

---

In the Matter of an Interest  
Arbitration Between:

MILWAUKEE COUNTY (Airport Fire Department)

and

Case 706  
No. 69443  
MIA-2901  
Dec. No.33199-A

MILWAUKEE COUNTY PROFESSIONAL  
FIRE FIGHTERS, IAFF LOCAL 1072

---

APPEARANCES:

Buelow Vetter, LLC., by Mr. Mark F. Vetter and Mr. Mark L. Olson, appearing on behalf of the County

Mr. Patrick A. Kilbane, IAFF District 5 Field Service Representative, appearing on behalf of the Association

**ARBITRATION AWARD**

Milwaukee County, hereinafter County or Employer, and the Milwaukee County Professional Fire Fighters, IAFF, Local 1072, hereinafter Association or Union, reached impasse in their collective bargaining for a collective bargaining agreement to be effective January 1, 2009. The parties submitted their final offers to the Wisconsin Employment Relations Commission and the Commission certified their impasse/final offers on December 29, 2010, and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the matter was held on May 17, 2011 in Milwaukee, Wisconsin. On August 30, 2011, the parties filed a supplemental agreement that they had entered into in order to conform the provisions of their final offers to the requirements of Wisconsin Act 32. The parties filed post-hearing briefs that were received on September 9, 2011, and reply briefs that were received by September 28, 2011. Thereafter, the County on November 22, 2011, submitted a recently settled collective bargaining agreement for 2009 –12 with its Deputy

Sheriffs' bargaining unit. On December 5, 2011, the Union filed its written commentary to the County's submission of its settlement with its Deputy Sheriffs' bargaining unit.

BACKGROUND:

The Milwaukee County Airport Fire Department consists of 17 Firefighters/Heavy Equipment Operators<sup>1</sup>, three Captains, Assistant Chief, and Chief. Their primary responsibilities are to provide fire protection and emergency medical services for Mitchell International Airport. Firefighters/Heavy Equipment Operators and Captains are included in the bargaining unit, whereas the Fire Chief and Assistant Chief are not in the bargaining unit. The 20 members of the bargaining unit are evenly split into three shifts comprised of a Captain and five Fire Fighter/Heavy Equipment Operators. The members work a reoccurring shift consisting of one 24-hour shift on duty, followed by two 24-hour shifts off duty. The average workweek is 56 hours totaling 2920 hours annually.

Milwaukee County employs all members of the Fire Department in the Division of Airport Operations, within the Department of Public Works. The Airport Division's operating budget falls within the overall Milwaukee County budget, but is unique from other operations in that its operation is not funded out of the County's tax levy upon the residents of Milwaukee County. The revenue to operate the Airport is generated through airline landing fees along with other incidental revenues such as parking and usage fees.

The parties were unable to reach a voluntary settlement for a new collective bargaining agreement and have submitted final offers on the matters that are in dispute. Those matters are:

The length of contract (duration of agreement); Wages; Health insurance premium sharing; Red circling of Captains; and Elimination of Steps 4 and 9 in pay ranges 17B and 18B of the Salary Schedule.

---

<sup>1</sup> The official title for the position as shown on Union Exhibit # 40 is Firefighter and Equipment Operator, but will be referenced in this award as Firefighter/Heavy Equipment Operator

The County's final offer is for a two-year collective bargaining agreement for the calendar years 2009 and 2010. The Association's final offer is for a three-year contract for the calendar years 2009, 2010, and 2011.

The County's final offer on wages is for a wage freeze in 2009 and 2010, and because its final offer is for only a two-year contract contains no wage offer for the 2011 calendar year. The Association's final offer on wages is for a 2% wage increase effective pay period 8 in 2009, a 2% wage increase effective pay period 21 in 2009, a 2% increase effective pay period 8 in 2010, a 2% increase effective pay period 21 in 2011, a 2% increase effective pay period 8 in 2011, and a 2% increase effective pay period 21 in 2011. The Association final offer also proposes to eliminate steps 4 and 9 in pay ranges 17B and 18B effective upon the date of the decision in this matter, whereas the County proposes no change to the current pay structure, and maintains the status quo.

The Association's final offer also contains a proposal to include the following language in the new collective bargaining agreement concerning the possible elimination of the Captain classification.

Regarding captain's pay, the County offer is to maintain the status quo. The Association's proposal is "If the County moves forward with the elimination of the Captain's position within the bargaining unit, all Captains shall have their wages frozen at their current rate, regardless of the classification they are moved in to. Their wages shall remain frozen until such time as the new classification wages catch up to or exceed the frozen wage at which time all such employees will be paid the higher wage. In addition, the Union demands to bargain the impact of the effects to any other mandatory subjects as a result of such change."

