

BEFORE THE ARBITRATOR

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In the Matter of an Interest Arbitration Between

**MILWAUKEE PROFESSIONAL FIREFIGHTERS'  
ASSOCIATION LOCAL #215**

and

**CITY OF MILWAUKEE**

**Case ID: 251.0004**

**Case Type: MIA**

**Decision No. 35703-A**

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**Appearances:**

**Mr. John F. Fuchs** and **Ms. Colette C. Reinke**, Attorneys at Law, Fuchs & Boyle, S.C., appearing on behalf of the Union.

**Mr. Thomas J. Beamish**, Assistant City Attorney, City of Milwaukee, appearing on behalf of the City.

**ARBITRATION AWARD**

The Union and Employer named above are parties to a collective bargaining agreement which expired on December 31, 2012. The parties filed an interest arbitration petition with the Wisconsin Employment Relations Commission, and a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. The parties submitted their final offers to the Investigator by May 1, 2015. On May 7, 2015, the Commission issued an Order appointing the undersigned to serve as the Arbitrator. Hearings were held January 19, April 11, 12, 13, 14, and 15, 2016 in Milwaukee, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on June 20, 2016.

## **FINAL OFFERS OF THE PARTIES**

### **City's Final Offer**

1. Article 1, Duration Article 1: Four years, January 1, 2013 through December 31, 2016.

2. Article 10, Base Salary:

(a) Effective Pay Period 1, 2013, a 2.0% across-the-board wage increase over Pay Period 26, 2012 wage rates.

(b) Effective Pay Period 1, 2014, a 1.0% across-the-board wage increase over Pay Period 26, 2013 wage rates.

(c) Effective Pay Period 14, 2014, a 1.0% across-the-board wage increase over Pay Period 13, 2014 wage rates.

(d) Effective Pay Period 1, 2015, a 2.0% across-the-board wage increase over Pay Period 26, 2014 wage rates.

(e) Effective Pay Period 1, 2015, a 2.9% pension offset (base-building and pensionable) for only those employees initially hired as a fireman prior to October 3, 2011.

(f) Effective Pay Period 1, 2015, increase the biweekly rates of pay by 1.0% for the title of Fire Paramedic and those Heavy Equipment Operators, and Lieutenants with a current EMT-II certification and available for assignment to paramedic duties. Effective Pay Period 1, 2015, Fire Captains with a current EMT-II certification and available for assignment to paramedic duties shall receive a 1%, pensionable, non-base-building supplement, payable biweekly.

(g) Effective Pay Period 1, 2016, a 2.0% across-the-board wage increase over Pay Period 26, 2015 wage rates.

(h) Effective Pay Period 14 a 2.0% across-the-board wage increase over Pay Period 13, 2016 wage rates.

(i) Effective Pay Period 25, 2016, a .25% across-the-board wage increase over Pay Period 14, 2016 wage rates.

(j) Effective Pay Period 1, 2016, a 2.9% pension offset (base-building and pensionable) for only those employees initially hired as a fireman prior to October 3, 2011.

3. Article 11, Hours of Work:

(a) Effective Pay Period 1, 2016, the normal hours of work shall increase from 49.8 hours to 53 hours per week.

4. Article 16, EMT-II Premium Pay:

(a) Effective the day after ratification by both parties, or the day after issuance of an arbitration award, add \$500 to the amount of premium pay that can be included as final average salary for purposes of computing the normal service retirement allowance.

5. Article 23, Pension Benefits:

(a) Effective the day after ratification by both parties, or the day after issuance of an arbitration award, the normal service retirement age shall increase to 52 with 25 years of service for those employees initially hired as firemen on or after that date.

(b) Effective PP 1 of 2015, employees initially hired as a fireman prior to October 3, 2011, shall begin paying 3.5% of earnable compensation toward the employee contribution of their pension.

(c) Effective PP 1 of 2016, employees initially hired as a fireman prior to October 3, 2011, shall pay 7% of earnable compensation toward the employee contribution.

(d) Effective the day after ratification, or the day after issuance of an arbitration award, any newly filed application for Duty Disability of any kind shall be referred to the Medical Council.

6. Article 24, Life Insurance:

(a) Effective 90 days after ratification by both parties or issuance of an arbitration award, the City shall provide base life insurance coverage of \$55,000 at no cost to the employee. Employees shall have the option to purchase additional life insurance up to 3 times their salary not to exceed \$300,000 and the option to purchase life insurance for spouses and dependents.

7. Article 27, Sick Leave:

Effective with the last payment in 2014, eligible employees shall be paid at his/her base salary hourly rate.

8. Article 48, Special Unit Pay:

(a) Effective with payments for calendar year 2013, increase special unit pay from \$240 to \$350.

(b) Effective for calendar year 2014, add the Tactical Emergency Medical Services Team as a special unit.

9. Update language and dates and delete any obsolete language.

**Association's Final Offer**

1. Article 1, Duration Article 1: Four year, January 1, 2013 through December 31, 2016.

2. Article 5, Subsection 6 - (Management Rights) - Minor Modification.

3. Article 7 - Grievance and Arbitration Procedure - Language Modification.

4. Article 10, Base Salary:

(a) Effective Pay Period 1, 2013, a 2.0% across-the-board wage increase over Pay Period 26, 2012 wages.

(b) Effective Pay Period 1, 2014, a 2.5% across-the-board wage increase over Pay Period 26, 2013 wage rates.

(c) Effective Pay Period 1, 2015, a 2.9% pension offset (base-building and pensionable) for only those employees initially hired as a fireman prior to October 3, 2011.

(d) Effective Pay Period 1, 2015, a 2.0% across-the-board wage increase over Pay Period 26, 2014 wage rates.

(e) Effective Pay Period 1, 2015, increase the biweekly rates of pay by 1.0% for the title of Fire

Paramedic and those Heavy Equipment Operators, Lieutenants and Captains with a current EMT II certification, available for assignment to paramedic duties.

(f) Effective Pay Period 1, 2016, a 2.9% pension offset (base-building and pensionable) for only those employees initially hired as a fireman prior to October 3, 2011.

(g) Effective Pay Period 1, 2016, a 2.0% across-the-board wage increase over Pay Period 26, 2015 wage rates.

(h) Effective PP 14, 2016, a .5% across-the-board wage increase over Pay Period 13 wage rates.

5. Article 16, Subsection 2 - EMT II Premium Pay - Modify language to reflect "6%" change from 5%. Update language removing "Milwaukee County Subsidy." Update language making "6%" pensionable.

6. Article 23 - Pension Benefits - Begin pension contribution upon execution of the agreement or the day after issuance of an arbitration award.

7. Article 23 - Pension benefits - Effective the date after issuance of an arbitration award, any newly filed application for Duty Disability of any kind shall be referred to the "Medical Council."

8. Article 23 - Effective the date after issuance of an arbitration award, the normal service retirement shall increase to 52 years of age with 25 years of service for those members hired after that date.

9. Article 23 - Effective the date after issuance of an arbitration award, employees initially hired shall begin paying the employee contribution of their pension.

10. Article 24 - Life Insurance - Effective the day after the issuance of an arbitration award, the City shall provide base life insurance coverage of \$55,000 at no cost to the employee. Employees shall have the option to purchase additional life insurance up to 3 times their salary not to exceed \$300,000.

11. Article 27 - Sick Leave: Effective 2013 eligible employees shall be at his/her rate base salary hourly rate.

12. Article 27, Subsection 5 - As a condition of eligibility for receipt of sick leave benefits, along with Doctors slip submittal, if required, departmental documentation submission must be made no later than the following pay period in which sick leave was used.

13. Article 32 - Vacations - Banking 72 hours in calendar year, if not used, will be paid out.

14. Article 49 - Special Unit Pay

(a) Effective with payments for calendar year 2013, increase special unit pay from \$240 to \$350.

(b) Effective with payments for calendar year 2014, add the Tactical Emergency Medical Services Team and the Honor Guard as a special unit.

15. Article 56 - Our Trade Regulations

16. Article 57 - Provision language recognizing previous city employees transitioning to Milwaukee Fire Department salary schedule language.

17. Article 58 - Additional Bargaining

(Arbitrator's note: the Association's full final offer as certified by the WERC is in more detail than the above summary. A summary was requested by the Arbitrator.)

### **STATUTORY CRITERIA**

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

(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:

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

arbitration or otherwise between parties, in the public service or in private employment.

**Greater Weight under Sec. 111.77(6)(am), Wis.Stats:**

Regarding the greater weight factor – the economic conditions of the jurisdiction – the City's Budget Director, Mark Nicolini, testified about the economic conditions of Milwaukee. He noted that the City's per capita property tax base ranked 10th among the 11 largest cities in the state, and it had the second largest decline between 2010 and 2015. The City's greater reliance on shared revenue -- over 26% of its budget, more than double the average of other large cities -- exposed it as there was a 15% decline in state shared revenue since 2004. Property owners pay the second highest tax rate of the 11 largest cities. In order to preserve services, the City used service charges, furloughs and budget restructuring. However, the City also took on new budget pressures related to pension costs and the housing crisis. Milwaukee also has relatively high unemployment and low personal income relative to other large cities.

Nicolini stated that wages and salaries are paid from the general city purposes budget which accounts for 42.1% of the property tax levy. Retirement provisions account for 31.8% of the levy and have grown significantly since 2009. The City is limited by the state legislature on increasing revenue through expenditure restraints and property tax levy limits. Nicolini pointed out that while new construction growth could provide \$3.8 million, the difference between the City's final offer and that of the Union's in this case is around \$9 million. The equalized value per capita tax base for Milwaukee was \$42,025, lower than the other large state cities except for Racine, with Madison at \$90,000 and the average over \$66,000. Compared to area communities, Brookfield's per capita value is nearly \$165,000 and the average of 18 county governments is \$86,666. Between 2009 and 2016, the assessed value for budget purposes declined \$5.1 billion dollars in Milwaukee. Only Racine slipped more in percentage terms. The tax rate for the City in 2014/2015 was \$28.62, second highest of the 11 cities, with Racine the highest.

