ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

THE FIRE DEPARTMENT OF THE CITY OF MILWAUKEE

And

MILWAUKEE PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 215, IAFF, AFL-CIO

CASE 375
NO. 45441
MIA-1613
Decision No. 26857-A

Impartial Arbitrator

William W. Petrie
217 South 7th Street, #5
Post Office Box 320
Waterford, WI 53185

Preliminary Meeting Held

June 13, 1991

Arbitration Hearing Held

December 12, 13, 16 and 17, 1991
January 13 and 14, 1992
Milwaukee, Wisconsin

Appearances

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Fire Department of the City of Milwaukee, and the Milwaukee Professional Firefighters Association, Local 215, IAFF, AFL-CIO, with the matter in dispute the terms of a renewal labor agreement covering the period from March 1, 1991 through December 31, 1992. The remaining impasse items are the rate of pay during the contract term for employees holding the Heavy Equipment Operator Classification (HEOs), and the Union's demand for up to a $15.00 per month parking reimbursement for bargaining unit employees assigned to the Fire House located at 784 North Broadway, in the city of Milwaukee.

After preliminary meetings between the parties had failed to result in a complete negotiated settlement, the Union on March 7, 1991, filed a petition with the Wisconsin Employment Relations Commission requesting final and binding interest arbitration pursuant to Section 111.77 of the Municipal Employment Relations Act. After a preliminary investigation by a member of its staff, the Commission on April 5, 1991 issued certain findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration, and on May 13, 1992 it appointed the undersigned to hear and decide the matter as arbitrator.

The parties preliminarily met with the Arbitrator on June 13, 1991, at which time they finalized the hearing arrangements and agreed that the Employer's final offer could be modified to delete the component dealing with EMT eligibility. A hearing took place before the undersigned on December 12, 13, 16 and 17, 1991, with additional rebuttal on January 13 and 14, 1992. All parties received full opportunities at the hearing to present evidence and argument in support of their respective positions, each closed with the submission of post hearing briefs and reply briefs, and the record was closed by the Arbitrator effective April 16, 1992.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties, hereby incorporated by reference into this decision and award, differ principally as follows:

(1) The offer of the City of Milwaukee provides for a 1% additional increase in base salary for the Heavy Equipment Operator Classification, effective in pay period 5 of 1992.

(2) The offer of the Association provides for two 2% increases in base salary for the Heavy Equipment Operator Classification, effective in pay period 5 of 1991 and in pay period 5 of 1992. It additionally proposes that employees assigned to 784 North Broadway be reimbursed for reasonable parking expenses, not to exceed $15.00 per employee per month.

THE STATUTORY CRITERIA

The decision and award of the Arbitrator is governed by the various arbitral criteria described in Section 111.77(6) of the Wisconsin Statutes, which provide in part as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the employer.

(b) The 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 proceedings with the wages, hours and conditions of employment of 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 consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the City of Milwaukee argued principally as follows.

(1) That both parties have agreed that the final offer selection process in these proceedings will turn principally upon arbitral consideration of the rates of pay for Heavy Equipment Operators.

(2) That the role of an interest arbitrator is to operate as an extension of the parties' contract negotiations, in an attempt to place the parties into the same position they would have occupied but for their inability to achieve a complete settlement across the bargaining table. In this connection, that the Arbitrator should consider such factors as the parties' past agreements, their past practices and their negotiations history.

(3) That various arbitrators, including the undersigned, have identified the comparison criterion as the most important and persuasive of the various arbitral criteria, and have concluded that intraindustry comparisons are the most persuasive of the various possible comparisons.

(a) That no matter how persuasive intraindustry comparisons appear to be, there are too many variables in municipal collective bargaining to justify immediately imposing a standard of comparison across the board, and expecting that it will remedy all real and imagined disparities between the parties.

(b) That the City has utilized the intraindustry comparisons identified by Arbitrator Gil Vernon in a prior interest arbitration proceeding between the City and the MPA, which consists of Milwaukee suburban communities, the State of Wisconsin's most populous cities, and a national group of similarly sized cities.

(4) Notwithstanding the normal importance of intraindustry comparables, that internal comparisons are more important in these proceedings.

(a) That the City has consistently attempted to maintain an internal pattern of equity on contract settlements with its employees; that the internal base salary, health and dental insurance, and total package relationship of previously settled contracts with the various unions representing the City's employees should be given considerable weight.

(b) That the above principle has been widely recognized by Wisconsin interest arbitrators.

(c) That the City's position relative to internal comparisons is twofold: first, that the City strives for consistency and equity in the treatment of its employees, and this is reflected in the internal pattern of settlements established with the other protective service bargaining units; and, second, that the City's offer to Local 215 compares favorably with external comparables.

(d) That Wisconsin interest arbitrators normally recognize the need to balance the external and internal comparison criteria. In the case at hand, that adherence to the City's internal pattern will not result in conditions which are substantially out of line with external comparables.

(e) That should Local 215 prevail in these proceedings, irreparable harm would be done to the collective bargaining process in the City of Milwaukee; that to depart from the settlement pattern would be to discourage voluntary settlements and to encourage labor turmoil. That the pattern-setting agreements were agreed upon between the City and the Milwaukee Police Association and/or District Council 48, AFSCME.

(5) That any analysis of the Employer's and the Union's proposals as they relate to rates of pay for HEOs, should include a review of the historic wage parity relationship that has existed between the City's three protective service bargaining units.

(a) That the MPA and the MPSO agreements represent voluntary settlements, and they illustrate the concept of base pay parity between the three protective service units.

(b) That testimony in the record indicates that police-fire wage parity has existed between the following classifications since 1981: Police Officer/Firefighter; Police Sergeant/Fire Lieutenant; Police Lieutenant/Fire Captain; Police Captain/Battalion Chief; and Police Deputy Inspector/Fire Deputy Chief.

(c) That as a result of a 1987-88 MPA interest arbitration, Arbitrator Kerkman established a new maximum step base pay

parity relationship between Police Detective (MPA) and Police Sergeants (MPSO); since Police Sergeants had historically been equated with Fire Lieutenants, that the Arbitrator's decision and award created a parity relationship that traversed three bargaining units.