Regarding health insurance, the County's proposal is for employees to pay \$75 for single coverage, or \$150 for family coverage if enrolled in the PPO in 2009, and if enrolled in the HMO, employees would \$35 for single coverage or \$70 for family coverage in 2009. The County proposes to maintain the 2009 employee contribution rates for the contract year covering 2010. The Association's proposal for 2009 is the same as the Employer's proposal. However, for 2010 the Association proposes that employees

enrolled in the PPO would pay \$90 for single coverage and \$180 for family coverage. Those employees enrolled in the HMO would pay \$50 for single coverage or \$100 for family coverage. For the 2011 contract year, the Association proposes that employees enrolled in the PPO would pay \$110 for single coverage and \$220 for family coverage. In 2011, employees enrolled in the HMO would pay \$70 for single coverage and \$140 for family coverage.

STATUTORY CRITERIA:

Section 111.77(6)

\* \* \*

(am) In reaching a decision, the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to the factors under par. (bm). The arbitrator shall give an accounting of the consideration of this factor in the arbitrator's decision.

(bm) In reaching a decision, in addition to the factors under, par. (am) the arbitrator shall give weight to the following factors:

bm)1.

1. The lawful authority of the employer.

(bm)2.

2. Stipulations of the parties.

(bm)3.

3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

(bm)4.

4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(bm)4.a.

a. In public employment in comparable communities.

(bm)4.b.

b. In private employment in comparable communities.

(bm)5.

5. The average consumer prices for goods and services, commonly known as the cost of living.

(bm)6.

6. 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.

(bm)7.

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

(bm)8.

8. 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 public service or in private employment.

POSITIONS OF THE PARTIES:

County:

The County stated that it's goals for the 2009-2010 contract negotiation with all County Bargaining Units were reflected in its Org. Unit 1972 which set forth the contract changes which were to be negotiated in order to achieve 2010 cost savings, and which were crucial to the County's fiscal well being. These necessary contract changes included salary freezes; furlough days; cutbacks and overtime costs; increases in health insurance plan design, such as deductibles, co-payments, and out-of-pocket maximums; and changes to retirement benefits. A number of other County bargaining units, which had settled by the time of the May 17, 2011 hearing in this matter, had voluntarily agreed to a number of these County bargaining goal changes. However, none of the concessions and changes which were agreed to by a majority of other County bargaining units have been proposed to the County or this arbitrator by the Union in this case and, the Union's final offer stands well outside of the internal County settlement pattern, not only in the matter of the unreasonable size of the Union's salary proposal, but also in its failure to address any of the contract concessions that most County bargaining units agreed to for 2009-2010.

The County argues that it has reached nearly identical settlements in five of its seven bargaining units, and has implemented the same wage provisions for its non-

represented employees for 2009 and 2010. The ASFME and the Deputy Sheriffs' were the only units not settled at the time of the arbitration hearing in this matter. One of those units, due to the legislative enactment of Wisconsin Act 10, the AFSME bargaining unit, no longer has the right to pursue interest arbitration for the 2009-2010 contract. If it reaches impasse with the AFSME bargaining unit, the County would have the right to unilaterally implement its final offer.

The County contends that while its offer is consistent and in line with the other internal bargaining unit settlements it has achieved, the inescapable and incontrovertible conclusion is that the Association wage offer is not. The County asserts that its offer is internally consistent, fiscally responsible, and the more reasonable of the parties offers. It argues that of the settled bargaining units, all have agreed to a zero percent (0%) increase for 2009, and only the nurses bargaining unit received wage increases for 2010. Whereas in this case, the firefighters are proposing increases in 2009 and 2010 which have a cost effect in each of those years of 3%, but a 4% lift which is significantly greater than the nurses wage increase of 1.25% effective January 1, 2010, 1% effective June 27, 2010, and 1.25% effective January 1, 2011, and 1% effective June 26, 2011. The County points out with respect to the nurses settlement agreement, the nurses also agreed to increase premium payments and an increase in out-of-network co-insurance payments from 20-30% in exchange for the 2010 wage increase it was granted. It also notes that the nurses had issues different from the remaining bargaining units, which warranted a break from the internal settlement pattern. The County argues that the nurses wage lift over three years is 4.5%, and that is to be contrasted with the 12% three year salary lift contained in the Association's final wage offer.

The County argues that the Association's final offer also contains a proposal for the elimination of steps 4 and 9 in pay ranges 17B and 18B effective upon receipt of the arbitration award. It argues that none of the other County bargaining units proposed elimination of any of the steps in their respective salary schedules, and none of the voluntary settlements reached with any of the other bargaining units included elimination of any steps. It does note that in two settled units, Technicians and

Attorneys, they agreed to a step freeze in 2010. The Employer also argues that it is disingenuous on the part of the Association to claim that this step elimination proposal will have “no economic impact” on the County. A review of employee seniority dates and placement on the salary schedule reflects that the proposal is far from cost neutral.

