MPSO offer. With respect to its unwillingness to pay, the City argues that its

⁹ Based upon the settlement dates and the actual percentage increases in the various jurisdictions, the City has calculated for those cities among the Vernon 18 listed in City Exhibit 44 that settlements occurring prior to 2007 averaged a 3.10% increase; those settlements reached in 2007 averaged a 3.57% increase; those settling in 2008 had an average settlement of 3.03% and those settling in 2009 average 1.82%. With respect to the Midwest cities set forth in City Exhibit 46, the pattern was similar. The settlements entered into prior to 2007 averaged 3.67%; the average of all 2007 settlements was 3.08%; the 2008 settlements averaged 2.30%; and the 2009 settlements averaged 1.68%. Finally, the settlements for the largest cities in Wisconsin set forth in City Exhibit 42 also showed a decline in the percentage increases in wages over time. Those settlements entered into prior to 2007 averaged 2.91%; those settlements taking place in 2007 averaged 3.16%; those settling in 2008 averaged 2.99%; and those settling in 2009 averaged 3.25%.

unwillingness is no different than MPSO's unwillingness to accept the City's offer. Lastly, the City argues that it has clearly established that it is worse off than the suburban comparables.

Clearly, the state of the national, state and especially the local economy and the City's financial condition is the major factor in defining the City's offer. This is the driving force in what the City has determined it is willing to offer as a reasonable offer.

Regarding the economy, no one can dispute that the country is in its worst recession since the Great Depression. Even if no evidence was produced at all, it would be absurd to think that the City of Milwaukee has not been greatly impacted by the downturn in the economy. The most recent unemployment figures show Milwaukee at 12.3% in March as compared to 9.8% state-wide and about the same nationally. Further, while there is disagreement over whether we are now out of recession or headed for a double dip recession, there is no disagreement that any improvement in the nation's unemployment will lag the overall recovery of the economy when it occurs.

Foreclosures are at their highest. In January 2007, foreclosures in the City averaged approximately 400 per month. This increased to nearly 2000 foreclosures at the end of 2008. It fell off a little in early 2009, but increased again at the end of the year. 46% of all single family and duplex home sales in the City in 2009 were sales of foreclosed homes.

The parties also argue about the impact or significance of the City's budget growth over the last ten years versus the increase in CPI; tax levy increase as it relates to ability to pay; total equalized value of property; per capita income versus total per capita income; poverty level and population; and an unexpected \$49 million contribution to the Pension Fund.

As often is the case with numbers, they can be used in various ways to support one's view of the disputed matter. That's the case here.

When all is said and done, the Union returns to its basic and primary position regarding the City's budget: It has \$20 million in the Wage Settlement Fund. The Union is correct that there is money in the Fund to cover the Union's offer. The Fund, however, will stand at \$10 million, not \$20 million, because funds are needed to cover other City settlements. Nonetheless, the \$10 million in the Fund is sufficient to meet the cost of the Union's offer which is some \$2,300,000 - \$2,400,000, in total cost, more than the City's offer. As stated earlier, however, regardless of the Fund amount, the issue before the Arbitrator remains, which offer is more reasonable when all factors are considered. MPSO has no more claim to the funds than did District Council 48 or the other Unions including MPA and Local 215.

There is no question in the Arbitrator's mind that the City faces difficult financial times. In weighing and balancing the City's ability to meet the cost of the Union's offer, the Arbitrator believes, and so finds, that the most reasonable wage package under the circumstances is the MPA and Local 215 wage package. They are the appropriate internal comparables. The only exception is that instead of adding \$360 to the Base Salary prior to the 2009 3% increase, the amount added is \$100. This is so, because both MPA and Local 215 funded \$260 of the \$360 additional payment from existing annual payments they receive from certification pay (MPA) and training standards and CPR pay (Local 215)¹⁰. In so finding, the Arbitrator appreciates the City's budgetary concerns, but, notwithstanding same, the short and long term harm caused by the City's offer to the wage relationship between police supervisors and the police officers and detectives they supervise, outweighs the additional cost involved. Under the MPA and Local 215 wage packages, as modified, the supervisors will maintain their wage relationship with the

¹⁰ If MPSO has a similar annual cash benefit to fund and additional \$260 to the Base Salary, the parties can consider such an addition in their next collective bargaining agreement.

officers and detectives. Also, it compares well with the CPI, 6.86% vs. 9.25%, and external comparables.