(d) Ironically, that Local 215 has historically insisted upon maintaining parity, as evidenced by its willingness to strike on this issue in 1981, but the Union has not seen fit to push for a parity relationship between HEOs and any police position until this round of negotiations, over ten years after the relationships were formed and after numerous voluntary settlements had preserved the relationships.

(e) That the Union has failed to establish a basis for a better wage package than that already established as the internal protective services pattern. That the HEO classification falls between the rank of Firefighter and Fire Lieutenant, and their parity counterparts of Police Officer and Police Sergeant. That there is no parity relationship between the HEO classification and any police classification; although there are several intermediate ranks between the ranks of Police Officer and Police Sergeant, that none of these positions has received any additional compensation beyond the 3.5% across-the-board increases.

(6) That Local 215 has not shown any increased job responsibilities for Heavy Equipment Operators.

(a) Although evidence in the record shows the duties and responsibilities of HEOs, there is no substantive evidence of any change in HEO responsibilities that would justify a special wage increase for this classification.

(b) That while the City will be gaining the right of assigning HEOs to either engines or ladders, it should be noted that not all Heavy Equipment Operators are going to be affected by this change.

(c) That the 1989-91 agreement between the parties provided for a 2% increase incentive for MPSs to become HEOs; that the HEOs, therefore, already receive payment for performing any additional duties.

(d) That Local 215 would only be relinquishing to management the right to assign those employees who were "grandfathered" to either an engine or a ladder; that the job responsibility of operating an aerial ladder is not new to the HEO classification, but only new to any remaining "grandfathered" employees.

(e) In summary, that the Union has failed to meet its burden of proof that there are additional duties and responsibilities associated with the position of Heavy Equipment Operator, which would justify an additional increment.

(7) That arbitral consideration of other 1991-92 agreements between the City of Milwaukee and other Unions, supports the position of the Employer in these proceedings.

(a) That testimony in the record indicates that the City had reached agreement in fourteen of nineteen bargaining units, including two of three protective services units.

(b) That the MPA was the first protective service unit to settle, at a two year total package cost of 9.22%.

(c) That the MPSO settlement was the second protective service settlement, at a two year total package cost of 9.72% including parking, or 9.04% without parking. That the parking increment resulted from the Employer's discontinuation of a long standing previous practice of allowing private vehicles to be parked in the Police Administration Building garage.

(d) That the total package cost of the City's final offer is 9.31%, while that of the Union's final offer is 9.94%.

(e) That while the City has attempted to maintain a relatively "level playing field" between protective service units, this would be interfered with by adoption of the Union's final offer. That Local 215's offer exceeds the total package costs of the MPA and MPSO settlements, and would only cover a 22 month agreement, rather than one for a full two years.

(f) That the City's costing approach reasonably compares the settlement costs for the three protective services units. That the City has not attempted to make settlements exactly equal, but recognizes that there must be some room for individual differences between units.

(g) That the City's final offer attempts to maintain Local 215 within the existing wage pattern set with the other protective service units, while at the same time trying to provide some additional accommodations for HEOs.

(h) That under either party's final offer, a far greater percentage of the bargaining unit will enjoy additional compensation beyond the across-the-board wage increases, than within the other protective service units.

(8) That arbitral consideration of the external comparables supports the position of the Employer in these proceedings.

(a) That the City used the external comparables at the suburban, the state and the national levels used by Arbitrator Vernon in a prior interest arbitration between the parties. That the City's relative ranking among national cities would not change with the selection of either offer, and the City's offer would not leave its HEOs substantially "out of whack" with other national cities.

(b) Relative to external comparables consisting of Wisconsin cities, the City's offer would place the HEOs second behind Wauwatosa, while the Union's would place Milwaukee in first place. That the City's offer would begin bridging the gap with Wauwatosa in an incremental fashion, while the Union's offer would erase a disparity in pay in one fell swoop, a type of disparity that should normally be addressed over a period of time.

That when comparing with State Cities, the City of Milwaukee has the highest hourly rates of pay, but its HEOs work only a 49.8 hour week, as compared with the 56 hour weeks which are the norm for most other municipalities; that the City's top ranking in hourly pay rates will be maintained with the selection of either final offer.

(c) Relative to other suburban communities in the State of Wisconsin, that Milwaukee would rank first in terms of hourly rates and second to Wauwatosa in terms of annualized rates of pay.

(9) That arbitral consideration of the cost of living criterion supports the selection of the final offer of the City.

(a) That the total package costs of both the City's and the Association's final offers outstrip the CPI-U (all cities) increases during the applicable period.

(b) That looking only to HEO wage increases, the Association proposes an 11% increase over 22 months, while the City proposes an 8% increase, and the City's offer is closer to the CPI-U (all cities) change of 8.46%.

(10) That the Association has simply failed to justify its demand for a parking allowance for those assigned to the firehouse located at 784 North Broadway; that it provided no quid pro quo for the demand and, if adopted, it would open the floodgates for other unions to make similar demands.

In summary, that HEOs will receive increased rates of pay, that the City's offer is consistent with the voluntary settlements reached with the MPA and the MPSO units, and with external comparables, and that adoption of the City's final offer would encourage voluntary settlements and result in continued labor peace.

In its reply brief, the City reiterated many of its initial points, and it emphasized the following principal considerations.

(1) In connection with the rate of pay for HEOs, that while total compensation is normally the preferred analysis, all other items have been agreed upon and the pay rate is the only remaining issue.

(a) That the Association should not be allowed to use these interest proceedings to renegotiate other aspects of total compensation.

(b) That it is improper to reach a negotiated settlement on benefits, and then urge that they are inferior and that you are thus entitled to be overcompensated in pay rates.

(2) That the external comparables support the position of the Employer.

(a) That only two errors were found in the City's data, relating to Shorewood and to Wauwatosa, and that they were corrected and explained by the City.

(b) Despite its arguments, that the Association failed to provide any total compensation comparisons, relative to its proffered suburban, state and national cities.

(c) That external comparables are helpful in providing a benchmark on the rate of pay issue alone.