The County contends that its health insurance premium contribution proposal is a practical one in light of the timing of this arbitration proceeding because the proceeding an award in this case will occur subsequent to the expiration of the County’s 2009-2010 contract term proposal. The County was aware of this timing when final offers were certified by the WERC on December 29, 2010, and was aware that it would be impractical and an administrative nightmare to retroactively alter health insurance plan design changes identical to those agreed upon with other internal bargaining units for 2010. That is why it didn’t propose the changes which the internal comparable supported. The County was not interested in increasing the employee contributions to the cost of premiums for 2010, even though internal settlements support that increase, because it did not want to retroactively attempt to obtain the payment from employees. Therefore, even though the County’s final offer relative to employee premium contributions for 2010 is not identical to the internal comparables, it is the most practical approach and actually accrues to the benefit of the employees. The County notes that the Association’s proposal appears to be an attempt to maintain consistency with the internal settlement pattern. The consistency is true in the case of the premium amounts proposed by the Association. However the retroactive collection of premium amounts from the members of the Firefighters Unit would, in actuality, create an administrative burden for the County.

The County also contends that compared with the established external comparable bargaining units Milwaukee County Firefighters are competitively compensated. It also argues that the wages earned by its firefighters are enhanced by their superior benefit package, which provides a total compensation package that clearly exceeds that of the comparables. It notes that the compensation package includes call-in pay, compensatory time, sick leave and sick leave payouts, uniform allowance, retiree health insurance,

EMT training certification pay, health insurance opt-out benefit, longevity pay, a 125 Plan, health insurance, paid holidays, paid vacations, educational bonus and incentive payments. The County concludes that an analysis of the various fringe benefits provided to its firefighters fully supports and establishes that the total wage and benefit package provided by the County to its firefighters is superior to the benefits offered by any of the other comparable departments in Milwaukee County. It also argues that the evidence with regard to the total compensation package unequivocally establishes that there is no need for any “catch up” adjustment to be provided to County employees when one considers their total compensation package.

The County also argues that the external firefighter comparables, which have been accepted in previous decisions as a measure of the value of salaries and benefits provided to Milwaukee County Firefighters are relevant and valid for this dispute. It contends that those nationally comparable fire employees have also experienced wage give backs during the 2009-2010 contract term. It argues that when the Austin, Texas settlement of 9% in 2009 is excluded from the group of external comparables, the 2009 average wage increase lift is equal to 1.5% which is far less than the 4.4% lift which is being proposed by the Association in this case. It also notes that three of the national comparables received salary cuts for 2010, and four of those received salary freezes in 2009. The County insists that when the external comparables are viewed within this context, the County’s final offer is fully consistent with the pattern of these national airport fire department settlements for 2009-2010, whereas the Union’s final offer is inconsistent with this pattern.

Regarding the Association’s proposal for the elimination of two salary schedule steps, the County argues that such a proposal when considered in light of Wisconsin arbitral precedent requires that the following requirements be met: 1. Has the party proposing the change demonstrated a need for the change? 2. If there is a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change? 3. Has the party demonstrated such criteria by clear and convincing evidence? In this case, the County argues that there is no record evidence that the Union attempted



to obtain this salary structure change in negotiations, and there was no evidence establishing any documented need for such a change when the Union made a similar proposal in 2007-2008 interest arbitration case. And, the Union totally ignored Arbitrator Robert's admonition in his decision regarding the 2007-2008 collective bargaining agreement interest arbitration proceeding wherein he stated: "Such a substantial restructuring should, in the view of the undersigned, contain a quid pro quo". Thus, the Employer concludes that the Union has not met any of the established arbitral criteria to justify its proposal for the elimination of two salary schedule steps.

The County also believes that the Union is required to provide a quid pro quo when it makes such an unreasonably and outrageously large, across the board, wage increase proposal because such can only be viewed as a drastic change in the status quo. In this case there are no internal County settlements, no external Milwaukee County area settlements, and no national firefighter settlements which come even close to the three year 12% salary increase being proposed by the Union. Thus, the Union's wage proposal can only be viewed as a drastic alteration to the status quo, which requires a quid pro quo. Here, the Association has not fulfilled the arbitral requirement of offering a quid pro quo to achieve its proposed salary increases, and proposes no compromise, no concessions, and no recognition of the County's fiscal exigencies that can justify or support its exorbitant salary proposal.