Further, while the City claims District Council 48 to be the appropriate internal comparable due to the passage of time, the Arbitrator notes that District Council 48 struck a deal at a reduced wage increase but received a guarantee of no layoffs for 2010 and 2011 and an early retirement window.

In the final analysis, in balancing the City's financial situation with MPSO's proposal for catch-up, the Arbitrator finds that due to the economic state of affairs of the City any additional monies for catch-up is not reasonable. The Union acknowledges that its proposal is equal to a 20.6% lift of which 11.9% is due to base wage increases.¹¹ The total cost difference is over 2 million dollars. This increase which is above and beyond any other unit, albeit for catch-up, is at a time when 90% - 95% of all general City employees had to take a two-day furlough which really translates to a pay cut. In addition, there have been substantial cuts in positions. The Fire Department has lost 99 full time equivalent (FTE) positions in the last two years. In the 2010 budget, 300 FTE positions have been eliminated. The Police Department 2010 budget has been reduced by 6%; its total positions authorized reduced by 94. The Department of Public Works' Operations Division 2010 budget calls for a reduction of 159 positions in "Total Positions Authorized."

Again, the Union relies on the \$10 million in the Wage Support Fund to support its catch-up position. The City, however, explained that any left over funds in that account goes to the Tax Stabilization Fund (TSF) which is a General Reserve Fund set aside for unexpected expenses. The Government Finance Officers Association (GFOA) advises that such a reserve

¹¹ Union Exhibit 43.

should be no less than 5% of a municipality's general fund budget. In 2008 the TSF was at 58.9 million. In the 2010 budget it is at 25.9 million. The TSF has steadily decreased and now stands below 5%. The Union correctly notes that the City has a history of AA bond rating, however the City points out that two credit rating agencies recently placed the City on "negative watch" in part due to the decline in the TSF as well as the City's decline in State aid and the absence of any viable local revenue diversification options available to the City.¹² This is not to say the City is about to lose its rating, only that the 5% minimum in the TSF is important and that falling below the minimum can lead to such a loss.

In summary, the Arbitrator agrees with the City that its economic and financial condition must be taken into consideration in determining the merits of the parties' positions. However, also important is the wage relationship between police supervisors and those they supervise. Organizationally and for employee morale it is important that MPSO does not lose ground to the MPA in this contract. Therefore, for reasons already discussed, the Arbitrator finds the MPA and Local 215 wage package, with modification, to be reasonable and within budget, but that catch-up is not warranted under the present economic and financial environment.

Direct Deposit of Pay Checks

¹² The Legislative Reference Bureau in its analysis of the TSF over the last ten years commented as follows: "...the TSF fund balance has declined in recent years. Two debt rating agencies, Moody's and Fitch, noted the decline in the TSF balance in recent debt rating reports. Moody's includes, 'Deterioration of reserve levels with no demonstrated commitment to restoring structural financial balance', as an event that could move the rating down in its March 20, 2009 report. Fitch noted that 'continued financial weakening resulting from economic erosion and/or state funding losses could trigger a bond rating downgrade. By continued 'financial weakening', Fitch is referring to further draw downs of the TSF balance.'" (Union Exhibit 9, p. 1)

The City's base salary final offer also includes a requirement that employees represented by MPSO participate in the direct deposit of pay checks following the execution of the labor agreement. The Union opposes the change.

The Arbitrator finds the City's proposal to be reasonable. All of the unions who have settled have agreed to the same direct deposit proposal as offered to the MPSO. The offer saves the City administrative costs. Approximately 265 of the 291 MPSO members already participate in the direct deposit program. The Union's position is that the remaining 26 employees should not be forced to participate. Given the internal pattern, the cost savings to the City and minimal impact on a very few members of MPSO, the Arbitrator finds the City's proposal to be reasonable.