(3) That the internal comparables support the position of the Employer, and that its costing methodology has been fully appropriate for these proceedings.

(a) That the City's use of total lift for compensation purposes is valid, and that it supports its position in these proceedings.

(b) Contrary to the arguments of the Union, that the City's pension costs were validly and conservatively computed for these proceedings.

(c) That the City has used the same methodology for costing all of its contracts, that the City Comptroller's office has independently verified these methods, and that it is reasonable to conclude that the City's figures are accurate.

In summary, that the Arbitrator should review the totality of the record, that the Association is urging a break in the status quo and bears the burden of proof, and that the City's offer is the more appropriate of the two before the Arbitrator.

POSITION OF THE ASSOCIATION

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the Association argued principally as follows.

(1) It emphasized certain elements of the history and the duties of the Heavy Equipment Operator in Milwaukee.

(a) That prior to January 12, 1986, engines were operated by Motor Pump Operators (MPOs), while aerial ladder trucks were operated by Firefighters; at that time, that the Department began appointing HEOs who were responsible for the operation of either engines or ladder trucks. Thereafter, that no more MPOs were appointed, but those already holding the MPO rank were allowed to remain in the classification.

(b) That between 1963 and 1969, top-step MPOs received base salaries that were 4.5% higher than top-step Firefighter salaries; that between 1969 and 1987 this differential fluctuated between 4.18% and 2.95%; that pay ranges between MPOs and HEOs were equalized in the 1987-89 agreement, with certain red-circling until MPO rates were 2% below HEO rates; that in the 1989-1991 agreement, MPO rates were fixed at 2% below HEOs at each step.

(c) That to encourage MPOs to qualify as HEOs, the parties agreed in 1988 that HEOs would be permitted to select, on a seniority basis, the type of apparatus to which they would be assigned.

(d) That during the term of the 1989-91 agreement, the Department adopted a policy of transferring all personnel, including HEOs, between battalions every three years.

(e) That the pay scales contained in all of the collective agreements between the parties, have consistently reflected a wage differential of 3.9% between top-step HEOs and top-step Firefighters.

(f) That the duties and responsibilities of the HEO classification are comprehensive, detailed and demanding; that the Department's decision to rotate HEOs between companies and to eliminate the "grandfather clause" will require them to be universally familiar with streets, water supply locations and other features throughout the City and to be familiar with the operation of both engines and ladder trucks.

(2) That arbitral consideration of the bargaining history within the protective services is material and relevant to the outcome of these proceedings.

(a) That Local 215 has been the bargaining representative of the sworn Firefighters, including Drivers, Fire Lieutenants and Captains employed by the City of Milwaukee, since 1963.

(b) Between 1965 and 1981, that the most divisive issue in contract negotiations was top-step wage parity between certain MFD ranks and corresponding ranks in the MPD and the MPA units.

(c) In 1974, that Fact Finder Robert L. Stutz concluded that parity between Firefighters and Police Officers was warranted.

(d) That the City rejected wage parity between the various ranks in the MFD and the MPD until 1981, at which time Local 215 struck over the issue; in a settlement of the dispute, that the City agreed to parity among the various correlative ranks, and agreed also to a "me too" clause that guaranteed such parity in the future.

(e) Since 1981, that top-step parity has been maintained between Firefighters (and Paramedics) and Police Officers, Fire Lieutenants and Police Sergeants (and Detectives), and Fire Captains and Police Lieutenants. That parity has never existed, however, between any of the intermediate ranks between Firefighter and Fire Lieutenants in MFD and any of the intermediate ranks between Police Officer and Sergeant/Detective in MPD, all of whom are represented by MPA.

(f) That the intermediate ranks in the MFD under the 1991-92 contract will be Heavy Equipment Operator, Fire Audio Visual Training Specialist and Training Officers, with the 1991 bi-weekly top step salaries of $1,377.78, $1,434.23 and $1,407.62 respectively.

That the intermediate ranks in the MPD under the renewal agreement are Court Liaison Officer, Identification Technician, Narcotics Control Officer and Police Alarm Officer with a 1991 bi-weekly top step salary of $1,413.15, Latent Print Examiner at $1,437.39, and Custodian of Police Property and Stores at $1,461.00.

(g) That the City has generally negotiated two year agreements with the three unions representing its sworn employees, and all three are considered "pattern setting" units within the protective services. In the current renewal agreement, that Local 215 and the City agreed to a 22 month renewal agreement to bring the unit into conformity with the contract durations in the MPA and the MPSO units.

(3) That arbitral consideration of the City's 1991-92 contract negotiations with the MPA and the MPSO is material and relevant to the outcome of these proceedings.

(a) That the City reached a settlement with the MPA for 1991-92 which was ratified and approved by December 1990; it settled with the MPSO between February 19 and 21, 1991.

(b) That the MPA agreement provided for 3.5% across-the-board base salary increases each year, plus a 1% increase each year for top step Police Officers, Police Women and Police Matrons; the MPSO agreement also provided for 3.5% across-the-board increases each year, plus an additional 1% of base pay in lieu of underfilling in the second year for Sergeants. That both contracts also contained changes in the pension, health insurance, uniform allowance and tuition reimbursement provisions, which changes are similar to those agreed upon between the City and Local 215. That certain additional changes were agreed upon in the MPA and the MPSO contracts, which were not reflected in the agreements between the City and Local 215.

(4) That arbitral consideration of the 1991-92 contract negotiations between the City and Local 215 on HEO wage rates and related issues, is material and relevant to the outcome of these proceedings.

(a) After their initial exchanges of proposals, that the parties' positions were modified and shaped by the give and take of negotiations.

(b) On December 13, 1990, that the City's Chief Negotiator proposed that a new top step be added to the HEOs pay range in the first year of the contract, 4% higher than the existing top step; that the principal quid pro quo sought by the City was the elimination of the "grandfather clause," whereby certain equipment operators were entitled to select their own apparatus. That this proposal was reiterated by the City in bargaining sessions on January 7, January 8, February 21 and February 22, 1991.