The County also argues that the current economic climate supports the County's final offer. The dire financial reports regarding the County's fiscal situation make clear that it would not be in the best interest of the citizens of Milwaukee County to exempt or insulate the firefighters from the current financial crisis. The County believes that its offer is the most reasonable in view of the well documented fiscal emergency which is being experienced in the local economy. Thus, it believes the County's final offer should be adopted based upon local economic conditions.

The County also rejects the Union's argument that airport governance is the jurisdiction that should be used in assessing the merits of the parties' position in this interest arbitration. The County argues that this position defies logic. It asserts that the

Airport Division of the Milwaukee County Department of Transportation and Public Works is not one of the parties to this dispute. The Airport Division does not have a collective bargaining agreement with the Union, and does not provide benefits to the airport firefighters. The airport is a division of the Milwaukee County Department of Transportation and Public Works. The County is responsible for adhering to its contract with the firefighters, a reality which does not change whether the airport itself is profitable or is buried in debt. The airport is not a private profit-sharing corporation. The airport is not a separate entity, but is owned and controlled by Milwaukee County. The municipal employer in this case is Milwaukee County and the jurisdiction of the employer is Milwaukee County. The Association did not cite nor is there any Wisconsin case law precedent establishing an airport as a jurisdiction or as a municipal employer as defined by Section 111.70(1)(j), Wis. Stats. Consequently, Milwaukee County is the municipal employer and is the jurisdiction that must be used in determining local economic conditions. The Union's effort to divert the attention of the arbitrator by falsely claiming that these employees are not employees of Milwaukee County cannot withstand close scrutiny or legal analysis. Furthermore, the County concludes that the finances of the airport cannot be used to further the Association's agenda.

Union:

The Union argues that the evidence clearly establishes that Milwaukee County Airport firefighters continue to be grossly underpaid in comparison with their intra-industry comparables. It also contends that the County has not established an internal settlement pattern sufficient to require the arbitrator to impose the same pattern on this bargaining unit. The Union believes that it has provided sufficient evidence and argument from which to conclude that it has made the more reasonable final offer.

First, it notes the evidence paints a clear picture that Milwaukee County Airport is doing very well, and has great potential to continue the record growth experienced in the past several years. That evidence shows a receipt from the airport rental car business that significantly increased from 2009 through 2011. The evidence also established the rise of the Milwaukee County Airport from 52nd in 2008 to 49th in 2009 among the 150

busiest airports in the nation. The record passenger tally of over 9.8 million passengers in 2010 placed Milwaukee County Airport as the 42nd busiest airport in the nation based upon 2009 data. The Union also notes that Milwaukee County Airport is not funded as a part of the property tax levy. Rather, the airport operates as an enterprise fund under the lawful authority of the County. The lease agreements that the County has with the airlines operating at the airport and various other user fees generate revenues sufficient to cover or exceed the expenses of the operation of the airport. As such, the Union contends that the arbitrator must consider the airport itself as the jurisdiction of which the economic conditions are given greater weight according to the new statutory requirement. Any decision in this case giving airport firefighters additional compensation will have no impact on the property tax levy of Milwaukee County.

The Union also contends that the County certainly has the ability to afford the cost of the Union's final offer. County Controller Manske testified that "from a fiscal perspective, it would have a cost impact on the airport and on the costs that they have since they cover most of their costs through their user fees." So it would have an impact on their costs and on their expenses there at the airport. The Union states that it is fully aware that its final offer does have an impact, but it is important to examine whether the impact is significant. Manske's testimony regarding the fiscal state of the airport is speculative and not supported by any evidence provided by the County. The Union concludes that Manske's testimony simply cannot be relied upon to come to the conclusion that the airport is in any kind of financial trouble whatsoever. The Union also contends that the testimony of Vice President and Chief Economist of the Air Transport Association of America (ATA) in the 2005-2006 interest arbitration proceeding is relevant today. At that hearing he testified that

"Third, while the County is experiencing a fiscal crisis, there is no evidence the airport is, and furthermore, the cost of any 'catch up' pay increase will not directly and immediately impact the County's finances as the cost will be absorbed by the airlines utilizing the airport. And, while the airline industry is also suffering financially, the amount involved in this dispute in the context of overall airline finances is insignificant."

The Union contends that the County is relying on the testimony of Manske to paint a bleak picture, but Manske is not an expert witness for the airline industry, and

therefore, his very limited testimony regarding the financial state of the airlines operating at the Milwaukee County Airport should be given no weight at all. The airport was thriving in 2005-2006, and continues to thrive today with record numbers of passengers year after year. The evidence also establishes that the Milwaukee County Fire Department operates under its budgeted amount, and the County offered no evidence or testimony that it does not have the financial ability to meet the costs of the Union's final offer. Consequently, the Union concludes that the arbitrator should find that its offer is the more reasonable.