Health Insurance

The City argues that because health care costs have exploded over the years, it had to make the changes proposed herein. Over the past 10 years, the City has been subjected to near double-digit annual increases in the cost of providing comprehensive health insurance benefits to its employees and retirees. The City hired Willis, a health insurance consulting organization, to study the City's plan including claims data. The City's proposal is presented and outlined in detail in its final offer (Joint Exhibit 11). The following are the main features.

The City's proposal with respect to drugs is to go from a 2-tier plan to a 3-tier plan. Under the 2-tier plan employees co-paid \$4 (generic) or \$8 (brand name). Under the 3-tier plan employees will pay either \$5, \$17 or \$25 depending upon which tier drug is selected. This change with other Unions has resulted in approximately \$8 million of avoided costs in 2009.

Co-pay for emergency visits is increased from \$25 to \$50.

The HMO plan, which is essentially free to employees, will require a monthly \$20 (single) and \$40 (family) premium contribution by employees.

The City's plan creates a Wellness and Prevention Program. The dual goal is to attempt to increase the health, well-being and production of the City's workforce, and at the same time attempt to moderate the rate at which health care costs directly borne by the City are increasing annually. The employee monthly premium contribution can increase to \$30, \$60 or remain at \$20, \$40 depending on the employees' participation in the program.

Lastly, the City proposes that it be able to offer an Exclusive Provider Organization (EPO) instead of, or in addition to, an HMO. The change is designed to permit the City to continue to pursue competitive methods of obtaining health insurance coverage for employees, without running the risk that in the future only one vendor, having made a non-competitive bid, would be selected as the City-offered HMO. The City's employees, however, would not have any diminishment in benefits, given the benefits were to be the same as that provided by any City-approved HMO plan. The City claims that under this change, employees would not be adversely affected. The EPO would simply provide a necessary alternative for how the City covered costs in an HMO type health plan.

With respect to the impact of its proposal, the City notes that although MPSO argues that all its members should receive no less than the same percentage increase in wages for 2007, 2008 and 2009 as that received by employees represented by MPA and Local 215 (with sergeants receiving substantially more), its members will not be required to pay health insurance expenses for the same time period as members represented by those two unions. Per the labor agreement, employees represented by the MPA in the HMO plan have made co-payments for office visits, emergency room visits and prescription drugs for all of 2008 and all of 2009. Per their labor

agreement, members of Local 215 have made co-payments for these services for three-quarters of 2008 and all of 2009. Employees represented by the MPSO, however, will not be required to make such co-payments until most likely the last quarter of 2010.

Addressing the issue of a quid pro quo, the City argues none is needed because the rampant increase in health care costs is really a mutual problem for the Employer and employees and that the changes proposed have already been implemented for over 90% of all City employees.

The Union argues that the City proposes to change Article 17 to allow the City the option of cancelling the HMO, and switching to an EPO to allow it to opt out of paying a flat fee every month for HMO medical services, but to instead pay for those HMO participants' medical services on a weekly basis as they are incurred, but to still have a third-party administer the plan. As the City sees it, this will allow them to bid an EPO plan against insurance company bids for an HMO in the future. The City believes this will create a competitive bidding process to allow them to keep their insurance costs from going up.

The MPSO opposes this change because it will change the 2007-2009 collective bargaining agreement to remove the City's requirement to provide an HMO, but instead to offer an EPO. This is despite the fact the time period the requested changes are for has already passed, and an HMO was required to be offered for that time period.

The MPSO opposes the City's future implementation of a wellness plan and an EPO as neither program has been implemented yet, and because there is no understanding as to how those programs would work or who would administer them or who the medical providers would be. In short, the MPSO believes the City is trying to use this interest arbitration to force significant unknown changes to their health insurance plan even though the requested changes

were not implemented and cannot be implemented during the 2007-2009 time period. As such, the City is trying to get these changes without the give and take negotiations that usually takes place for significant changes to any group's collective bargaining agreement. The MPSO opposes the City's position and views it as an effort to backdoor negotiations and to use interest arbitration to strong arm the MPSO into their demands.

Furthermore, the Union argues that the City has not offered a quid pro quo. The other Unions who settled with the City were able to negotiate the health insurance changes. Here, the City's unbending position not to give the MPSO anything for any significant change, and then to get those significant changes without a quid pro quo must be rejected.