(c) That the City never communicated to Local 215 that, if it did not immediately accept the City's entire package, the City would withdraw the proposal to create the additional 4% top step for HEOs, or that it would reduce the total value of its proffered package because it had already settled with MPA and MPSO.

(d) That at 6:30 p.m. on February 22, 1991, the City withdrew its proposal to add a 4% step for HEOs, apparently as a result of its negotiator's pique at the disclosure of the terms of the pending MPSO settlement, in alleged violation of a "gag rule."

(e) That the costs of the City's offer for a 4% increase for HEOs was significantly in excess of its later addition of a 1% pay increase for Lieutenants; that the change in the City's proposal on the evening of February 22, 1991, amounted to an approximate reduction of $524,419 over the two year duration of the renewal agreement.

(f) In its final offer, that the City proposes only an additional 1% pay increase for the top-step HEOs in the second year, which would represent a reduction in the wage differential between top-step HEOs and top-step Firefighters from 3.9% to an approximate 2.9%; in its final offer that Local 215 proposes an additional 2% pay increase for top-step HEOs each year, which would increase the wage differential to approximately 4.9%, approximately the same differential proposed by the City until the evening of February 22, 1991.

(5) That arbitral consideration of the negotiations relating to Local 215's parking proposal is material and relevant to the outcome of these proceedings.

(a) That both the MPA and the MPSO agreements provide for parking reimbursement allowances for members assigned to the Police Administration Building, with the regular allowance under each agreement a maximum of $70 per month, with special provisions for two and three person car pools. That the City estimates that these parking provisions will cost $104,640 and $169,400 over the life of the MPA and the MPSO contracts.

(b) That while both the MPA and the MPSO contracts are pattern setting units for the City's protective services, no parking allowance is presently provided to any member of Local 215.

(c) That Ladder Company 1 and Engine Company 1 are housed at 784 North Broadway, with 33 bargaining unit employees assigned to these companies, with 11 on duty each day; that no free parking is available in the vicinity of the fire house, and the Association has proposed parking reimbursement to a maximum of $15 per month. That the cost of the Union's proposal over the life of the agreement would be $10,890.

(6) In general, that the position of the Association is supported by the following summarized arguments.

(a) That the Association's final offer with respect to HEO salary and the resultant differential between top-step HEO salary and top-step Firefighter salary, is substantially similar to the proposal repeatedly made by the City until February 22, 1991, which was characterized by the City's negotiator as its settlement proposal, not its arbitration position.

(b) That the Association's offer provides the City with substantially the same quid pro quo that it sought in exchange for its earlier proposal for a first year 4% increase in top-step HEO salary, principally the elimination of the "grandfather clause." Accordingly, that the Union's offer represents the agreement that the parties would have reached across the table, had they been able to do so.

(c) That both final offers would modify the current wage differential between top-step HEOs and top-step Firefighters. That the City seeks to reduce it from 3.9% to 2.9%, while the Association seeks to increase it to 4.9% the first year, and then to 5.9% in the second year of the agreement.

(d) That the Association proposed differentials are supported by arbitral consideration of the average differentials between HEOs and Firefighters in other major nationwide and midwestern cities; that the City proposed differentials would rank at or near the bottom of any relevant list of major metropolitan fire departments, both nationwide and regional.

(e) That comparisons of the two final offers with other major Wisconsin cities and with nearby suburban communities, favor the selection of the final offer of the Association, when viewed in terms of total annual HEO compensation and total hourly compensation, calculated according to total hours actually worked per year. That while Milwaukee HEOs should rank at the top of the pay scale in the State of Wisconsin, neither final offer would place them near the top of annual or hourly total compensation comparisons.

(f) That the Association's final offer is well within the parameters of the voluntary settlements reached with the MPA and the MPSO. That it would produce a lift that falls between those of the MPA and the MPSO settlements, and would result in a percentage cost increase smaller than either of the two settlements.

(g) That since HEOs are not in parity with any ranks in MPD, the Association proposed increase would not break any parity relationship; instead, that it would bring the HEOs closer in line with the intermediate ranks at MPD.

(h) That the City's argument that acceptance of the Association's offer would reward it with a richer contract than the MPA and the MPSO contracts is baseless. That the Association offer is not for a "richer" contract, and it merely parallels the settlement offer continued by the City until February 22, 1991, after settlements had been reached with both the MPA and the MPSO.

(i) That the Association's final offer is more in line with cost-of-living increases than the City's offer.

(j) That the Association's parking proposal is justifiable and reasonable in light of the absence of available free parking, and it is also consistent with certain parking benefits provided under the MPA and the MPSO contracts.

(k) On the basis of arbitral consideration of all of the statutory arbitral criteria, that the final offer of the Association should be selected.

(7) In detail, that the Association's final offer represents the agreement that the parties should have reached had they been able to do so.

(a) As previously recognized by the Arbitrator in other interest arbitration proceedings, that the purpose of the process is to arrive at the same end point that the parties would have reached at the bargaining table, had they been able to do so.

(b) That City witnesses confirmed that its proposal on the table on the morning of February 22, 1991 was a settlement proposal, as opposed to an arbitration position; that this proposal has been accepted in all material respects by Local 215.

(c) That the principal quid pro quo sought by the City in exchange for the new top step for HEOs was the elimination of the "grandfather clause," and the Association's agreement that all HEOs were to be qualified and assignable to any apparatus; that the Association has already agreed to this quid pro quo.

(d) Except for the request for parking reimbursement for members in Ladder Company 1 and in Engine Company 1, that the Association withdrew all of its other economic proposals that the City had rejected, and it also dropped its HEO relief assignment grievance.

(e) That the only significant differences between the City's settlement proposal and the stipulations and the Association's final offer, are that the City withdrew its demand that all Firefighters be qualified to operate any apparatus as the quid pro quo for the additional 1% for Firefighters and paramedics, the Lieutenants are receiving 1% of base salary in the second year instead of approximately $100, and the Association has adhered to its request for parking reimbursement for certain members.

(f) That the selection of the final offer of the Union is consistent with the maintenance of parity between the protective services.

(g) That the City has proposed reducing the historic differential between top-step HEOs and top-step Firefighters from 3.9% to 2.9%, but it has failed to provide any quid pro quo for this proposed change.