The Union also argues that there is not a negative impact on the interests and welfare of the public if its final offer is selected. It contends that the County has a financially thriving entity in Milwaukee County Airport, which is not funded through the property tax levy, and consequently, there is no impact on County taxpayers. Lease agreements and user fees will absorb the cost of the Union's final offer. It also asserts that there is no identifiable consequence of the costs that will be passed on to users at the airport.

In support of its wage offer the Union asserts that the County's airport Firefighter classification is unique because it combines the duties of what the comparable fire departments treat as separate classifications, Heavy Equipment Operator (HEO), Drivers, Engineers, and Firefighter. Milwaukee County airport on the other hand has only one classification- Firefighter with a 10 step pay range as compared to other comparable departments that have an average of 6 steps for Firefighter, 4 steps for HEO's, and 2 steps for Lieutenants and Captains. It argues that if the County's offer for a two year wage freeze is adopted the County Airport Firefighter will earn 21.33% less than the comparables Firefighter classification, 28.80% less than the comparables top step HEOs, and 39.64% less than the comparables top step Lieutenants at the end of 2010. The Union contends that those wage disparities will close by the end of 2011 if the Union's final offer is selected. It argues that the evidence shows that County firefighters are grossly below the average for the comparable fire departments in both pools - Milwaukee County area comparable pool and US airports pool. It asserts that it

is unacceptable to allow the County to continually degrade the standing of its firefighters with its comparable departments. It states that is why it has proposed eliminating Steps 4 and 9 of the pay range effective upon the date of the arbitrator's award in this matter. This would reduce the number of steps from 10 to 8 and bring the county closer to the average of 6 steps among the Milwaukee County area comparable pool while not increasing the County's cost during the contract's term. The Union also argues that even with its step reduction proposal the County's firefighters will still remain significantly behind the comparables.

The Union also believes that the average CPI and overall compensation criteria favor adoption of the Union's final offer. The County is offering a two year wage freeze whereas the CPI for 2009 through April 2011 increased by 4.2%. The average wage increase for the comparable airports that have settled contracts for 2009 through 2011 is 5.2%. Consequently, if the County's offer is adopted the wage disparity will continue to grow. And, the Union contends that the additional benefits like vacation, sick leave, etc that County firefighters receive are below average in comparison with comparable fire departments. The Union argues these additional factors also support adoption of its final offer.

The Union also contends that there were a change in circumstance during the pendency of this arbitration proceeding and that change was the requirement that the arbitrator give "greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to the factors". It argues that under that under that criteria the arbitrator should adopt the Union's final offer because of the thriving status of the Milwaukee County Airport and the fact that there si no impact on the county tax levy for the airport's operation because those costs are covered by the user and fees.

The Union asserts that the criteria "such other factors", which are normally taken into consideration in interest arbitrations supports selection of the Union's final offer. It states that selection of the County's 2 year offer would have the parties bargaining retrospectively since a year of the successor agreement will already have passed, whereas selection of its offer will permit prospective negotiations for a successor agreement. It also believes that its offer for increases to the employee's contribution to health insurance

premiums in the 2<sup>nd</sup> and third years of its contract proposal allows the County to generate cost savings and the Union fully anticipated that the County would retroactively collect those contributions. The Union also characterizes those employee premium contribution increases as a quid pro quo for its elimination of the two steps of the 10-step wage schedule, even though no employee will benefit from the reduced steps during the contract term.

The Union concludes that it has the more reasonable final offer and believes it should be the offer selected.

#### DISCUSSION:

As can be seen from the parties' final offers the penultimate issue in this case is wages, and the significant disparity in the parties' final offers. The County has proposed a two-year contract with a wage freeze in both 2009 and 2010 contract years. The Union, on the other hand, proposes a three-year contract, 2009 through 2011, with wage increases in each contract year. The Union proposes that there be a 2% ATB increase effective pay period 8, and a 2% ATB increase effective pay period 21 in each of the three contract years. It is not disputed that the Union's split annual increases in each contract year has a cost to the employer of 2% in each contract year, but has a wage lift of 4% in each contract year.

The Union's costing data shows that for calendar year 2009 the base wage lift for Firefighter/Heavy Equipment Operator is equal to \$2228 annually per employee with a cost to the County of \$1060; for calendar year 2010 the base wage lift for Firefighter/Heavy Equipment Operator equates to \$2317 annually per employee with the cost to the County in 2010 of \$1108; and for calendar year 2011 the base wage lift under the Union's final offer for Firefighter/Heavy Equipment Operator equates to \$2410 annually with a cost to the County in 2011 of \$1153. The Union's data for Captains shows that if its final offer were selected it would result in a base wage lift for Captains in 2009 equal to \$2341 annually per employee with a cost to the County of \$1120; for calendar year 2010 the base wage lift for Captain equates to \$2436 annually per employee with the cost to the County in 2010 of \$1165; and for calendar year 2011 the base wage lift under the Union's final offer for Captain equates to \$2535 annually with a cost to the county in

2011 of \$1212. The County's final offer on wages is for a wage freeze in 2009 and 2010, and obviously has no wage lift or cost associated with it.