Another economic factor cited by Nicolini is the housing crisis, with about 4,600 vacant properties. The City spent about \$14.5 million demolishing properties and it spends about \$1,900 annually on each vacant property for mowing the grass, shoveling snow, etc. A Strong Neighborhoods Plan was created to deal with housing foreclosures, and that department has cost about a million dollars in additional personnel costs in 2015 and 2016, with capital expenses of over 6.5 million. Milwaukee went from 110 foreclosures in 2008 to 1,318 in 2013. Also, the median adjusted gross income is \$22,940, the lowest among the 11 largest cities, with Waukesha the highest at \$39,080 in 2014. Unemployment rates in February of 2016 were 6.8% for Milwaukee, the second highest with only Racine higher at 7.9%. Between 1980 and 2010, the portion of city residents employed in manufacturing declined nearly 62%, while the percentage of families living in poverty increased by 125%.

The former assessment commissioner for the City, Mary Reavey, testified that declining property values from 2009 to 2014 have resulted in increased tax rates, and although

assessments in southeast Wisconsin increased by 2% in 2015, Milwaukee's continued to decline by 0.6%. Of the 11 largest cities in the state, Milwaukee usually has the highest or second highest effective tax rate and the second lowest per capita full value. Adding in the suburbs does not change the picture much. Milwaukee also has the largest amount of exempt property and nowhere to go to annex more property to add to the tax base.

Another witness testifying about economic conditions for the City was Merton Finkler, a professor of economics at Lawrence University in Appleton. He found that many people 65 and over were moving out of the City, and the older population tends to have higher incomes and be wealthier on the average. The City has a larger share of the population under 5 and a small share over 65. Among the 11 largest cities, Milwaukee ranks last in median household income and per capita income and has the highest percentage of population below the poverty line with 29.4% below the poverty line. Milwaukee has the second highest concentration of poverty nationally among the major Metropolitan Statistical Areas (MSA's). Finkler's data reinforced Reavey's data on full property values and effective property tax rates, and he noted that Milwaukee has much smaller tax base to be able to tap and it is already tapping it at a higher rate than other communities. Household income and per capita income are the lowest in the area of 20 surrounding suburbs and cities. Looking at national data, Finkler stated that Milwaukee ranked third among the largest cities in each state as for its residential property tax rate, with only Detroit and Philadelphia higher. Among distressed large cities, Milwaukee was ranked 7th out of 10 -- and three of those cities have declared bankruptcy (Detroit, San Bernardino and Stockton, California).

The Comprehensive Area Financial Report (CAFR) for the year 2014 noted that the City had a high investment grade bond rating which allows it to have low borrowing costs. The report also states that the City remains in good financial condition.

Nicolini also said that Milwaukee has eliminated 480 positions, four fire engine companies, and achieved budget reductions through furloughs. Local 2015 had no furloughs from 2010 through 2015, although other groups had from 2 to 4 days. The furloughs saved the City about \$19 million. The Fire Department has lost about 230 positions.

The Fire Department has approximately 300 firefighters, 175 paramedics, 160 fire lieutenants, and 58 captains in the bargaining unit. In management, there are 19 battalion chiefs, 3 deputy chiefs, 3 assistant fire chiefs, and the chief. There are 36 fire houses in the City, 32 fire engines, 12 ladder trucks, and 12 paramedic units. Usually 4 people are assigned to an engine, 4 to a ladder truck, and 2 to a paramedic unit. Assistant Fire Chief Gerard Washington testified that calls for paramedics, particularly calls for advanced life support, have increased significantly. He noted that the City's financial circumstances forced the Department to operate with brownouts, where some apparatus would not be staffed with personnel although that piece of equipment would be in service. There are also rolling brownouts, where the brownout is moved from one firehouse to another instead of it being a permanent firehouse that would not be staffed. No personnel have been laid off. In the last 3 or 4 years, 3 engines and 1 ladder were decommissioned or completely taken out of service, and the people assigned to those

pieces were reassigned elsewhere. Washington acknowledged that since 2004, about 200 front line positions have been eliminated through attrition. There are fewer firefighters assigned to engines and ladder companies since 2004, when there were 5 on each piece of equipment. When paramedics make a run, an engine or a truck goes along, and those runs have increased dramatically.

Parties' Arguments on Economic Conditions:

In its brief, the Union notes that the City's economic concerns of a declining tax base, shared revenue reductions, and state levy limits are common and general concerns felt across the state and not unique to the City. Everything to which witnesses testified are factors that existed throughout negotiations and during settlements with the police unions. The City does not show why these economic conditions were not an impediment to settling with two police unions. The City can afford money for 2,000 employees but not for 765. Further, the City does not show that the economic conditions described are new to the 2013-2016 period of this contract. There is no evidence that the City cannot pay.

The Union notes the Comprehensive Annual Financial Report (CAFR) for the year ending in 2014 lists revitalization efforts which have brought entities moving into Milwaukee, plus the North Western Mutual new office building, Potawatomi Casino's new hotel, etc. The City retained a high investment grade, a measure of the quality and safety of a bond based upon the issuer's financial condition. The City has replaced declines in state revenue with additional fees such as a solid waste fees. The report states that the City remains in good financial condition. The Union states that protective services will have a great impact on a municipality's budget but it is a critical function of the municipality. The CAFR notes that the Common Council approved a streetcar that would cost \$98 million for its first phase. There is a 50/50 private/public venture for a \$500 million arena for the Milwaukee Bucks. This all shows that the City has the financial ability to fund such developments, which are less important than essential emergency medical services and fire protection. Milwaukee's pension structure is among the healthiest in the country. Nicolini indicated that there has been an elimination of 480 funded full-time equivalent positions, including the elimination of 4 engine companies since 2009, saving about \$45 million a year. About 230 frontline firefighters have been eliminated. Local 215 has borne the bulk of the reductions.

In its brief, the City asserts that this statutory factor favors its final offer, with the Union's offer costing some \$9.1 million more than the City's offer. Slashing the size of the workforce, furloughing remaining employees, and reducing operating budgets is not the standard operating procedure of a government with rock solid finances. As a result of the Great Recession and market plunge, the City had to make a \$50 million dollar payment to the pension fund in 2010 (the total property tax levy is regularly \$250 million). Following the establishment of the Stable Employer Contribution Policy, the City makes annual pension contributions of \$60-62 million dollars through 2017. Nicolini noted that about 32% of the 2016 property tax levy was allocated for retirement provisions. The City's required 24.83% contribution rate is more than 80% above that required of other large cities in the state in the



WRS pension. Local 215 members receive guaranteed COLA's where the WRS payments can be reduced in a market decline.

The City points to the housing and foreclosure crisis, where vacant properties burden the City in many ways, such as no taxes coming in on the properties, and expenses going out to maintain or demolish them. The City has felt the effects of the decline in shared revenue to a greater degree than other cities or suburbs. Between 2003 and 2015, the decline in inflation-adjusted dollars in state aids amounts to \$94.5 million, which would pay salaries of around 1,900 employees on an annual salary of \$50,000. The City has needed to deal with state levy limits, and an optimistic outlook of an increase of \$3.8 million is still overwhelmed by the Union's final offer costing \$9.1 million more than the City's final offer. The City is further constrained by the State's expenditure restraint program. The City has the lowest equalized value per capita , while the tax rate is the second highest among the state's largest cities. The City is effectively land locked and cannot grow a tax base through annexations as other cities have done. The City's dependent population -- under age 5 -- has grown while its share of those 65 and older has declined. Milwaukee ranks last in median household income in the state's largest cities. There is a high rate of poverty, and the City's residents should not be saddled with the substantial costs in Local 215's final offer.

In its reply brief, the Union asserts that the City describes an economic picture reflecting declines in Milwaukee that are not unique to large American cities, dating back to 1980. These economic circumstances existed when the City settled with the police unions. The 36 year historical period should not control the current 4 year contractual period. Local 215's final offer serves the weight to be given to the economic condition, as the ATB raises result in a lesser proportionate cost to the City than its police, who number three times as many members. Also, Local 215 has been reduced in size from 986 members to 756 members. It has borne more than its proportionate share of accommodating the economic picture.

In its reply brief, the City disputes the Union's statement that the declining tax base, revenue reductions and state levy limits were general and common concerns felt by municipalities across the state. Nicolini testified that the City's reliance on shared revenue has resulted in a greater exposure to the City than other local governments. His testimony indicated that while all those factors exist for all municipal governments in the state, those factors have a degree of intensity much greater in the City.

The City says it settled in December of 2015 with the two police unions because they agreed to make their member contributions to the pension contemporaneously with the pension offset payments, unlike Local 215. Also there were no significant dollars to a sizeable percentage of their memberships like Local 215's proposal for paramedics. And the settlements did not exceed the budgetary authority for settlements by \$9 million as in this case. The City's financial challenges were not an impediment to settling with those unions. The City also objects to the Union's suggestion that the economic circumstances are no different than in the past. The pension cost (noted above) cordons off nearly 25% of the annual property tax levy. The City will lose \$3-4 million due to recent state legislative action. The City has shown the

change in economic circumstances relative to a decade ago, though prudent management has spared it from harsher consequences. CAFR, as quoted by the Union, does not support the conclusion that the City is in solid financial condition, and even notes the post-employment obligations and restrictions on charges for services.

**Wages & Pensions:**

The City's wage and pension offer is:

2013 - 2% ATB - pay period 1

2014 - 1/1% ATB - pay periods 1 & 14

2015 - 2% ATB - pay period 1

2015 - 2.9% pension offset - pay period 1 (base-building and pensionable) for those employees initially hired as a fireman prior to October 3, 2011

2015 - 1% pay period 1 for fire paramedics, heavy equipment operators, and lieutenants with EMT-II certification and available for assignment to paramedic duties. 1% pensionable, non-base-building supplement, payable biweekly for fire captains with current EMT-II certification and available for assignment to paramedic duties.