(h) That Local 215's final offer would increase the HEO versus Firefighter differential to 4.9% in the first year and 5.9% in the second year; that the City's original proposal, however, would have resulted in a first year differential of 6.9%, and a second year figure of 5.9%. That the Association had agreed to the quid pro quo for the City's original HEO proposal and, accordingly, has met this requirement in connection with its final offer, which demands less than the City's earlier offer.

(8) That arbitral consideration of relevant national comparables, supports the wage differential contained in the Association's final offer.

(a) In proposing the reduction of the previous 3.9% differential between top-step HEOs and top-step Firefighters to 2.9%, the City is seeking to place Milwaukee far below the mean

differential between HEOs and Firefighters in comparable large metropolitan cities in the United States.

(b) That either the City's original proposal and/or the Association's final offer, would bring Milwaukee into line with relevant national average wage differentials.

(c) That Union Witness James J. Kilgallon, a labor economist and president of an economic consulting firm testified that any one of three universes of large US cities would be appropriate for comparing wage differentials between HEOs and Firefighters: the first universe, which was used by Arbitrator Vernon in the most recent MPA arbitration, consists of the nine cities above and the nine below Milwaukee in terms of population; the second universe consists of the 30 largest US cities; the third universe consists of mid-western MSAs with populations in excess of 500,000.

(d) That the testimony of Mr. Kilgallon indicated HEO versus Firefighter differentials within the three universes as follows: within the first universe, that those cities with both classifications had mean differentials of 9.1%, and, including all cities, a mean differential of 6.6%; within the second universe, that cities with both classifications had mean differentials of 9.0%, and an all cities mean differential of 6.8%; within the third universe, that the dual classification cities had a mean differential of 7.2%, and an all cities mean differential of 4.6%.

That the above comparisons clearly favor the selection of the final offer of the Association in these proceedings, and that comparisons based upon use of median, rather than mean comparisons, also favor the final offer of the Association.

(e) That Mr. Kilgallon testified that the second universe was the most relevant in these proceedings, in that the mean 1991 Firefighter salary for all cities in this group was closest to the stipulated 1991 top-step Firefighter salary in Milwaukee.

In summary, that the national and regional comparables clearly support the Association's final offer with respect to the wage differential that should exist between top-step HEOs and top-step Firefighters.

(9) In detail, that arbitral consideration of the relevant State and suburban comparables support Local 215's final offer.

(a) According to preliminary 1990 census data, that Milwaukee is the 17th largest city in the Nation, with a population of 628,088; that overall population of the Milwaukee Metropolitan Statistical Area is approximately 1,432,100, reflecting not only residential population, but also the influx of workers and others that would tend to come into the City on a regular basis.

(b) That the MFD and its employees protect not only the City's residents, but all of its commercial and industrial establishments, and the people who come into the City on a regular basis, including workers, customers, travelers, etc.

(c) That the City prepared exhibits purport to show that the annual salary for HEOs in Milwaukee would be number 1 in the State under Local 215's proposal, and number 2 under its proposal, and it also submitted that Milwaukee HEOs work fewer hours than other HEOs in the State of Wisconsin. That these analyses are deficient in three respects: first, that the working conditions of Firefighters and HEOs in Milwaukee are not comparable to those in the other municipalities; second, that some of the data in the City's exhibits are incorrect; and third, that the City's data are incomplete and misleading.

(d) In elaboration of the working conditions observations offered in (c) above, that the following major considerations must be recognized: Milwaukee is by far the largest City in the State, with Madison the only other City with a population in excess of 100,000; that the other cities cited by the Employer, range in population from 37,757 for Fond du Lac to 96,466 for Green Bay, and that the suburban comparables range from 7,238 for Fox Point to 63,221 for West Allis; that Milwaukee Firefighters respond to far more alarms than those in any other municipality in the State, and they must possess much greater detailed knowledge of streets, traffic, buildings and fire fighting techniques, than their suburban and outstate counterparts; that Milwaukee has a much higher vehicle per alarm ratio than do other municipalities in the State, and a much higher volume of apparatus runs; that Milwaukee Firefighters have a much higher ratio of alarms at night than do other Wisconsin Firefighters; and that the heavier equipment usage requires significantly greater vehicle overhaul and maintenance responsibilities for Milwaukee HEOs.

On the basis of the above, that a telling argument could be made that Milwaukee HEOs are not really comparable with any others within the State of Wisconsin. That if State comparables must be used, however, that Milwaukee HEOs are entitled to compensation which reflects the reality and the frequency of performance of their duties.

(e) In elaboration of the accuracy of data observations offered in (c) above, that certain data submitted by the City in connection with the Cities of Shorewood and Glendale are erroneous, and that the City's comparisons are misleading in that they isolate upon only annual base salaries and average numbers of hours per week. In the latter connections, that total compensation comparisons should be given significant weight, and that the actual number of firefighter hours worked during any year is far less than the stated weekly average extended over a year; that more accurate comparisons can be arrived at by determining the total annual compensation received by each municipality's HEOs, and by dividing total annual compensation by the number of hours actually worked. That when viewing only annual base salary, Milwaukee HEOs appear to be one of the two or three highest paid in the State; that when looking to total compensation, however, with particular reference to pension contributions, Milwaukee HEOs rank closer to the bottom of the list than the top.

(f) That given the much greater demands placed upon Milwaukee HEOs than others within the State, with particular attention

to elimination of the grandfather clause and the City's now unchallenged right to reassign them to other locations, Milwaukee HEOs should be the highest paid in the State. That this is not the case, however, on either an annual base salary or on a total compensation basis.

(10) That Local 215's final offer is favored by arbitral consideration of the internal comparison criterion.

(a) That the City attempted to show in its exhibits that, in terms of total lift, its proposal is in line with the 1991-92 agreements with MPA and MPSO, while that of Local 215 is excessive.

(b) That the City's costing analysis referenced immediately above is flawed and unreliable in two major respects: first, that it overstates the cost of making EMT pay pensionable, and, second, that its assumptions relating to both timing and to number of employees in the bargaining unit are flawed.