In addition to the proposed wage increase, the Union's final offer also proposes to eliminate steps 4 and 9 from the wage schedule effective upon the issuance of the award in this matter. Because this award is being issued after December 31, 2011, which would be after the contract expiration date were the Union's final offer to be selected, there will be no cost to the County during the contract's term. The County's final offer makes no proposal regarding any modification to the existing wage structure.

The County has argued that the Union's wage offer is "outrageous" and excessive, particularly at a time when the County is experiencing financial distress. The Union, on the other hand, has deduced evidence that the Firefighter/Heavy Equipment Operators' wages are significantly below the average wage of its comparables. In the past, the parties have used both municipal fire departments geographically located within the boundaries of Milwaukee County, as well as airport fire departments in other locales within the United States. While utilizing other airport fire departments provides a comparison with employees performing similar work, airport firefighting, as opposed to comparing with geographically proximate municipal fire departments, but not airport fire departments, the undersigned believes that the most meaningful comparables when evaluating wage proposals are the geographically proximate municipal fire departments because they are located within the Milwaukee County labor market and impacted by the same or similar economic conditions.

Utilizing the geographic proximate local municipal fire departments within the County, the Union has made a persuasive case establishing that the Milwaukee County Airport Firefighter/Heavy Equipment Operator wage schedule maximum rate/top rate is significantly below the average of the schedule maximum/top rate of the Firefighter classification within the Milwaukee County area fire department comparables. The Union has also adduced evidence regarding the wage rates for Heavy Equipment Operators and Captains in the Milwaukee area fire department comparable group, and argues that those rates of pay should also be utilized in any wage comparison. I disagree with respect to Heavy Equipment Operator because there is insufficient record evidence to reach any meaningful conclusion regarding a comparison of the Milwaukee County Airport

Firefighter/Heavy Equipment Operator classification vis-à-vis the Heavy Equipment Operator classification among the comparable Milwaukee County area fire departments. Consequently, my analysis of the Unions “catch-up” argument involves only a comparison of the top rate of pay of the Milwaukee County Airport Firefighter/Heavy Equipment Operator to the top wage rate of the Firefighter classification among the established comparable fire departments within Milwaukee County itself.

The Union's documentary evidence establishes that in 2009 the Milwaukee County area municipal fire department comparables (Cudahy, Franklin, Greendale, Greenfield, Milwaukee, North Shore, Oak Creek, St. Francis, South Milwaukee, Wauwatosa, and West Allis) granted an average across-the-board wage increase of 2.7%. Additionally, in 2009 Greenfield, North Shore and West Allis granted wage lifts of 3%, 3.25% and 3% respectively. None of the comparables in 2009 experienced a wage freeze. For 2010, ten of the eleven comparables had reached agreements at the time of the hearing herein, and the average across-the-board wage increase among those 10 comparables was 1%. St. Francis and South Milwaukee had wage freezes in 2010 and North Shore granted a 0.75% increase effective December 31, 2010. However, three of those 10 comparables granted wage lifts in excess of the average 1% ATB increase. Cudahy, Greenfield and West Allis each granted a 3% wage lift for 2010. In 2011, the average across-the-board wage increase among the seven comparables that had settled contracts was 1.77%. Two of those comparables granted wage lifts in 2011 in excess of the 1.77% ATB – Franklin 2% Greenfield 3%. None of the settled comparables experienced a wage freeze for calendar year 2011.

The Union's evidence regarding the disparity between the top rate for a Milwaukee County Airport Firefighter/Heavy Equipment Operator and the average of the 11 Milwaukee County municipal comparable Firefighter top rates shows that the Milwaukee County Airport Firefighter/Heavy Equipment Operator top rate at the end of calendar year 2008 was \$55,129 as compared with the average of the comparables of \$61,162 for a difference of \$6033. In 2009 the County proposes a freeze, consequently the Airport Firefighter/Heavy Equipment Operator top rate will remain at the 2008 annual wage of \$55,129, whereas if the Union's offer is selected the top rate in 2009 would increase to \$57,334 as compared with the average among the comparables of \$61,162 for a difference



of \$3828 per year. Again, for 2010 the County proposes a wage freeze, consequently the top rate for Airport Firefighter/Heavy Equipment Operator would remain at \$55,129 per year. However, if the Union's final offer is selected the top rate for Airport Firefighter/Heavy Equipment Operator would increase to \$59,627 annually, which compares to the average top rate for Firefighter among the municipal comparables of \$62,393 per year for difference of \$2765. If the County's offer is selected the difference between the top rate for Airport Firefighter/Heavy Equipment Operator and the average among the municipal comparables for the top rate of firefighter of \$62,293 widens to \$7264 annually. Clearly, the differential between the County Airport Firefighter/Heavy Equipment Operator top rate and the average top rate for Firefighter among the Milwaukee County municipal fire department comparables grows larger if the County's final offer is selected, whereas under the Union's final offer the differential would decrease.