2016 - 2% ATB - pay period 1

2016 - 2% ATB - pay period 14

2016 - .25% ATB - pay period 25

2016 - 2.9% - pay period 1 (base-building and pensionable) for those employees initially hired as a fireman prior to October 3, 2011

Article 16 - EMT-II premium pay - day after ratification or day after issuance of an arbitration award, add \$500 to amount of premium pay that can be included as final average salary for purposes of computing the normal service retirement allowance

The Union's wage and pension offer is:

2013 - 2% ATB - pay period 1

2014 - 2.5% ATB - pay period 1

2015 - 2% ATB - pay period 1

2015 - 1% pay period 1 - increase biweekly rates for title of fire paramedic, heavy equipment operators, lieutenants and captains with a current EMT II certification, available for assignment to paramedic duties

2015 - 2.9% pension offset (base-building and pensionable) for those employees initially hired as a fireman prior to October 3, 2011

2016 - 2% ATB - pay period 1

2016 - .5% ATB - pay period 14

2016 - 2.9% pension offset (base-building and pensionable) for those employees initially hired as a fireman prior to October 3, 2011

Article 16 - EMT II premium pay - modify language to reflect 6% change from 5% and update language removing "Milwaukee County Subsidy." Update language making 6% pensionable.

The City's pension plan is separate from the state and county plans. Other participants in this pension plan include the Milwaukee Metropolitan Sewerage District, the Milwaukee

Area Technical College, part of the Milwaukee Public School District, the Housing Authority of the City of Milwaukee, the Redevelopment Authority of the City of Milwaukee, and the Wisconsin Center Convention District. The City has a Stable Employee Pension Contribution Policy that enables the City to make contributions over five years based on percentages of payroll to avoid large swings due to return on assets in the plan. Contribution rates for firemen (without social security) are 24.83% until 2018 when the rates can be reset. In 1972, the City agreed to pay the employee portion of the pension contribution. Under state law, members of the system who are police or firemen and hired on or after October 3, 2011, contribute 7% of their compensation. The parties agree to have all employees paying 7% into the pension plan but differ on the timing of the employee pension contribution. The City's offer has employees hired as firemen before October 3, 2011, paying 3.5% pension contribution on 2015, pay period 1, and another 3.5% contribution on 2016, pay period 1, for a total of 7%. The Union's final offer calls for beginning pension contributions of 3.5% upon execution of the agreement or the day after issuance of an arbitration award and the other 3.5% beginning 2017. The parties agreed that there will be a 2.9% wage raise called a pension offset at the beginning of 2015 and 2016.

John Barmore is a firefighter, Vice-president of the Union and a trustee on the pension board and chairman of that board of trustees. He stated that the pension system is well-funded, running from 90 to 100% funded to meet future liabilities. Barmore knew that there were several lawsuits brought against the fund by employees. Employees have objected to any retroactive changes in pensions, although prospective changes have been allowed. Barmore expressed concern that a retroactive payment to the pension fund on the part of an employee would likely risk litigation. Members would be going back making contributions that were already made on their behalf by the City. Barmore was aware of a Madison teachers case that went to the State Supreme Court challenging a change in state law regarding contributions required under Chapter 36, wherein the Court found no violation of law requiring employees to make the contribution.

Nicole Fleck, City Labor Relations Officer, testified that looking at 20 suburban jurisdictions (although 7 of them are combined in the North Shore Fire Department), the firefighters in Milwaukee would end up on the top of the salary schedules under either the Union or City's offer. It differs for paramedics, where the Union's offer would rank the paramedics on top, with Brookfield coming in second and the City's offer third. Fleck stated that the Union's proposal has members making the 3.5% pension on the day after the arbitration award is issued (or after ratification) and the final full amount of the employee portion of the pension contribution (7%) on pay period 1 of 2017. Because there was no settlement, the earliest that the pension contribution would start under the Union's offer would be in the middle of 2016. Taking the maximum salary minus the pension, the City's firefighters end up ranked first in suburban communities by 2016 under either final offer, and the paramedics are third under the City's final offer, with Brookfield again coming in second and the Union's offer first. In terms of total compensation, Fleck's data showed that the City's offer would put the firefighters 12th in the suburban communities and the Union's offer would make it 13th in 2016. Those rankings would be the same for paramedics.

City Labor Negotiator Deborah Ford testified about the final offers and compared them to the next 10 largest cities in the State. Firefighter base salaries would rank at the top of these comparisons all four years of the contract, and paramedics would get to the top only in 2016, albeit with several cities not settled. Ford testified that as other cities' employees started contributing to pension funds, they did not get fully matching salary bumps to cover those contributions. The Union agreed to the 5.8% offsets for the 7% pension contribution. In 2016, Milwaukee would rank first under either offer in base salary minus the pension contribution for both firefighters and paramedics, as well as in total compensation. The Union and City also agreed to move the retirement age up from 49 with 22 years to service to age 52 with 25 years of service, for new employees. The parties also agreed on a change in the duty disability retirement process to refer applications to a medical council which will not include members' personal physicians.

For firefighters, the across-the-board increases are higher in the City's offer (16.05%) than the Union's offer (14.8%). Fleck noted that the higher lift is for the City's proposed 53-hour work week. Because the current work week is 49.8 hours, the additional time adds a 6.4% increase to the work schedule and either 6 or 7 additional days, depending on the year, or 13 days over two years. The City's quid pro quo is 1.25%, according to Fleck. Ford testified that the 53-hour work week proposal was a budgetary response to financial challenges. She stated that the Fire Department had been sharing cost cutting measures like other departments, and using brownouts to save money.

David Seager is a fire captain, the President of Local 215 and the sole contract administrator. He testified that parity with the police union and police supervisors' union (MPA and MPSO) is a key element in negotiations. Seager considers the two police contracts in the City as key reference points in negotiations and tries to maintain parity between them and Local 215's contract. The MPA contract is considered more equal to the Local 215 unit because the MPSO unit is made up of supervisors, and the MPA and Local 215 are the rank and file police and firefighters. For the time period of 2013-2016, the MPA and MPSO received 16.3% across-the-board raises, while the City's offer here is 16.05% and the Union's offer is 14.8%. Seager said that the MPA increased its retirement age to 50 with 25 years of service.

There is a premium for paramedics, called EMT-II's. Under the expired contract, the premium was 5% of base salary, non-pensionable, non-base-building, with \$1,000 added to the final average salary for computing the retirement allowance. The 5% premium pay is funded by Milwaukee County, and the expired contract stated that if the County eliminates the funding, the premium shall cease. Other suburbs also receive a subsidy from the County, but paramedics under those contracts would not lose pay if the County stopped paying it. The Union's offer would eliminate the language about the cessation of the premium if the County were to drop the subsidy. The City's final offer would raise the \$1,000 figure to \$1,500 and add 1% to the base in 2015, for all certified paramedics except for fire captains, who would receive a 1% payment that is pensionable but not base building. The Union's final offer changed Article 16 to make the EMT-II's eligible for a 6% premium. The Union created a separate pay

range for paramedics in Article 10, base salary, and built the 6% into the base starting in 2015. The Union's offer adds only 1% extra on the premium but puts it into the base salary and makes it pensionable in 2015. The City has interpreted the Union's offer as having both the 6% built into the base salary and having a 6% premium in the final salary calculation as in Article 16.

Seager stated that paramedics are below the national and state average, and the premium had been at 5% for about 38 years. Paramedics are recognized for doing the paramedic job all the time, even though they are also firefighters. Seager believes it is necessary to incorporate the premium into their base salary so that they are paid all of the time for all of the work they do. He testified that the Union did not intend to ask for both an increase to the base salary and then on top of that a 6% premium. Seager said the Union never intended to double down on the premium payment and the base salary. When paramedics work overtime, they don't get time and a half based on the premium in the current contract. In other jurisdictions, the paramedics compensation is pensionable, except for Wauwatosa. Another factor in making the premium base building is that it would remain in place even if the County were to drop the subsidy.

The role of paramedics has expanded exponentially, Seager noted, with changes in the workload, the type of runs, new software and programs such as tactical emergency medicine services. The City also receives revenue from paramedic services of transporting patients to hospitals, to the tune of \$5.7 million in 2013 to \$6.6 million in 2015. Paramedics have been trained in a new program that helps frequent 911 callers to use primary care physicians rather than call 911, which would drive costs down. Seager also noted that the Department has a greater volume and more severe cases than other departments with a high rate of survival upon delivery to hospitals. Firefighters and paramedics have greater risks and perform more services than suburban communities.

Furthermore, Seager said that there are problems with recruitment and retention of paramedics in the Department. About four years ago, no one was volunteering to become a paramedic and the Department mandated two different classes in two consecutive years for firefighters to become paramedics. Retention of paramedics is also an issue. Some paramedics request to leave, and while the administration can allow them to get out, it can also require people to maintain that position. When Seager started in 1998, paramedic units were staffed with 3 paramedics but are now staffed with 2 paramedics.

Jerry Biggart, an Oak Creek firefighter with a paramedic license who also is a field representative for the International Association of Firefighters, testified that Milwaukee is the busiest city in terms of activity and response to calls. He found that paramedic pay is pensionable in the state and was not aware of any place where it was not pensionable. Oak Creek also receives a subsidy from the County but paramedics would not lose their premium pay if the County drops that subsidy.

Bryan Rynders is a fiscal planning specialist senior in the Budget management division

of the City. His data shows that about 86% of the bargaining unit members were hired before October 3, 2011 and therefore were not paying the employee contribution portion of the pension, which is a total of 24.83% of pensionable wages (no social security). Rynders found 13.6% of the unit were paying 7% into the pension, and that group does not get the pension offset as accepted by both parties of 2.9% in 2015 and 2016. The Union does not have the other 86% of members paying into the pension until 2016, while the City's final offer starts it in 2015 and concludes it in 2016, with 3.5% in each year. Under the City's final offer, the City saves \$1.1 million starting in 2015 and 2016, as members start paying 3.5% of the pension.

According to Rynders' costing of the final offers, the parties are apart by about \$9.1 million, with the Union's pension costs running up about \$3.8 over what the City's offer on this item. The other large number in there is \$1.9 million that the City expected to save with the implementation of the 53 hour work week in 2016. The costing of the EMT's increase is open to interpretation, with the City costing it both in Article 10 and Article 16 and the Union disputing that effect and interpretation except for the 1% increase in Article 16. Rynders' costing shows the EMT-II certification pay increase as \$1.3 million for 2015 and 2016 in the Union's offer. He also costed the change from 5% to 6% as \$345 thousand and added this to the total. The difference in wages between the parties is about \$800 thousand. The 2016 budget for the Department was \$111 million.