Lastly, the City has not established a compelling need for the changes. It can negotiate those changes with the MPSO in the 2010-2011 collective bargaining agreement.

In resolving this issue, and for that matter the residency issue, the Arbitrator notes that interest arbitrators are guided by established principles and standards developed over many years. These principles provide the parties with predictability and in so doing guide and help the parties develop and assess their issues in negotiations. Moreover, the parties are aware of what they can expect in arbitration.

As discussed earlier, one of the long-established principles is that, generally stated, internal comparables¹³ rule unless there is good reason to go outside, i.e., external comparables. This is especially true in the area of fringe benefits.¹⁴

¹³ It is also a specific factor to be considered under Section 111.77(6), Stats.

¹⁴ Rio Community School District, Decision No. 30092-A (Torosian, 10/01) and cases cited therein: Winnebago County, Decision No. 26494-A (Vernon, 6/91); Greendale School District, Decision No. 25499-A (Malamud, 1/89); and Dane County (Sheriff's Department), Decision No. 25576-B (Nielsen, 2/89).

Here, 90% of all City employees, including 88% represented employees, are already under the same health plan as proposed to MPSO. The Union raises issues with the Wellness Program and EPO, but those are the same issues faced by and accepted by all employees.

MPSO's two main arguments why the City's offer should not be accepted by the Arbitrator is that (1) no quid pro quo is offered and (2) since the term of this agreement, 2007-2009, is already passed, the changes sought by the City should be negotiated in the next, 2010-2011 agreement.

With respect to the quid pro quo argument, MPSO makes a good argument that MPA and Local 215 accepted health insurance changes with their wage package increase. They were not asked to accept the changes with the City wage offer presented to MPSO. This argument, however, is now moot because the Arbitrator has awarded the same wage settlement to MPSO as received by MPA and Local 215, MPSO's comparables.

As for the wait and negotiate next time, the parties may likely find themselves in the same position as now; negotiating and not reaching an agreement until well into the term of the agreement. Meanwhile, no changes are made at a time when 90% of the City's employees are already covered.

Based on all of the above, the Arbitrator selects the City's Health Insurance offer as the more reasonable of the two.

Residency

The Union's final offer requests that its members be allowed to buy out of the City's residence requirement by taking a 2% decrease in their base wages, but still being required to live in a radius which includes: Milwaukee County, Ozaukee County, Washington County,

Waukesha County, and Racine County. This encompasses a 25-mile radius which is consistent with the external comparables and the response time required.

The MPSO argues there is compelling reason for a change allowing police supervisors to opt out of the residency requirement. Police personnel are different than all other City employees including firefighters. They have to arrest dangerous persons, career criminals, and in doing so, create dangerous enemies in the process. No other City employee but police officers have criminals track them down at their homes where their families are put at risk.

Moreover, no other City employee but police personnel were issued Varda alarms with their names placed on roll call boards within the Milwaukee Police Department to notify everyone the name of the officer that has been threatened by a criminal so that everyone within the Milwaukee Police Department knows the officer who has been issued a Varda, and that the Varda alarm has been installed in that officer's home. Yet, Varda alarms when triggered send an immediate response to dispatchers so that the threatened officer gets an immediate response to their home. However, a Varda alarm being installed in their home does not assure safety, it only assures that if the alarm gets tripped, the threatened officer would get an almost immediate response to their home by the Milwaukee Police Department.

Additionally, no other City employee has received a memo from their department head like the memo Chief Flynn issued to Milwaukee Police Department members on September 15, 2009. (1/26/10, Seitz, at 368; 1/17/10, Flynn, 498-99; Union Exhibit 50). Yet, due to a rash of crimes against Milwaukee Police Department officer homes, Chief Flynn was forced to notify all Milwaukee Police Department members in his September 15, 2009 memo that they had to safeguard their homes by removing any overt signs inside their homes that a police officer lived there.

Also, no other City employee has to be called to their neighbor's home in a domestic violence call and arrest their neighbor.

As such, the dangers a Milwaukee Police Department sworn member takes by being forced to live in the City is a danger no other City employee is forced to undertake by the residency rule. For the safety of MPSO members, compelling reason exists for the requested change to the residency article.