(c) That when corrected to reflect the actual pension contribution for EMT pay and a bargaining unit strength of 998 instead of 1,006, the total lift in the City's proposal is below that of either the MPA or the MPSO, while Local 215's proposal falls between the MPA and the MPSO lifts.

(d) That comparisons based upon the total cost percentage increases of the four contracts (ie. MPA, MPSO, City's proposal, and Local 215's proposal), indicate that the City's proposal is lower than either the MPA or the MPSO contracts, while Local 215's proposal falls between the MPA and the MPSO contracts in terms of lift, and falls below both of them under two of three measures of total percentage increases.

(e) In looking to the Union's final offer and the City's original proposal, that the former carries a cost for the HEO and the Lieutenant items of $486,014, while the latter carried a cost of $585,380. While total lift comparisons are somewhat deceptive, that comparisons based upon percentage increases over the life of the agreement show that the City's original proposal was more expensive than Local 215's final offer.

(f) That Local 215's final HEO proposal would not break any parity between Firefighters and Police Officers, since HEOs are not in parity with any comparable MPD rank. Indeed, that the additional increase for HEOs which is proposed by the Association, would result in a base salary below that of the lowest intermediate rank in MPD between Police Officer and Sergeant.

(11) That the evidence in the record indicates that selection of the final offer of Local 215 would not constitute a rewarding of this Union for being the last of the protective services units to settle.

(a) That Local 215 is merely asking that the City be held to its earlier settlement proposal which was withdrawn, not because it would have provided a reward for going last, but because

the City believed it had received unauthorized information from the President of MPSO.

(b) That the City's Chief Negotiator had completed negotiations with MPA for its 1991-92 contract in November 1990, weeks before its first bargaining session with Local 215; that the City's Comptroller's analysis of the MPA settlement was submitted to the Common Council on December 18, 1991; That the City never suggested to the Union prior to February 22, 1991, that it might either reconsider or withdraw its original HEO proposal because it felt that it was a "richer" contract than that received by the MPA; not even on the morning of February 22, 1991, after reaching a tentative agreement with the MPSO, did the City's negotiator indicate that its original HEO proposal would be withdrawn; and that it was only after learning the MPSO had provided information to Local 215 that the City's negotiator withdrew its original HEO proposal.

(c) That the City's reward rationale was apparently developed as an afterthought, to justify what was merely an exercise of pique, after learning that the MPSO and Local 215 had Unions were exchanging information.

(12) That Local 215's final offer is supported by arbitral consideration of the cost of living criterion.

(a) That the City's analysis of cost of living changes versus salary changes is flawed.

(b) In the above connection, that the City's data measuring cost of living increases begins in February 1989, when the first wage increase under the 1989-91 agreement became effective, but it has inexplicably computed CPI increases from this date utilizing February 1989 as zero, and computed salary increases for HEOs and Firefighters from a 2% base. Thus all percentage base salary increases shown on the city's exhibits begin with a reference base that is 2% too high, and they should be adjusted downward to properly analyze the increases in CPI.

(c) When proper comparisons are used, that they show that increases in HEO salaries barely kept pace with CPI increases until February of 1991, after which they fell behind the CPI throughout the balance of the contract's first year.

(d) Since Local 215's final offer would result in precisely the same percentage increase relative to February 1989 base HEO salary that the City had claimed for its own proposal, while the City's would have been 2.2% lower, that arbitral consideration of the cost of living criterion favors the selection of the final offer of the Union.

(13) That arbitral consideration of various remaining statutory criteria also favors selection of the final offer of the Union.

(a) That there is no suggestion that acceptance of the Union's final offer would exceed the lawful authority of the City.

(b) That there is no basis for concluding that the interest and welfare of the public criterion favors selection of the

final offer of the City: that the Union's proposal does nothing that could be construed as seeking to best the MPSO and the MPA settlements; that, on the basis of proper figures, the Union's final offer would produce a percentage increase in the cost of the contract less than that of the other two settlements, and a lift that falls between the other two settlements; that adoption of the Union's final offer would break no parity relationships; that this case raises no ability to pay questions; and that there have been no changes relating to the statutory criteria during the pendency of this arbitration.

(c) In summary, that arbitral consideration of all of the criteria referenced in Section 111.77(6) favors the selection of the Union's final salary offer for HEOs during the terms of the renewal agreement.

(14) That Local 215's parking reimbursement proposal is both reasonable, and consistent with the relevant internal comparables.

(a) That the parking proposal responds to the absence of any free parking in the vicinity, and the need of Firefighters assigned to Engine Company 1 and Ladder Company 1 to secure 24 hour parking whenever they are on duty.

(b) That the Union's parking proposal is reasonable in amount, and that the amount of the proposed reimbursement is not in issue.

(c) That the parking reimbursement is in line with the practices within the MPA and the MPSO units, where the amounts reimbursed range from $70 to $105 per month, far in excess of that proposed by Local 215.

(d) That there is no basis for concluding, as argued by the City, that a parking reimbursement to the Firefighters would trigger similar demands on behalf of the 2,000 AFSCME represented employees working in the City Hall complex; in this connection, that the City has consistently argued that the pattern setting units for protective services are the units represented by the MPA and the MPSO, in addition to the MFD unit represented by Local 215.

(d) In any event, that Firefighters are distinguishable in various respects from the civilian employees working at City Hall, including the nature of their jobs, and the fact that they must secure appropriate parking for 24 hour periods, rather than merely for 8 hour periods during daylight hours.

In its reply brief the Association emphasized or reemphasized the following principal arguments.

(1) That the City's original settlement proposal providing for a first year 4% increase for top-step HEOs, establishes the reasonableness and the appropriateness of Local 215's final offer.

(a) That the recurrent theme of the City's brief is its contention that the Union is attempting gain more through arbitration than it could get over the bargaining table, that it has resisted Local 215's unjustifiable efforts to gain a wage increase for top-step HEOs that would break the internal settlement pattern, particularly within the

protective services units, and that adoption of the Union's final offer would create labor turmoil.