Rynders found the costs of new dollars in the MPSO contract for 2013 and 2014 to be \$2.155 million. In 2015 and 2016, there was a \$1.7 million savings because MPSO agreed to begin paying the employee contribution to the pension. New costs in wages and benefits for that period amount to only \$235 thousand. The new costs for the 2013-2016 show a \$8.4 million reduction in benefits, again due to the employee pension contribution, and a total for wages and benefits of \$17 million.

The MPA's increase in costs for the time period in question is \$21.5 million or 13.9% from its baseline. The MPA is much larger than Local 215. The comparative numbers under final offers here are \$15 million for the City or 20.9%, and \$24 million for the Union or 27.6%.

At the time of the arbitration hearing, there was litigation pending between the MPA and the City about whether the pension contribution could go back through prior years. Local 215 asserted that it made the pension contribution prospective to avoid any litigation over it being retroactive.

In 2013, 2014, and 2015, the MPA and MPSO members had 3 furlough days (unpaid) each year. General city employees had 3 furlough days in 2013 and 2014. Local 215 has not had any furlough days through that time frame, as well as prior years when MPA and MPSO took 2 furlough days in 2010. The 3 furlough days in one year amount to a loss in pay of 1.15% to MPA and MPSO. Furlough days for MPA and MPSO are 8 hour days.

Thomas Klusman, a retired police officer and the labor relations manager at MPSO,

noted that the salary lifts, the 16.3% between 2013 and 2016, could be reduced through furloughs. Rynders testified that the furloughs have no impact on the across-the-board increases. There are no furloughs in 2016, and MPA and MPSO will receive a full base salary for 2080 hours of work. The previous furloughs reduce those hours by 24.

Parties' Arguments Regarding Wages & Pensions:

The Union contends that while the City opposed the effort of the MPA to break base parity in a 1990 award before Arbitrator Vernon, it costed the firefighters' proposal with no comparison to the police contracts. Parity with police unions has generally been maintained and should be maintained unless there is a valid reason to break it. Local 215 is being asked to work more hours, which would be a reason to break parity in favor of the Union. But as Fleck conceded, the difference between the City's offer and Local 215's offer in terms of total raises is that the City offers only 1.25% more than the Union, and she considers that amount the quid pro quo for a 6.4% increase in time worked. Moreover, the City's offer to Local 215 is 0.25% lower than that to the police -- 16.3% versus 16.05%. Neither MPA nor MPSO was asked to work more hours. Thus, the City proposes a negative 0.25% wage for a 6.4% increase in work as compared to the police. Firefighters already work 512 more hours than police.

The Union asserts that of the \$9 million dollar difference between the parties, \$3 million of it is money the City hoped to not have to spend, for which it offers no quid pro quo -- the change in work week. Another \$2 to \$3 million is the pension contribution/raise timing difference, which goes away. Nicolini admitted that the impact of the delayed timing of the pension contribution disappears eventually, and he was more concerned about the impact on 2017 and beyond. So the difference is really only \$3 million, which spread out over 4 years is not even \$1 million a year.

Furthermore, the Union argues that the \$9 million number is off by hundreds of thousands of dollars, due to the costing of Local 215's proposed paramedic increase twice. There is only one increase, and if it's offer is selected, the offer will be interpreted consistent with the testimony, and the paramedic wages will be paid under Article 10. The City will not be paying the premium redundantly as it claims, regarding its reading of Article 16. The Union was never on notice until the hearing in this matter that the City was strategically doubling up on the paramedic figure to make the Union's offer look less desirable.

In support of the paramedics' increase, the Union argues that a paramedic is always a paramedic, there are increases in training requirements and increases in call activity, there has not been a raise in the premium for a long time, there are very emotional demands of the job, and the fees going back to the City amount to millions of dollars. A paramedic is always a paramedic on every call, even when working in a role as a firefighter. Seager noted that the daily staffing has been reduced from 304 to 216, and where 3 paramedics used to respond, now only 2 respond. The number of calls and the number of serious traumas has gone up, making this a stressful and demanding position. There are issues with recruiting and retention of paramedics. Recruiting for paramedics is difficult. Biggart testified that paramedics have

added 200 hours to their curriculum and that Milwaukee is the busiest jurisdiction for paramedics. Paramedics returned \$5.7 million to the City in 2013 and \$6.6 in 2015. The City also receives \$750,000 from the County for paramedic services. Biggart noted that paramedic pay is pensionable everywhere else in the state except Milwaukee.

Regarding employee pension contributions, the Union notes that the City is ultimately ahead in dollars because the contribution will be 7% and the pension offset is 5.8%. Local 215 expressed its concern for litigation. Individual members can and have sued legal counsel. A contract proposal that potentially leads to litigation should not warrant favorable consideration.

The Union finds the most compelling reason economically to select its offer is the money the City has already gained by eliminating so many of its positions in the Fire Department. Washington noted that 230 members have been eliminated by attrition. So 756 remain active, carrying the same work load once done by 986 workers. That means 77% of the force that used to work is doing the same work, and the City is saving 23 to 24% of the overall cost of its front line firefighters. Those 230 eliminated workers would cost more than \$25 million.

The City objects to the Union's argument that the entire proceeding be determined by the across-the-board increases in final offers compared to those ATB's with the two police unions. This ignores reductions in wages through furloughs which Local 215 never had. Both MPA and MPSO had 3 days of furloughs in 2013, 2014, and 2015, a loss of 3 days pay, in relationship to 260 days, converts to a loss of 1.15% of salary each year. The concept of parity includes fringe benefits, the City notes, citing a 1988 Arbitrator Rice award with MPSO. In a 1990 award with MPA, Arbitrator Vernon found that a final offer shouldn't be compared to internal settlements on the basis of package parity but should fit into a package pattern, which seeks consistency between groups but allows for some differences between them. The Union's \$9 million offer above the City's does not fall within a true parity argument. The Union's offer amounts to a 27.6% increase in wages and benefits over the 2013-2016 term versus the 13.9% (MPA) and 10.3% MPSO increases in wages and benefits, and the City's offer provides a 20.9% increase. Arbitrators McLaughlin (MPSO, 2015) and Torosian (MPSO, 2010) and Greco (MPSO, 2008) all found the economic and financial conditions had to be part of the evaluations of final offers.

The City points out that it reached voluntary settlements with both police unions more than 6 months after these final offers were certified. Both MPA and MPSO agreed to contribute to the pension fund in 2016 contemporaneously with the 5.8% pension offset. Local 215 agreed to phase in the pension over 2 years but took the pension offset of 2.9% in 2015 without giving the contribution until about 1 and 1/2 years later (when this award is issued), and it took the second phase of 2.9% offset again without giving the contribution for another year. Not until January of 2017 would Local 215 members be making the full 7% contribution, an entire year after MPA and MPSO made it. No parity relationship can be said to exist with the police unions here. Under the Union's final offer, the City would be making enhanced pension



offset payments in exchange for nothing. Moreover, the City notes that neither MPA nor MPSO got a significant increase premium for a portion of their memberships, while Local 215 seeks a large increase in payments to paramedics.

While not conceding that suburbs or other large cities are comparable to Milwaukee, the City asserts that its offer provides competitive increases with other jurisdictions and employees performing similar services. In 2012, municipalities started requiring firefighters to contribute the employee share to the WRS. By 2014, all 20 suburbs were deducting pensions from base salaries for the pensions. By 2014, the salary increases were 2.25% (median) or 2.31% (mean), 16 of 20 suburbs had 7% of pay going to the WRS for the employee share. In 2014, the City's offer is 2% ATB (split 1/1) and no member contribution for pension starts until 2015. Moreover, the City provides pension offset payments while external jurisdictions did not. The City's healthy increases were confirmed by Ford who testified about the larger cities in the state. In 2014, firefighters in other large cities have deductions from 3% to 7% for pension contributions. The City's rank rises in both suburban and large city salaries.

The City claims its offer on paramedic salary increases is preferable, with a 1% increase in base salary in 2015 and \$500 added to the amount that is pensionable. The City reads the Union's offer as 6% increase in base salary (after the ATB's), and the 5% in premium in Article 16 going to 6% and that 6% pensionable for those retiring after 2014. Under the City's offer, paramedics move up to second place in the metro area by 2016, and first in terms of total compensation, and it will rank first in other large cities in the state. The Union's offer provides a double and costly raise for paramedic. The Union's 6% increase in Article 10 makes it pensionable. In Article 16, the Union has those premium payments increased to 6% to continue through the term of the contract. The premium payment has always been paid to paramedics in addition to their base salary. The Union does not state in its final offer that the premium payment in Article 16 will cease. The City costs the Union's offer on paramedics as more than \$1.65 million.

The City contends it's proposed pension offset timed to begin when members contribute for their pension is equitable and in the public's interests. The member contribution was phased in over two years, and the Union did not object to the concept and agreed that the 5.8% in pension offset money would be full recompense for the 7% in member contributions. Many cities did not provide a pension offset payment and the ATB's were well short of the percentages deducted from those employees' paychecks to fund their pensions. The Union offered two explanations for why it did not time the pension contributions to correspond to the pension offset money. It argued that the member contribution had already been made by the City (by prior contract) and thus would be made twice. The Union also raised the concern that retroactive changes could raise litigation, and some litigation was pending. The City finds those concerns to be without merit. In May of 2016, Milwaukee County Circuit Court Judge William Sosnay declared that MPA members taking on the obligation to make the employee's share of pension contributions to the City's retirement system did not violate provision of Chapter 36 of the Milwaukee City Charter. There is no demonstrable legal impediment to the City's offer.

In its reply brief, the Union states that City argued for comparison to the MPA but is now changing that position. Local 215 submits that it should be compared to the MPA. Local 215's ATB raises are less but its retroactive raises are more. The City's ATB raises are also less than MPA's but the uncompensated 6.4% increase in work results in a long term indefinite disparity with the police, and firefighters are already working more hours than the police or any other employee group. The Union does not know why the City has rewarded the police with more money while offering its members less money for a substantially increased work schedule. While the City continues to assert that there's a double increase in compensation for paramedics in the Union's offer, this is disingenuous. The record is clear that paramedics would be compensated as set forth in Article 10 and Article 16 merely clarifies pensionability. If literal readings control this award, the City's offer fails because it's proposed work schedule effective January 1, 2016 is impossible to implement.