Furthermore, MPSO argues that it's offer is reasonable.

The externals - Vernon 18, state and suburban - show that few have a complete residency requirement. Those that require a radius, the average radius is 25 miles; the radius from Milwaukee to the counties proposed by the MPSO.

Additionally, in regard to Chief Flynn's concerns about the importance of citizens knowing they are dealing with officers who can relate to their circumstances because they live in the City, the Chief in these proceedings admitted professional officers would be professional no matter where they lived. Further, currently, Milwaukee Police Department does not assign members to work locations based on the neighborhoods they live within.

MPSO contends that its offer is reasonable because it would help the Milwaukee Police Department attract and retain better qualified candidates. Milwaukee Police Department competes with suburban police forces for the same labor pool. Milwaukee Police Department has recently geographically broadened its recruiting search, and in so doing learned that the residence requirement created problems as good candidates did not want to live in the City they policed, and thought Milwaukee was unsafe.

Further, residency is a reason persons leave the Milwaukee Police Department. Several sergeants and ex-MPD officers testified that they left because of quality of life, safety of the

family, and because of the poor public school system in Milwaukee. Their children had to be enrolled in private schools at a considerable expense.

Finally, MPSO argues that it has included an appropriate quid pro quo for opting out of the residency requirement. MPSO's offer that employees must forego 2% in wages for opting out of residency is consistent with West Allis, an external comparable, where law enforcement personnel receive 2% less in wages to live somewhere else.

The City opposes MPSO's offer allowing its members to opt out of the residency requirement.

To begin with, it argues that this is a major policy change which should not be imposed through interest arbitration. This was enunciated by Arbitrator Kessler¹⁵ and by Arbitrator Krinsky who, in the City of St. Francis,¹⁶ found that the residence change sought by the Union should be left to bargaining unless there is compelling reason to order such a change.

Here, the City argues there is no compelling reason to change. The residency requirement has been in effect since 1938, some 70 years. The Union's compelling reasons are primarily financial. It had members testify that City property taxes were high and that the cost of educating their children was high because, due to the quality of education provided by the Milwaukee School system, they had to send their children to private schools. But, the City's residency requirement is no greater or worse for MPSO represented employees than it is for other employees. They have the same options as other City employees including the opportunity

¹⁵ Columbia County (County Home Non-Professionals), Decision No. 28960-A (Kessler, 1997).

¹⁶ City of St. Francis (Police Department), Decision No. 26577-A (Krinsky, 1991).

provided to City employees to be able to apply to up to three suburban public school districts to enroll their children in a school that has available space in the particular grade level sought.

The other main compelling reason offered is that police supervisors arrest people which places them in a position where their safety and their families' is at stake. This can happen because those they have arrested seek them out at their homes or they, by chance, may run into one of them at the grocery store.

The City counters claiming that as police supervisors they seldom make arrests. MPA represented officers are the ones who arrest and they are not exempt from the City's residency requirement. Further, the grocery store scenario is a possibility but the chances are slim.

The same can be said of another reason offered by MPSO. That is, they may be called to a domestic situation with a neighbor and placed in a position where they would have to arrest a next door neighbor. Again, the chances of this are remote and speculative.

With respect to the impact of residency in recruitment and detention, there is no evidence to support the Union's claim that the City is suffering in this area. To the contrary, there are currently more than 4,500 to 5,000 people seeking to join the Milwaukee Police Department. This is 2.6 – 2.8 times the number of applicants the Department received in 2000. It is noted that supervisors are normally promoted from the ranks below.

Lastly, even if there were merit to the Union's position, a sufficient quid pro quo has not been offered. A 2% reduction in base salary of a sergeant at the top step only amounts to approximately \$1,500. This is very little when compared to the approximate \$880 million City employees collectively add to the property base.

As pointed out by both parties, the City's residence requirement was an issue in their last interest arbitration before Arbitrator Greco. Arbitrator Greco did not find that there was a recruitment and retention problem, but even if there were, he found the rule must be retained because MPSO did not offer a quid pro quo and it did not present any compelling reason why some of its members should be exempt from residency. Further, he cited Chief Flynn's testimony that it is good policy for police officers to live in the community they are policing.