The County's final offer also, does not include a wage proposal for 2011. The Union again repeats its proposal for a 4% wage lift in 2011, and if its final offer is selected would raise the top rate for the Firefighter/Heavy Equipment Operator at the Milwaukee County Airport to \$62,012 annually as compared with the average among the settled municipal comparables of \$63,059 for a difference of \$1047. The County's settlements with its other bargaining units, attorneys, machinists and aerospace workers, and technicians, engineers and architects were for three-year agreements (2009, 2010, 2011) with a wage re-opener in 2011. The County negotiated a 3-year contract with its nurses' bargaining unit that included wage increases of 2.25% in 2010 and 2011.<sup>2</sup> The County reached a settlement with its Deputy Sheriffs' bargaining unit in late November of 2011, and that settlement provided for a wage freeze in 2009, 2010, and 2011 and a 4% ATB increase to the base rate effective October 28, 2012.

The foregoing summary of the Union's documentary evidence persuades me that County Airport Firefighter/Heavy Equipment Operators are in a catch-up position wage wise with respect to their Milwaukee County municipal fire department comparables. But, is now an appropriate time, in this economic climate, to be awarding catch-up increases even where the evidence establishes doing so would be warranted. The County, which

---

<sup>2</sup> 1.25% effective 1/1/2010; 1.0% effective 6/27/2010; 1.25% effective 1/1/2011; 1.0% effective 6/26/2011.

doesn't address whether there is a need for catch-up, argues that it is experiencing financial distress and should not be required to provide a wage increase to airport firefighters of the magnitude being proposed by the Union. However, this same climate existed when it negotiated with its nurses' bargaining unit and although there was a wage freeze for calendar year 2009, the County granted wage increases for the nurses' bargaining unit for both 2010 and 2011 calendar years. The County argues that the nurses bargaining unit "had issues which differed from the other bargaining units and those issues warranted a break from the internal settlement pattern". Clearly, as discussed above, the Union has persuasively argued that it has a "catch-up" issue. Additionally, it is not disputed that any wage increase granted in this bargaining unit will have no impact upon the County tax levy because the Airport's operating costs are covered by the fees the County charges the airlines utilizing the airport. Thus, the admitted financial distress that the County is experiencing in these volatile economic times, which no doubt has driven the settlements with its other bargaining units, and which it relies upon in this case to support its argument for a wage freeze, as well as its contention that the Union's offer should be rejected, does not carry the weight that it obviously carries in those other bargaining units. I have stated many times before in other cases that internal comparability is a significant, and in many cases controlling factor, in determining which final offer is selected. In this case however, I believe that while internal comparability weights in favor of a wage freeze, the County deviated from that course and made an exception for its nurses notwithstanding its economic situation. And, the Union has also persuasively argued that an exception should be made in this case because of the demonstrated catch-up position of the Airport Firefighter/Heavy Equipment Operators.

So while the economic conditions of Milwaukee County are entitled to greater weight than any of the other statutory criteria in this case those economic conditions have not prevented the County from granting significant wage adjustments to its nurses' vis-à-vis the wage freeze it is offering this bargaining unit bargaining. Also, the nurses' bargaining unit contains a significantly larger number of employees, and consequently, the cost of the wage adjustments granted in that bargaining unit will, not doubt, dwarf the cost of providing the catch-up adjustments contained in the Union's final offer here. And, the County provides no persuasive explanation for how its economic circumstance permits it

to grant wage adjustments for its nurses' bargaining unit while at the same time precludes granting catch-up wage adjustments in this bargaining unit.

Also significant, even though entitled to less weight in selecting a final offer, the comparable municipal fire departments all located within Milwaukee County granted wage increases in 2009, 2010 and 2011 with only two of those municipalities negotiating wage freezes with their fire fighter bargaining units in 2010. And, Greenfield negotiated 3% increases to their rates in all three years, 2009, 2010, and 2011. West Allis negotiated 3% increases with its firefighters in 2009 and 2010. When viewed in light of what occurred in "public employment in comparable communities" [(bm)4.a] that are located within Milwaukee County, the Union's final offer does not appear as outrageous. Regarding the County's contention that selection of the Union's final offer would not be in the best interest of the citizens of Milwaukee County, it is important to recognize that the citizens in the comparable municipalities within Milwaukee County, through their elected representatives, saw fit to negotiate wage rate increases, and in a few cases those increases were close to the level the Union seeks here.