The Union does not dispute the costing factors in the final offers with the exception of the double up of the paramedic pay. The City claims its offer is 20.9% new money and the Union's offer is 27.6% new money. The difference is 6.7%, and only 1.675% spread out over 4 years. The City argues that this is a hair under twice the MPA's comparable increase would be in increased wages and benefits. The City ignores that the disparity resolves itself when the 7% pension contribution starts. The 7% contribution is in effect the difference between the two offers, based on the City's costing. After that adjustment, its costing would also have to be adjusted going forward because the 14.8% ATB's would then be the starting point in future years as opposed to 16.05% ATB. The contribution will be made in face of only 14.8% ATB, and the City will begin to make up that money, although in different budgetary cycles.

The Union asks whether the flaw in timing of the contribution really justifies taking the City's offer over the Local 215's offer, which in the end will cost less going forward? And is that timing disparity a more compelling reason to pick the City's offer in face of the City's demand for 13 days every 2 years essentially without compensation? While the City has little concern for possible claims by individual members, any contract that has a potential for litigation should be viewed negatively.

The Union notes that its offer would cost \$9 million over the City's offer, in a budget of \$931,891,000 for general government, public safety, public works, health, culture and recreation, conservation and development, contributions, and interest on long term debt. The \$9 million is reduced by \$3 million which is not a new cost but an expected savings is then \$6 million, which spread out over 4 years is \$1.5 million. No one even argues that there is an inability to pay. The tax stabilization reserve is \$56.6 million, according to the CAFR, and the City is in solid financial shape. Even giving greater weight to the economic conditions in the jurisdiction, the Arbitrator should still apply the other factors under Section 111.77(6)(bm).

In its reply brief, the City contends that the Union seeks to back-pedal from its position in its final offer regarding the paramedics premium. The Union claimed in its brief that the paramedic wages will be paid under Article 10, and the premium pay in Article 16 will not be

paid redundantly. It is clear that the Union's offer provides a 6% increase in base salary for paramedics above the 2% increase for all members in 2015. The Union continues to provide in Article 16 that paramedics shall be eligible for a 6% premium. Historically, those premium payments have been made in addition to base salary payments made to paramedics. The Union's language provides that the 6% premium is to be included in final average salary for computing the pension, and nothing states that the premium payment will cease at any time. The only condition under which the premium payment ceases is if the County stops the subsidy, and the Union offer strikes that language. Thus, the Union is trying to disavow the language it submitted as its final offer and is impermissibly trying to modify its final offer. The Union attempts to escape the consequences of its language as drafted because it belatedly recognizes that its final offer as worded leads to unjustifiable results.

Moreover, the City has proposed a 1% increase in base salary and an increase in the pensionable amount, rising from \$1,000 to \$1,500. Paramedics will rise to the top ranking in total compensation relative to suburban communities surveyed, as well as the next 10 largest cities in the state. The Union's cost for increasing the base salary of paramedics by 6% is \$1.3 million and \$345,251 for the increase proposed in Article 16.

On the pension contributions, the City takes issue with the Union's statement that the City is ultimately ahead in dollars due to a 5.8% raise and a 7% contribution. The 5.8% pension offset payment inflates base salary payments and generates a Medicare payment obligation by the City -- a 1.45% of wages. While the Union believes the City would be ahead in the future, it will not be ahead. Furthermore, the City would forego \$4 million in pension contributions under the Union's proposal in 2015 and 2016. The City also dismisses the Union's concern about potential litigation for retroactive employee contributions, citing the Milwaukee county Circuit Court declaratory judgment involving MPA. The Union could have obtained a determination of the legality of the City's pension proposal before the submission of final offers but did not do so. Although the Union did file a petition for a declaratory ruling to the WERC to litigate the legality of the pension proposal, the WERC dismissed it as untimely.

### **Schedule change proposal - 53 hour work week**

The collective bargaining agreement dated March 1, 1987 to March 1, 1989, was the agreement that changed the hours per week from 52.30768 to 49.8 in 1988. Assistant Chief Gerard Washington testified about the City's proposal to change the work week from 49.8 to 53 hours. The Code of Federal Regulations allows for exceptions for overtime in police and fire protection. For firefighters, 204 hours in a 27-day cycle is the maximum without incurring overtime. Currently, they work 24 hours on and then 48 hours off. An employee would work 9 days in a 27-day cycle with one day as paid time off. There are generally 13 cycles of 27 days in one year and 14 in the next. If the City implemented its 53-hour work week, the hours would switch every other cycle from 192 to 216, with 24 hours paid time off in the 1st cycle, and 12 hours of overtime in the second cycle. The average week comes out to 52.89 hours. Washington stated that the changes from the current schedule would mean that a member would have paid time off every other cycle instead of every cycle, and 12 hours of overtime

every other cycle. Washington said the 53-hour schedule provides for more flexibility and more people available to respond to calls. However, he acknowledged that the City would not have a full year in 2016 to implement the 53 hour schedule due to the timing of the arbitration hearing and there might be people who would have hardships in meeting a new schedule, due to their prior plans. The Department has to meet minimum staffing, and there is a list of people who volunteer to work overtime or special duty. The federal regulations for the FLSA also provide that two individuals may substitute for one another and those hours may be excluded from the calculation of hours for overtime.

The parties agree that firefighters will work more days under the proposed schedule -- 13 days in two years. According to Fleck, the quid pro quo is 1.25% in salary in 2016.

Seager testified that in 1987, firefighters were working 52.8 hours , but in order to get under the threshold in the FLSA, they negotiated a change to 49.8 hours. The 53-hour work week would add 3.2 hours a week that results in the 13 days over two years of additional time worked. This means employees would have to give back days that were contractually negotiated to be off. Other departments that work 53 or 56 hour weeks have their earned off time in vacations and holiday time off.

Seager said that the Union was willing to consider the schedule change if there were a reasonable quid pro quo, which there is not. He noted that the Union is asking less than the police received and there was no increase in the work load of the MPS or the MPSO.

Biggart also testified about the schedule. He stated that if the schedule were changed from working 49.8 hours to 53 hours a week, firefighters would still continue working 24 hours on and days off that are paid would be given up. Biggart said that if more time is requested from an employer, employees expect to be compensated for working more time. He thought it would be difficult, even chaotic, to start a new schedule in the middle of a year because employees have picked their time off.

Leonard Kreil, a retired fire lieutenant, was a Union steward and served on the Union's executive board. He retired in 2014 while this contract was still in negotiations, after serving 32 years on the job. Some of the factors in his decision to retire included the additional 7 days without additional compensation that might occur under the City's proposal. Kreil also thought it would be difficult to implement this schedule in the middle of a year because of the picks for days off. With trades not guaranteed by contract, the imposition of a new schedule could make things even more difficult.

The final offers in this case were certified in May of 2015. The City's proposal would put the new schedule in place right away in 2016, but since that became impossible, the City has now assumed that if its offer were accepted, it could implement the new schedule around the end of August. (The parties' initially scheduled a hearing in August of 2015 but this arbitrator's absence caused a 4 month delay and the hearing was rescheduled for January of 2016, when the parties made a settlement attempt that was ultimately unsuccessful and then the hearing

was rescheduled again in April of 2016.)

The Parties' Arguments on the Work Schedule:

The Union claims that this change should be rejected, because it breaks parity without justification and there is no quid pro quo. Although other fire departments have this schedule, they may work fewer days in a year than here. None of the other departments in the state are viewed as comparable. The reality is that the schedule is new, with an extra 6 to 7 days a year, with no quid pro quo.

The City believes the schedule change is a reasonable alternative to cost cutting measures such as brownouts and decommissioning of equipment. Other fire departments have scheduled more hours up to a 56-hour work week. There may be more equipment and resources to respond to calls for service that may benefit the public. Currently, fire personnel work a 27-day cycle, of which there are 13.52 in a year. Employees are scheduled for 9 days in that 27-day cycle, where 8 are worked and 1 is a paid off day. In the new proposed schedule, personnel would work 8 days in a 27-day cycle with 1 paid time off day in one cycle and then work 9 days without a paid day off in the next cycle. This would cause employees to work 216 hours in such a cycle, and 12 of those hours would be paid at FLSA overtime rates. Employees would retain 7 paid time off days but lose 6, and where the 204 hour threshold is exceeded, would receive 12 overtime hours. The current use of brownouts is less than ideal. Employees are being compensated for the need to give up 1 day off every other cycle and also have the prospect of having half the hours they work on that additional day paid at FLSA overtime rates. The public is better served by having a full complement of equipment and personnel available to respond when needed.

While the Union fears chaos in implementing this schedule in mid year, Washington said the Department would deal with potential hardship cases. The City notes that using Union exhibit #70, the members currently work fewer hours than 6 of the 10 jurisdictions shown and are within 7 hours of 2 of the other jurisdictions. Thus, the City's proposal brings the hours into line with the external jurisdictions. The basic objection to this proposal is financial, the City states, and points to its overall financial package. The City does not save as much as expected because of the delay in this proceeding, and the savings is reduced by \$414,000 for each cycle of delay beyond the assumed implementation date of August 31, 2016.

In its reply brief, the Union objects to the City's use of communities outside of Germantown, Menomonee Falls, and Brookfield to show the economic conditions when those communities have never been determined to be comparable. Milwaukee has advantages that other cities do not. It can afford construction of a very expensive trolley and a new arena. Yet it offers a negative quid pro quo of 0.25% wage increase for a 6.4% increase in work week. The City's economic condition shows no justification for that proposal. To the extent that the schedule might be in the public interest, the City should have offer a quid pro quo for it. Union members are willing to work the schedule and are not even asking for a dollar for dollar quid pro quo. The City never explains why it would offer a lesser wage package to the firefighters

than to the police while asking the firefighters to work more.