(b) That the position of the City is completely contrary to the facts in the record relating to negotiations history preceding the impasse which generated these proceedings, including the Employer's withdrawal of its earlier proposal for an extra 4% increase for HEOs.

(c) That the history of the parties' recent and prior negotiations fall well within the general coverage of Paragraph (h) of Section 111.77(6) of the Wisconsin Statutes, and tentative agreements reached between parties during negotiations are entitled to considerable weight.

(d) That many arbitrators and independent experts, including various Wisconsin interest arbitrators, have recognized that the most satisfactory award is one consistent with the terms on which the parties were able at one time to substantially agree.

(e) That the City's consistent support for its original proposed 4% HEO salary increase, is the best evidence of the reasonableness and appropriateness of Local 215's final offer.

(2) That the City's abrupt and unilateral revocation of its settlement proposal, without warning and without good cause, defeated any realistic prospect of a voluntary settlement, and such action should not be condoned.

(a) That while it occasionally happens that one party or the other moves "backwards" during negotiations, the practice generates serious problems such as in the impasse at hand.

(b) That any backward movement should normally be limited to those situations involving either good faith mistakes, changes in circumstances, or advance notice to the other party that a conditional proposal will be reduced if not accepted; that none of these conditions, were present in the case at hand.

(3) That the City is seeking to reverse the trend established in the 1987-89 agreement, to increase the base pay differential between Heavy Equipment Operators and Firefighters.

(a) That between 1963 and 1984, the differential between MPOs and Firefighters had slipped from 4.54% to 2.96%, and the MPOs were insisting that the differential be adjusted to more closely reflect the average differential within comparable cities.

(b) That when a proposed 1985-87 agreement that would have maintained a 3% differential for MPOs and a 3.9% differential for the newly created HEOs was submitted to the membership for ratification, it was rejected. That the agreement was then revised to provide that MPOs would receive the same base salary as HEOs, and thus enjoy the same differential above Firefighters; that while the MPO salary was to be "red circled" until it was 2% less than HEOs at each step, incumbent MPOs were assured that if they were reclassified as HEOs, they would be permitted seniority

selection of the type of apparatus to which they would be assigned.

(c) That the City now proposes that the MPOs who fought for the 4% differential and who are now HEOs, give up their rights under the "grandfather clause," and also accept a reduced 2.9% differential between top-step HEOs and top-step Firefighters; that this 2.9% differential would be the lowest ever!

(4) That Local 215's proposed increase in HEO base salary, is also justified by arbitral considerations of various increases in HEO job responsibilities.

(a) Due to the elimination of the "grandfather clause," that HEOs can be required to operate either an engine or a truck, rather than merely one or the other, and that entirely different skills are required to operate these different types of apparatus.

(b) That the Employer's implementation of a rotation policy for all personnel since the execution of the 1989-91 agreement has required all HEOs to become intimately familiar with new response areas at least every three years.

(5) That the Local 215 proposed increase in HEO base salary is consistent with the internal patterns reflected in the MPA and the MPSO settlements.

(a) That the City expressed concern with alleged discrepancies in lift between the protective service settlements, relies upon substantial overstatement of both the cost of making EMT pay pensionable, and the size of the bargaining unit.

(b) When correct pension costs and bargaining unit size are used, that the lift in the City's proposal is below that of either the MPA or the MPSO contracts, while that in Local 215's offer falls between them.

(c) That the City has failed to respond to the testimony of Dale Brown that both final offers will result in a lower percentage cost increase to the City over the life of the renewal agreement, than is reflected in either the MPA or the MPSO settlement.

(d) That arbitral consideration of the percentages of bargaining unit employees benefiting from the two salary offers, favors selection of the final offer of Local 215; in this connection, that the Employer's arguments focused upon the second year of the renewal agreement, rather than upon the first and the second years.

(e) That arbitral selection of the final offer of the Union will simply not have any adverse impact upon the City's internal pattern of settlements, or upon the so-called "level playing field" which it purportedly seeks to maintain.

(6) That arbitral consideration of the external comparables favors selection of the final offer of the Union.

(a) That various arbitrators, including the undersigned, have recognized the importance of intraindustry comparisons.

(b) That the Union presented evidence comparing the top-step wage differential between Firefighters and HEOs in Milwaukee versus three universes of other national cities, and all of these comparisons reflect the fact that the Union's proposal would place Milwaukee below the average Firefighter/HEO differential, and that the City's proposal would place Milwaukee at or near the bottom of the lists of comparables.

(c) That the City has not controverted the Union's evidence relating to the above referenced average differentials, but instead has focused upon annual base salaries, including the average number of hours per week worked by platoons or shifts in each city.

(d) That the Employer urged comparisons provide a very incomplete and misleading picture of employees' total annual compensation, and they ignore the fact that the average number of hours per week worked by an employee's shift or platoon has only a very limited correlation to the average number of hours worked per week or year by the average employee.

(e) In contrast to the position of the City, that the comparisons of wage differentials urged by the Union are highly relevant, and their use is also supported by the parties' recent bargaining history.

FINDINGS AND CONCLUSIONS

The hearing in these proceedings has been both lengthy and detailed, the record includes hundreds of exhibits, both parties have provided extremely comprehensive post hearing briefs and reply briefs, and the size and complexity of the record is also clearly reflected in the length of this decision and award. Prior to reaching a decision, selecting the more appropriate of the two final offers in issue, and rendering an award, the Arbitrator will preliminarily address the following considerations:

(1) The general nature of the statutory interest arbitration process in Wisconsin, the application of the statutory arbitral criteria, and the normal role of an interest arbitrator in the final offer selection process;

(2) The specific nature of the salary dispute before the Arbitrator, and the weight to be placed upon the parking reimbursement impasse item in the final offer selection process;

(3) The most appropriate wage comparisons to be utilized by the arbitrator in these proceedings, and the relative weights to be placed upon internal versus external intraindustry comparisons in these proceedings;

(4) The utilization of bargaining history considerations, and the weight to be placed upon this arbitral criterion in the these proceedings;

(5) Consideration of the remaining statutory criteria.