The Union's final offer also proposes the elimination of steps 4 and 9 in pay ranges 17B and 18B effective upon the date of the award in this matter. The County has a 10-step wage schedule as compared to the other comparable municipal fire departments that have an average of 6 steps for Firefighter. The County argued that the Union has not satisfied the established arbitral prerequisites for achieving such a significant change in the wage structure through arbitration, i.e. demonstrate by clear and convincing evidence a need for the change, and provide a quid pro quo. It also argues that the Union did not seek this change in negotiations and has ignored Arbitrator Robert's admonition in a 2007-2008 arbitration decision that such a restructuring requires a quid pro quo.<sup>3</sup>

First, I am persuaded the Union has established the need for such a change. As was just discussed, the Airport Firefighter/Heavy Equipment Operators are in need of catching up to their Milwaukee County municipal Firefighter comparable counterparts. Some of that need to catch-up is also in the amount of time it takes for a Firefighter/Heavy Equipment Operator to reach the top step of the classification. The Union's final offer

---

<sup>3</sup> The County has also argued that a quid pro quo should be required for the significant wage increases the Union has proposed in its final offer.

would reduce the current number of steps from 10 to 8, still more than the 6-step average among the municipal comparables. And, while it is troubling that the Union didn't raise this issue during bargaining, that fact does not detract from the merits of its proposal. Also, it is the case that bargaining doesn't have to end once the final offer exchange begins. Consequently, the County was not precluded from engaging the Union in bargaining over changes to the wage structure once the Union proposed doing so during the final offer exchange process.

As for the issue of a quid pro quo and the County's contention that none had been proffered by the Union, the Union responds that it has proposed increasing the amount of the employees' share of the health insurance premiums in both 2010 and 2011. While the County dismisses that offer as not being a quid pro quo because its other settled bargaining units agreed to do the same, I do not. The County argues that it didn't include within its final offer a requirement that employees contribute more in 2010 and 2011, notwithstanding that the pattern in its settled bargaining units was that employees were required to make such increased contributions, because it would be impractical and an administrative nightmare to retroactively alter health insurance plan design changes identical to those agreed upon with other internal bargaining units for 2010. The undersigned doesn't find that to be persuasive logic for deviating from the internal pattern it otherwise wants to impose upon this bargaining unit. And, because the County did not request this bargaining unit to increase the employees' share of the health insurance premium, in the undersigned's opinion, the Union's final offer doing so does constitute a quid pro quo. It is the Union offering to give up something of value, i.e. having employees pay a greater share of their health insurance premium cost. The County might argue about the sufficiency of the quid pro quo, but in light of the demonstrated need for wage rate and structure catch-up I am persuaded it is sufficient in this case.

Regarding the parties' final offers on employee health insurance, I find that the Union's final offer preserves internal comparability on a significant fringe benefit and for that reason alone is preferable to the County's final offer on health insurance. For a County experiencing financial distress it is puzzling that it allowed administrative concerns over retroactively securing the increased premium contributions from employees to trump gaining some limited relief in the cost of providing employees with health insurance. And,

as should be obvious to the reader by now, because the undersigned will be selecting the Union's final offer in this case, I can see no reason why the County would not be able to deduct those additional premium contributions from the retroactive pay these bargaining unit employees will receive under the Union's final offer.

Another issue in dispute is the Union's proposal to, in effect, "red circle" the Captains' wages at the then current rate should the County eliminate the Captain classification. The County represented that it had no intention of doing so. Furthermore, because this is such a minor issue it has had no impact in the deliberative process regarding which final offer to select.

The last item of difference in the parties' final offers is the term of the contract. The County's offer is for a two-year agreement, whereas the Union's final offer is for a three-year contract. The County entered into three-year agreements with a wage re-opener in 2011 with its other settled bargaining units, except for the Deputies' unit wherein the parties agreed to a four-year contract. In this case, the catch up wage issue is the most significant of the parties' differences and because I have concluded the Union's wage offer is preferable to the County's a three-year term is also preferred and is internally consistent with the County's other settlements.

Therefore, based upon the evidence, testimony, arguments, and application of the statutory criteria contained in Section 111.77(6) Wis. Stats. to the facts of this dispute the undersigned enters the following

### **AWARD**

The Union's final offer is selected and shall be incorporated into the parties' 2009-2011 collective bargaining agreement.

Entered this 18th day of January 2012.

Thomas L. Yaeger  
Arbitrator