The City, in reply, says it provides a 4.25% lift in base salary in 2016 for implementing a change in hours. The City thought it would achieve more savings but those savings have been diminished. As for the Union's arguments regarding parity, the Union ignores the furloughs of prior years that Local 215 did not have. It also ignores its double enhancement for paramedics, and the delayed pension contributions. Local 215 does better than the police unions for total increases. The public interest is served by a modest increase in work hours.

### **Trading Policy**

Employees frequently trade shifts with each other. Washington said there are 13,000 to 14,000 trades a year. The current contract has no language regarding these trades, but the City has a policy which the Union has proposed be added to the contract, mostly word for word. One concern of the Department is that the trade is paid back in a timely fashion so that someone does not leave the service without a trade taken care of. If someone cannot get another person to trade a shift with him, the Department can become the trading partner with an emergency city-owed-trade-on and ask that person to pay it back where there would be a short day to meet minimum staffing.

Washington stated that management was concerned about the trade policy going into the labor contract because it could limit management's ability to run the Department in the best interests of the City. If someone is not honoring his trades, the Department could revoke his ability to make trades or limit them. He also had some concern about restricting trades involving paramedics, although the language is the City's policy. Washington said that the policy language restricts paramedics' trading except rank for rank or within rank, and the Department permits greater flexibility. There is also a concern about not generating overtime with a trade. Washington admitted that management would like to be out of the trade business.

Seager said that the proposed language was cut and pasted directly from management's most recent policy on trades. The policy doesn't cover how to handle people who abuse trading privileges. Seager said the Department has the option to discipline someone, and revoking their trading ability would be a form of discipline.

All the 12 largest cities except Milwaukee in the State have trade language in their labor contracts. Biggart reviewed the trade language in other contracts. The 10 next largest cities in the state all have contractual language on trades. The language typically holds the employer harmless. He considers trading to be a condition of employment and seeks to put it in every contract. On occasion, members have attempted to grieve issues over trades but could not because of no language in the contract. Trading language had been in the contract in the past.

Michael Torpy, a firefighter and member of the Union's executive board, said that the trading policy was previously in the labor agreement and the prior language is the same that

the Union seeks now. Torpy said that he did not believe that the trading policy presented problems for the Department but there have been problems for the Union members. One example was a member named Joe Eberly who made trades with other members who worked his days, but then Eberly was not showing up and his trading privileges were rescinded. Members who had traded with him were punished collectively to around \$4,200 to \$4,500. Even though Eberly owed others the time, they had to work and Eberly got out of working 7 days. There was no way to grieve this because there was no trading language in the contract. Firefighter Rutly got injured on duty, and he had a trade that he was supposed to work, but he didn't get paid because his pay was taken from him. He could not use his sick pay because trades are not in the contract. If trades were in the contract, he would have used injury pay. Torpy also noted the case of Captain Halber, injured on duty, and made to pay time back. Echervaria was injured off duty and could not use sick pay because trades were not in the contract. Torpy felt he could try to grieve these denials of sick leave or injury leave but would not be successful.

#### The Parties' Arguments on Trading:

The Union looks to Biggart's testimony that noted every fire department has contract language on trades and trading is a condition of employment. Trades benefit both sides. They reduce overtime for the Department and allow a more normalized life style for members who work a 24 hour shift. By not allowing the trade day to become the member's scheduled day, the City is able to eliminate the applicability of sick pay, funeral pay, injury pay and military leave. The Union calls the City's objections specious. One is no more likely to get sick on a trade day than a regularly scheduled day. While the City said it could not manage trades if they were contractual, trades were formerly covered in the contract. The Union states that that City retains its present ability to do everything it would do if a person did not show for a regularly scheduled day, and the City can prohibit participation in trading. The City's objection to the length of the proposed language is absurd because much of it is the current trade policy

The City contends that putting the trading language in the contract unduly restrains legitimate management rights. Federal regulation authorizes voluntary trades and the resulting hours worked are excluded from the calculation of hours regulated by the FLSA. The City submits that despite the fact that the proposed language is current City policy, the language is too restrictive in certain areas and too generous in others. The Union agreed to remove a reference to trades in the parties' last labor agreement. Thousands of trades take place each year with relatively few problems. The language does not allow for dealing with abuse or people who don't honor their trades. The external comparables frequently hold the employer harmless in these trades. The City believes that it can change policy easily if necessary, and this proposal is not in the public interest.

In reply, the Union states that its proposal does not interfere with the management of the Department. The final offer contemplates a transfer policy within the total control of the City. It has proposed language that was once in the contract and borrows heavily from the City's policy. It opens a greater door for discipline in the event of any misconduct in the course

of trades.

The City maintains that it is not in the Department's best interests to change the current situation, where employees are not now entitled to be paid sick leave for not coming to work on a trade-on day. There may be some incidental benefits to the Department by permitting trades but keeping track of 14,000 trades is more of a headache than a benefit. The City should be able to suspend trading privileges but under the language proposed, it could only deal with the employee through the discipline process. Other departments have a hold harmless clause but that it not proposed here.

### **Vacation Bank**

The Union has proposed to allow employees to bank up to 72 hours of vacation for emergency use. If it is not used, it is to be paid out at the end of the year. Washington said that in these emergency circumstances, the Department has worked it out with the individual and used emergency city-owned trade-offs with the individual paying it back at a reasonable time within 30 calendar days.

Battalion chiefs and those above the rank of fire captain, who are management, are allowed to accrue vacation up to 360 hours and carry it over. Union members are in a use-it-or-lose-it situation. Seager said that the emergency use would allow for a flooded basement or a sick child or family member to use a banked day.

The City finds this proposal to be unnecessary and costly and not given to any other City employee. The Union never identified any instances when an emergency had arisen and the employee could not leave work. External jurisdictions do not have banked vacation days which can be cashed out. While the Union noted that battalion chiefs have it, they received less in pay increases in 2013, 2014 and 2015 than being proposed here. Also, the City finds the additional costs could run from \$413,000 at a 25% utilization rate to \$1.6 million.

The Union states that this proposal of banking 72 hours can benefit the City. It allows an avenue for payment of FMLA time. Battalion chiefs are allowed to do it. It is not a high cost article.

### **Transfer - Management Rights**

The Union has proposed language in Article 5, Management Rights, to allow the City to amend, from time to time, such transfer policy in effect and the right to transfer employees within the Department in a manner most advantageous to the City. Washington testified that there was an incident at Engine house 32 a couple of years ago where the Department moved a large number of employees without basing it on seniority, due to the culture at that firehouse. Currently, there is nothing in the contract with regard to transfers. The City believes that the language could allow for a member to file a grievance over this.



Seager said the Department has absolute discretion on transfers because the language provides them to be in the manner most advantageous to the City. The Department could make transfers that are in the best interests of the employees. The Union wants to preserve a policy that the Department has established.

The Union argues that its proposal merely recognizes that transfer practices and policies are a condition of employment, and prior contracts recognized transfers. The City still has full authority, and Local 215 is seeking to recapture transfer policies that were part of former labor contracts but lost after the 2007-2009 contract. The City submits that there is no need for this language change. The City, in its reply brief, notes that the language was not "lost" but was in fact bargained and removed. The Union offered no compelling basis for a change.

### **Transfer - Other Departments**

The Union has proposed an Article 57 that personnel transferring from other City positions into the Fire Department shall not incur any reduction in pay and will be placed on a pay scale step to preserve their existing rate of pay. The City proposed language for Article 10, paragraph 7, that would have employees coming from other departments into the firefighter classification retain their biweekly rate of pay, if higher than the firefighter entry level rate, until the firefighter recruit class reaches that rate of pay or higher, at which time the employee's rate shall stay the same or increase to match that of the recruit class. Also, any ATB's would not apply, and the employee would not be eligible for a wage increase until those conditions are met.

Fleck stated that the parties have entered into several memoranda of understandings on this subject. The parties have agreed on freezing the employee's rate of pay until their whole recruiting class would catch up to that pay or they would move to the next rate of pay with the class. However, there are at least 6 employees who transferred into the Fire Department from other departments making more than the entry-level firefighter.

The Union states that the few people transferring into the Department should not lose money, and this is a matter of fairness. The City objects to the Union's proposal to go to a pay scale higher than incoming recruits because they have not spent any time on the job, just like the rest of the recruit class.

### **Grievance & Arbitration Language**

The Union has proposed changes in the grievance and arbitration procedure language in Article 7. The changes include eliminating some steps and adding the names of two arbitrators. Fleck testified that there have been only 5 grievances filed a year since 2005 and only 6 arbitration decisions since 1975. Ford stated that the parties had not discussed these changes and the City first saw this proposal in the Union's final offer. She added that the language naming two arbitrators was lifted from language in the police officers' contract,

where there were extensive negotiations with the union and contact with the arbitrators named. One of those arbitrators indicated he was going to be limited in what kind of cases he took. Seager said that the Union's proposed language included a phrase "unless mutually agreed otherwise" after the arbitrators' names, in case they were not available. Ford also objected to eliminating the step with the Labor Negotiator. One grievance pertaining to Scott Terris goes back to July of 2014 from the Chief's decision to just getting scheduled in May of 2016.

Torpy testified that he had 12 outstanding grievances where management has not responded. Torpy noted that Reinhard Rittmeyer's case on sick leave was successfully resolved but the Union had 19 other similar cases and only 4 were taken care of. A group of 6 -- Krause, Kaye, Padglow, Lempke, Trapp, and Terris -- were suspended with pay, and when discipline was imposed, some of them thought they lost a vacation day. Torpy agreed that there were cases in which the City tried to streamline the process by combing similar grievances, but he felt that due to different circumstances in each case, it would be best that they were treated separately.

The Union contends that the current grievance procedure does not work. The 12 outstanding grievances without management response are the examples. The proposed language allows the process to move ahead, and if the City declines to participate in a step, then that step is deemed satisfied and the grievance can move to the next level. As to the City's objection that the Union did not procure the concurrence of the 2 arbitrators named, the proposal allows for alternate arbitrators because arbitrators are not guaranteed to be available.