Some 70 years ago, the City adopted a policy requiring its employees to "live where you work." It has been in effect continuously since 1938 covering all City employees with no exceptions. Collectively, City employees account for approximately \$800 million in property value.

Needless to say that the internal comparables favor the City's position to retain the residency requirement. All of the 2007-2009 collective bargaining agreements reached by the City with its Unions, including MPA, Local 215 and District Council 48, retain the residency requirement. That being the case, MPSO has the burden of establishing a compelling need for its proposed change to exempt police supervisors from the residency rule.

The Union's compelling reason is primarily two-fold. One, that due to the nature of their job, they and their families are at risk from retribution from criminals that they have arrested. They run the risk of having such criminals track them down at their homes. The other reason is "quality of life." As to the former, there is no question MPSO represented supervisors have a tough and dangerous job. They are at risk by the very nature of their job. But the question in context of this proceeding is whether there is a compelling reason why they should be set apart from all other City employees.

The evidence in this regard is not persuasive. There is no question that the police supervisors have made many arrests as they moved through the ranks. However, as supervisors they do not normally make arrests in the normal course of their work. It is the rank and file police officers and detectives who make arrests on a daily basis. Said officers who number approximately 1,650 and who are far more involved with arrests are not exempted from the residency requirement.

Also, importantly, there is no reason to believe that living outside the City will protect police supervisors and their families from criminals tracking them down to their homes. Criminals can just as easily track someone across City lines as within the City boundaries.

Again, this is not to say this concern is not real because it is, as evidenced by the Chief's memos regarding same. However, the concern does not meet the compelling need test given the frequency that it might occur and the fact that police officers, who face a much greater threat of criminal retribution because they make most of the arrests, are subject to the same residency requirement.

The Union also gave examples of a supervisor being possibly called upon to arrest a neighbor in a domestic violence case and running into a criminal who he/she arrested in a grocery store. Again, situations like this may occur, but infrequently. Most of the unit supervisors may very well go through their career without having to respond to a police call by a neighbor.

The Union's other compelling reason argument for its residency proposal, relates to quality of life. The evidence offered in this regard was primarily that due to the poor public school system in Milwaukee, police supervisors, at considerable expense, must send their children to private schools for a good education. But, this is no different for the police

supervisors than the other City employees. The supervisors' need is no greater than the other 7,000 City employees.

Lastly, there is an important policy reason for maintaining residency which was expounded by Chief Flynn:

I also just get a sense that as we look across the way we conduct law enforcement in this country, I think it's pretty clear that people want to feel on some level they're policed by their own. And I think that's a connection that our officers have with the residents of Milwaukee that's strong, and I think forms some of what I think is some very significant citizen support for the efforts of the Police Department. I think this Police Department is thought well of by its community, and I think the fact they all live here is one reason why people think well of them. They see them in the community. They see them as neighbors. They see them as, you know, fully functioning family people, not just as authority figures. (Tr. 496).

Based on the above, the Arbitrator concludes that MPSO has not established a compelling reason for exempting the police supervisors from the City-wide residency requirement.

Having considered the statutory criteria, the evidence and arguments presented by the parties, the Arbitrator, based on the above and foregoing discussion, makes and issues the following

AWARD

That the following Award be incorporated into the parties 2007-2009 three-year collective bargaining agreement, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agreed were to remain unchanged.

1. Across-the-board wage increases of 3% for 2007; 3.25% for 2008; and for 2009, a 3% increase, after adding \$100 to pp. 26 2008 rates of pay.
2. The City's proposal relating to direct deposit of pay checks, Article 9.
3. The City's proposal relating to Article 17, health insurance.
4. The City's proposal relating to parking, Article 55.¹⁷
5. The City's Interpreter/Translator Pay; Off-Duty Employment; Political Leaves of Absence; Drug Testing; and Early Intervention Program proposals are determined to be withdrawn.

Dated at Madison, Wisconsin, this 20th day of July, 2010.

Herman Torosian, Arbitrator

¹⁷ As noted earlier in the decision, MPSO indicated at the hearing that it did not oppose the City's parking offer.