The City objects to the proposal to remove the Labor Negotiator from the grievance process. Although there have been scheduling difficulties recently, few grievances have been filed over the years, averaging 5 a year since 2005, and only 6 proceeding to arbitration in 40 years. The City also objects to designating two people to serve as arbitrators without their knowledge and consent, although both agreed to serve as arbitrators under the MPA contract.

In reply, the Union believes the City does not appear to understand its proposal as to grievances. The Union proposal simply indicates that if the City declines to participate in a step of the grievance procedure, then that step is deemed satisfied. It is the City's own conduct which precipitates the request that these matters must be in a new contract.

The City states that if this issue was a significant problem, it could have been raised in bargaining but never was. The Union's chief objective is to remove the Labor Negotiator from any role in the process. The current language already allows the Union to move a grievance to the next step if the City does not answer it within the time limits.

### **Sick Leave**

There is an open issue in Article 27 pertaining to sick leave, where the Union has

changed the time frame for the department to submit documentation. Seager stated that there have been times where members used their earned sick leave benefit and have not been paid for using it. The parties agreed on a sick leave control incentive program to be 8 hours in the member's current rank.

The Union finds the current system a windfall to some and a shortfall to others. Sick leave pay requirements often cannot be met because the system does not match the computerization reporting system in place. If the paperwork cannot be turned in on time, the sick leave benefit currently can be lost.

The City states that with respect to the Sick Leave Control Program, the Union does not provide for any payments during the term of this contract, while its final offer continues these payments by making changes to the applicable dates.

### **Special Unit Pay**

Both parties propose an increase in special unit pay from \$240 to \$350 in Article 48 and both include the tactical emergency medical services team in 2014. The Union adds the Honor Guard also in 2014 but the City does not. Ford said that the City did not add the Honor Guard because there was a question about the Section 501(c)(3) tax exempt status, and the question did not get answered in time for the City to add it to its final offer. The Union stated that the Section 501(c)(3) status is not the City's concern. Adding the Honor Guard is practically a no cost item.

### **Life Insurance**

The City's final offer provides for life insurance of \$55,000 at no cost to the employee, with the option to buy more insurance up to 3 times their salary not to exceed \$300,000 and the option to buy life insurance for spouses and dependents. The parties agreed except for the timing, with the City's offer going into effect after ratification or the issuance of an arbitration award and the Union's offer effective pay period 1 of 2015. The City states that it is not practical to provide it retroactively.

### **Consumer Price Index**

Fleck prepared a chart comparing the CPI for the disputed contract years and compared it to the City and Union offers. The offers reflect the total lift but not the cost as there are split increases and delayed increases in the offers. In 2013, the CPI was 1.5%, and both parties' offers are 2%. In 2014, the CPI was 1.6% and the City's offer (lift) was 2% while the Union's offer was 2.5%. In 2015, the CPI was 0.1%, and both parties' offer was 4.9% (excluding paramedics). In 2016 which was for January and February only, the CPI was 1.2%, and the City's offer was 7.15% and the Union's offer was 5.4%. The totals for the 4 years was CPI at 4.4%, City's offer at 16.05% and Union's offer at 14.8%. The City considers its total package final offer at 20.9% over 4 years, the Union's total package final offer at 27.6%, with the CPI-U of 4.4%.

The parties have much business to do with each other, which drives rates up, and the CPI is not relevant in this case. While the City argues that its final offer is closer to the CPI than the Union's final offer, this is almost always the case in years of low inflation.

## **DISCUSSION**

There are a number of outstanding issues in this case, but the big ones, the ones that determine the outcome, are few -- wages, pensions, and the 53-hour work week schedule. There are a couple of issues that the parties spent some time on -- the trading policy and the grievance and arbitration procedure -- but these two do not affect the outcome here. Then there are several minor issues -- vacation bank, transfers in management rights language, scheduling transfers from other departments into pay scales, sick leave, special unit pay, and life insurance -- none of which have any significance in reaching the final result. So working a bit backward, the minor issues need not really be addressed by the arbitrator. They are free riders, put in a final offer because they neither help nor harm that offer but if they were in the offer selected, they would ride along with it. The arbitrator will address the trading policy issue and the grievance language briefly.

The Union's trading policy proposal has much merit to it. Trades were previously in the contract, the language is largely the City's policy anyway, all other fire departments have some language on trades, trades are a major condition of employment, and trades are a benefit to both the employees and the employer. From an arbitrator's standpoint -- what's not to like??

However, the grievance language changes are not favored at this time, due to the lack of a need for a change in language. The parties have relatively few grievances between them, averaging about 5 a year with only 6 going to arbitration in 40 years. It appears that a bunch of grievances were stalled at Step 3 but the Union has a remedy for this. The City says it can move them on when there's a lack of response.

As to the major issues, the wages and pensions and work schedule, both parties have something in their final offers that make them difficult to swallow and which should have driven them to a settlement but did not. The City's offer has a major work change in the 53-hour work week schedule with no real quid pro quo offered for the increase in hours and the loss of paid days off. The Union's offer has a badly mistimed pension contribution, starting a year and a half after it is first paid for the pension contribution with pension offset money in wages.

The change in the work week results in a significant number of hours over the period of a year, 6 or 7 days depending on the year, or 13 in two years. Certainly those who have to work this extra time are entitled to a quid pro quo for making a change that saves the City a lot of money. There is a \$1.9 million in savings if the schedule is implemented August 31, 2016. For each cycle that it is not in effect, the cost is \$414,000. The City should have been willing to give employees back some of that. But identifying the quid pro quo is somewhat of a problem.

At one time, the City thought it had a 1.25% quid pro quo on the table, because the total lift for the City's ATB's was 16.05% while the Union's ATB's lift was 14.8%. The City's wage offer for 2016, excluding the 2.9% pension offset, is 4.25% in lift. But that 1.25% that Fleck called the quid pro quo disappeared when the City settled with the MPA and the MPSO for lifts of 16.3% for the same years in question. There was nothing stated that gave the police unions greater lift, when the firefighters were being asked to work many more hours for a lesser amount ATB. The police settlements actually make the deal look like a negative 0.25% for working more hours. While the City says it settled with the police unions after its final offer for Local 215 was certified, the City knew when it settled with the police unions that it had offered less to Local 215. The City says that the police unions at least gave up the pension contribution in return for the pension offset money, something Local 215 had not done, at least at the same time. The City also suggests that the furloughs imposed on the police unions which were not shared by Local 215 made some difference. However, the furloughs resulted in a loss of earnings but not a loss of base pay or rate of pay, so when the City rolled out 16.3% for the police unions, it was not clear to the firefighters what the higher amount was for in the face of a certified final offer of 16.05% for the Union here. Despite the City's precision in identifying the "pension offset" money for the member contributions, it cannot identify a quid pro quo for the increased work schedule with such precision. It says that its total offer is good enough.

The City argues that this new schedule provides more personnel on duty and is in the best interest of the public. It believes that the work schedule will provide an alternative to the rolling brownouts and other measures taken to curb expenses during the great recession of 2008 and onward. The Union believes its department has taken at least its share if not more of the cuts to public service. Eventually, it is in the public's interest to have a strong, well-staffed fire department as well as a settled labor contract. The problem with imposing this schedule on department personnel through arbitration is that the members will probably feel they have been burdened into working more hours without their agreement and without anything coming back their way for helping out the City with a huge savings. The last time the parties changed hours was in the March 1987 to March 1989 contract, when the hours were changed from 52.3 to 49.8 in 1988, and in that contract, the parties bargained for the reduction in hours to avoid overtime mandated under the FLSA.

If the issue of the work week schedule were standing alone, the Union's position of status quo would be preferred so that the parties could eventually bargain it out themselves and find a reasonable quid pro quo. The Union has not been totally adverse to working more, but has asked for a quid pro quo. That's quite reasonable. Without a quid pro quo, or at least an acceptable one, the City's final offer is deficient on this major proposal.

But, of course, that is not the only big issue. The Union's final offer has its own flaw, primarily in the timing of the pension contribution. The City is correct on this point, and everyone knows it. The 2.9% pension offset in wages should correspond to the 3.5% in member contributions to the pension plan. The Union's offer misses the mark by a wide margin. It accepts the first 2.9% increase in wages in the beginning of 2015 but delays the 3.5% pension contribution until at least a year and a half -- the middle or more of 2016. Then it takes

the next 2.9% increase at the beginning of 2016 but delays the 3.5% pension contribution for a year to 2017. This is clearly unreasonable, and the Union knows it. The first delay in pension contribution was to be implemented under its offer either upon a settlement or the date of issuance of the arbitration award. The parties had certified final offers into the WERC by May of 2015, so at best, the Union might have expected an award by the end of 2015, which would still be a delay of nearly a year.

The issue of the legality of retroactivity is not a very viable one because the Union had other options, such as testing out its legality in advance or timing the pension offset increases to begin with the delayed contributions. I'm not going to beat this dead horse any further because the Union is well aware of this flaw in its final offer, and it asks whether this flaw in the timing of the contribution justifies taking the City's offer when the Union's offer will cost less going forward in the end. That may be true, if one looks at only the ATB's for firefighters of 14.8% versus the 16.03%. But the arbitrator has to look at all the circumstances here, such as the savings that the City hoped to achieve as well as the ultimate costs in new money between the parties. The full member contribution to the pension is 7%, and the pension offset is 5.8%, leaving a 1.4% gap. While the Union believes that the City gains on this over time, Rynders said that with Medicare at 1.45% due to the higher wages, it brings it back to 7%. On the issue of pension contributions only, the City's position is preferred.

If we were to look at wages only, the difference between the parties is not great, only about 720,000. That amount would have been an acceptable difference, given the length of the contract and the number of employees involved. However, the difference between the final offers is \$9.1 million, with the Union's offer of \$24.2 million in new money and the City's offer of \$15.1 million. The offers in terms of percentages are either 20.9% under the City or 27.6% under the Union's offer, from the base of the 2012 contract. Because the City's offer has employees start contributing to the pension in 2015, the cost of that in 2015 is a negative \$239,122, with the cost in 2016 a negative \$1,102,803. Taking the costs for four years, the total is then a negative \$389,975. Under the Union's offer, the cost is \$4,199,335, or about \$3.8 million more than the City's offer over the 4 years.

The \$9.1 difference in offers is too much, and the biggest chunk of that is the pension. To get some sense of the size of this, the 2016 budget for the Fire Department was \$111 million. While the \$9.1 divided by 4 years is somewhat modified, the fact is that there is not much difference between the parties for the first 2 years of the contract. It is 2015 and 2016 that drive up the difference, with the pension being the major part of it. As noted earlier, the City also expects to receive a substantial savings by implementing the 53-hour work week, to the tune of nearly \$2 million.

The premium pay for paramedics also drives up the money, although there's a dispute on how much. Both parties start adding more to the paramedics' base pay in 2015, with the City adding 1% and the Union taking the 5% in Article 16 and making it 6% but adds it to the base and makes it base building and pensionable in 2015. The Union also strikes the language of Article 16 that would have this premium stop if Milwaukee County no longer subsidizes it.

The Union's position has much merit to it, despite the flaw in Article 16 where the Union did not make it clear when the premium would stop being just a premium in 2015 and 2016. The City has some basis for reading the final offer as a doubling up of the premium, but it was clear at hearing that the Union never intended it to be so. We don't need to spend much time on this because if the Union's offer were to prevail, the City would likely acquiesce to the Union's position, and anyone challenging that would be met with several pages of sworn testimony in transcripts from Union members testifying in this proceeding that would show there was no intent to double up on the premium. Moreover, that is not the piece that makes it so expensive. The so-called double-costing portion only costs \$345,251, which is minor in this dispute. Adding 1% onto the base for paramedics is over \$100,000, as seen by the City's offer, which adds costs of \$104,717 in 2015 and \$126,956 in 2016 for a total of \$231,673. The Union's offer, adding 6% into the base, is \$644,788 for 2015 and \$675,291 for 2016, for a total of \$1,320,079 -- another \$1 million more than the City's offer when deducting the City's costs of \$232,673. That's the big cost, although this might be modified by the County's subsidy.

I prefer that the premium become a base building and pensionable part of wages because otherwise, it is just a bonus which can actually be lost if the County declines to fund it. The contract doesn't even guarantee that the premium would continue through the life of the contract. Most other jurisdictions that have this subsidy have treated it as base building and pensionable, with the possible exception of Wauwatosa. Turning this into a guaranteed premium is essential. Making it base building and pensionable is better for both parties and helps with the problems of recruitment and retention of paramedics. The City recognizes the need for building more into the base by putting 1% into the base, and perhaps if this premium is ever to get into the base, it has to be done in smaller increments.

This is a problem that is not going away, with the workload of paramedics rising rapidly. When the City puts out a notice that it will hire a firefighter, it usually receives about 6,000 applications for firefighter positions. However, it has had to mandate that people become paramedics in the past. City ex. #8 shows that under the City's final offer, paramedics would be below Brookfield in base salary rank by \$681, although they would be at the top under the Union's final offer. The same is true when considering the pension contribution (City ex.#11). The paramedics in Milwaukee should be ahead of everyone in the state and the suburbs. Thus, the Union's proposal on paramedics' premium, including eliminating the language about the premium loss if the County stops paying it, is overall preferred, although Article 16 as written is not preferred (in either offer).

Those are the major elements on which this case turns - the 53-hour work week, wages and pensions, and the overall costs of the offers. The statutory criteria has to be reconciled with the problems in these final offers. Section 111.77(6)(am), Wis.Stats., states that the arbitrator shall give greater weight to the economic conditions in the jurisdiction than the arbitrator gives to the factors under par. (bm). Given the severity of the economic problems facing the City, one cannot help but recognize that the economics of these offers have to be given the most serious consideration beyond the other statutory factors.

The economic conditions in the City are more severe and negative than the next 10 large cities in the state, with Racine being the only place showing more severe problems in several areas. The economic conditions in the City are more severe and negative than in all the surrounding suburbs. Going out of state, Milwaukee ranks as the 7th most distressed large city in the United States, and 3rd in its residential property tax rate, with only Detroit and Philadelphia higher.

The criteria for measuring the economic conditions all put Milwaukee in the worst position in the state among large cities and suburbs, with only Racine coming in worse in some of the criteria. Milwaukee's per capita tax base ranked 10th among the 11 largest cities with the second largest decline between 2010 and 2015. Property owners pay the 2nd highest tax rate. Other cities are able to annex property and bring in a larger tax base, but the City is land locked. The equalized value per capita tax base is \$42,025, with the average over \$66,000. The City's tax rate was 2nd highest at \$28.62.

In the paradox of a low and declining tax base and a high tax rate, the income of residents and the demographics add to the problems. Older people with higher incomes are moving out of the City and leaving a larger share of the population that is more vulnerable, with a larger share of children under 5. The median adjusted gross income of \$22,940 was the lowest among the 11 largest cities. Unemployment was the 2nd highest. The City has the highest percentage of population below the poverty line -- 29.4% are below the poverty line.

These are just a portion of the criteria that clearly demonstrate the City's distressed economic condition. The Union says this is nothing new, that cities with large manufacturing bases have been going downhill since 1980. Nothing in the statute indicates that this economic condition has to be changing or to be different than in the past. The great recession of 2008 added to the distress, as evidenced by the number of foreclosures. While the foreclosures may have crested and started to fall in numbers, there are about 4,600 vacant properties, and the City spent about \$14.5 million demolishing some of them and continues to spend millions dealing with these properties, which bring in no tax revenue. Another change is the reduction in shared revenue which has declined since 2004, and Milwaukee relied on the state shared revenue for over 26% of its budget which is more than double the average of other large cities.

The picture of not totally bleak, as the CAFR notes, and the pension plan is now well funded. There are statements in the CAFR for 2014 showing the City in good financial condition. The City can have its finances straight and the people living in the City are still having difficult economic times. The City can have its obligations paid, its bond and investment ratings good, low borrowing costs, and still be stressed because its sources of income are declining, getting tapped out, or stressed to the hilt. Certainly a City with a poverty rate hovering on 30%, with high property taxes and low per capita income, high unemployment, etc., cannot be said to be economically strong. After all, it had to eliminate 480 positions, and 230 of those were in the Fire Department. It took other steps, such as furlough days with police and general employees, rolling brownouts in firehouses leaving some equipment in place but unstaffed. There have been hardships imposed on both the employees working for



the City as well as the citizens they serve. In economic terms, the City is much worse off than its surrounding suburbs, the next 10 largest cities in the state, and in some respects, large cities in the country.

It is also true, as the Union states, that the Fire Department has taken more than its share of the pain in the loss of 230 positions out of 480 total city-wide. And it has taken on rolling brownouts as well as the loss of equipment, and still performed well. And the same economic conditions applied when the City settled contracts with the police unions and put a little more money on the table without asking for the type of concession it asks for here on the work week schedule. While the Union believes that its offer with a lower ATB lift meets this statutory criteria better than the City's offer, the real problem in the large amount of difference between the parties is the savings that the City's offer achieves between the pension contributions and the work week schedule. And this has to be seen in the context that there is a minimum of \$15 million in new money already on the table.

All in all, the parties' final offers have to be weighed with the greater weight being given to these economic conditions rather than the other statutory factors. The only other statutory factor that comes much into play here is the comparison of wages, hours and conditions of employment with other employees in public employment in comparable communities. This factor also encompasses the parity consideration. However, neither final offer pays much if any attention to parity, particularly with the main comparable of the MPA. Seager stated the Union was willing to concede losing parity with the police. The ultimate lift of 16.03% in the City's offer is close to the MPA's lift of 16.3%, and the Union does not ask for as much in lift and does not change the work schedule. While the City argues that the MPA contract calls for the pension offset and contribution to occur simultaneously, they don't occur until 2016, a year later than the City's proposal to Local 215. The two police contracts might have made a persuasive case for internal comparability if in fact they matched up to the City's final offer. But as Local 215 points out, the City gave them more and asked less back. So those settled comparables don't help the City.

The Arbitrator has given much consideration to the greater weight factor and has concluded that under the economic conditions presented here, the difference of \$9.1 million is too much. Even though that is spread out a little over 4 years, it is really the difference in the last 2 years of the contract that make so much difference. The Union attempts to minimize the difference by stating that the cost savings of \$3 million reduces the \$9 million difference of \$1.5 million a year, in a total budget of \$931,891,000. However, the savings is not achieved by the Union's final offer. The 3.8% savings in pension and the 1.9% savings in work week schedule that is built into the City's offer results in 5.7% which is more than half of the difference. Certainly there should have been more from the City in the way of a quid pro quo for the work schedule. It should also be remembered that the \$9.1 million is just the **difference** between the parties. There is still a lot of new money in this contract - \$24 million in the Union's offer and \$15 million in the City's offer.

The City's final offer is preferred over the Union's because of the Union's offer costs too

much within the current economic condition of the City. The pension savings is an important factor that results in favor of the City's offer, albeit not the only one. The parties had already agreed to the member contribution of 7% to the pension plan, split in 2015 and 2016. The 5.8% money in wages in exchange for the 7% pension was a fair deal, everyone agreed to it. It is the timing of the pension contribution that makes the difference. Many other jurisdictions gave something in wages in return for the pension contributions but seldom labeled a portion of those enhanced wages as the parties here clearly labeled the "pension offset" to be in return for the pension contribution, making them go hand in hand. The City's offer that makes the pension offset correspond to the pension contribution is more reasonable. The Union's offer that takes the first pension offset money but delays the pension contribution for a year and a half is not reasonable. It would have been fairly easy to rectify this. If the Union had timed the pension offsets to match the pension contributions, or moved the pension contribution back to match the beginning of year offsets, it would have gone a long way toward eliminating a large part of the difference between the parties. While the Union contends that this is an issue that goes away in 2017 and its offer is better going forward, the only issue is the 2013 - 2016 contract years and what the parties have asked for during that time frame.

Based on the entire record and the statutory criteria, including the economic conditions of the City, the City's final offer is preferred and selected to go into the contract for the years of 2013 - 2016.

### **AWARD**

The City's final offer is selected and shall be incorporated into the parties 2013-2016 collective bargaining agreement.

Dated at Elkhorn, Wisconsin, this 29th day of July, 2016.

Karen J. Mawhinney, Arbitrator