The Nature of the Statutory Interest Arbitration Process in Wisconsin, the Application of the Statutory Criteria, and the Role of an Interest Arbitrator in the Final Offer Selection Process

The Wisconsin Legislature has mandated in Section 111.77(6) of the Wisconsin Statutes that statutory interest arbitrators shall give weight to the various arbitral criteria described therein. It has not, however, established any relative importance for the various criteria, thus leaving to individual arbitrators the responsibility to determine the relative weights to be assigned to the various criteria on a case-by-case basis. In making these determinations, Wisconsin interest arbitrators look to the evidentiary records and the specific arguments of the parties, and apply certain general principles normally utilized by interest arbitrators.

It will be noted at this point that it is widely recognized in Wisconsin and elsewhere that the comparison criterion is normally the most important of the various criteria, and that the so-called intraindustry comparison is generally the most important of the various possible comparisons. These considerations are discussed in the following excerpts from the authoritative book by Irving Bernstein:

> "a. Intraindustry Comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first ranking of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
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> Wage parity within the industry is so compelling to arbitrators that, absent qualifications dealt with below, they invariably succumb to its force. Its persuasiveness, in fact, provides as sound a basis for predictions as may be uncovered in social affairs. The loyalty of arbitrators to this criterion at the general level could be documented at length..... [1]

In the case at hand the parties are in dispute over the composition of the principal intraindustry comparison group, and in connection with the relative weights to be placed upon external intraindustry comparisons, versus certain internal City of Milwaukee comparisons, most notably those within the three protective services bargaining units. When parties are in dispute as to the makeup of particular comparison groups, and/or relative to the weight to be placed upon the various possible comparisons, interest arbitrators frequently consider the parties' bargaining history, and they are extremely reluctant to abandon or to distinguish the comparisons used by the parties in the past, or to modify the wages, benefits or language comparisons utilized by the parties in the past. These principles are described as follows by Bernstein:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or to create a differential....
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> "The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the

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[1] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, p. 56.

past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..." [2]

The force of bargaining history in selecting and in applying wage comparisons is also briefly explained in the following excerpt from the book by Elkouri and Elkouri:

> "Where each of various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons which the parties themselves had considered significant in free collective bargaining, especially in the recent past." [3]

On the basis of the above, it is clear that the parties' negotiations history may significantly impact upon both the selection of, and the relative weight to be placed upon the various possible comparisons. Hypothetically, parties may price their general wage structure on the basis of external comparisons, but may simultaneously determine the level and the details of certain job slotting and/or fringe benefits on the basis of specific internal comparisons.

In the case at hand, the parties are in dispute with respect to certain principles of wage parity and wage differentials, with the City relying principally upon internal, protective services comparisons, and the Union principally emphasizing external intraindustry comparisons relative to the appropriate differential between the Firefighter and the HEO classifications; both parties have argued that arbitral consideration of bargaining history favors its position.

In next addressing the normal goal of Wisconsin interest arbitrators in the final offer selection process, both parties recognize that they operate as extensions of the contract negotiations process, and that they normally attempt to place the parties into the same position they would have reached over the bargaining table, had they been able to achieve a negotiated settlement. This widely accepted principle is discussed in the following additional excerpt from the Elkouris' book:

> "In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract right ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations -

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[2] The Arbitration of Wages, pp. 63, 66.

[3] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, p. 811. (footnotes omitted)

> they have left to this Board to determine what they should by negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to?...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining...' " [4]

In carrying out the above described duty, Wisconsin interest arbitrators will look closely to the parties' past agreements and to their negotiations history. Although neither of these factors is specifically listed in Section 111.77(6), they fall well within the general scope of sub-section (h) to this section of the Wisconsin Statutes.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded as follows: that the comparison criterion is normally the most persuasive of the arbitral criteria described in Section 111.77(6) of the Wisconsin Statutes; that the intraindustry comparison criterion is normally the most persuasive of the various possible comparisons, but this may vary on the basis of the parties' negotiations history and the specific nature of the impasse items in issue; and that the normal goal of an interest arbitrator is to operate as an extension of the contract negotiations process, and to attempt to place the parties into the same position they would have arrived at in the negotiations processes, had they been able to achieve a full settlement.

The Specific Nature of the Salary Dispute before the Arbitrator, and the Weight to be Placed Upon the Parking Reimbursement Impasse Item in the Final Offer Selection Process

As referenced earlier, the specific nature of a wage dispute can have a significant impact upon the relative weight to be placed upon the various arbitral criteria. In urging that principal weight be placed upon internal rather than external comparisons in this dispute, the Employer submitted that arbitral adoption of the final salary offer of the Union would be inconsistent with the settlements within the MPSO and the MPA units, argued that it would break settlement parity between the protective services units, and advanced the proposition that such action could do irreparable harm to the Milwaukee collective bargaining processes, could discourage voluntary settlements, and could encourage labor turmoil. In urging that principal weight be placed upon external intraindustry comparisons in determining the salary differential between the Firefighter and the HEO classifications, the Union emphasized the parties' agreement relative to the general wage increases applicable during the term of the renewal agreement, cited the lack of any wage parity between the HEOs and any other protective services classification, and denied that any undermining of the collective bargaining processes or creation of labor turmoil would result from arbitral selection of its final offer.

The City is quite correct in articulating the need for interest arbitrators to balance the weight to be placed upon the external intraindustry versus the internal intraemployer comparisons under certain circumstances, and sometimes to place primary weight upon the latter. An established pattern of overall wage settlement consistency, for example, and/or a pattern of wage parity between particular classifications within the City's protective services bargaining units, would be entitled to considerable arbitral weight in the final offer selection process, and such internal comparisons could then be entitled to greater arbitral weight than external intraindustry comparisons which had not previously been utilized by the parties. The Employer is also

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[4] How Arbitration Works, pp. 504-505. (footnotes omitted)

quite correct that arbitral disregard of any such historic and previously negotiated wage relationships could do substantial damage to the collective bargaining processes, and to the prospects for future voluntary settlements between the parties.

Despite the theoretical validity of the above referenced Employer arguments, they simply do not apply to the dispute at hand:

(1) While the parties have apparently adopted the general principle of parity between the overall protective services settlements, there has been no agreement or practice tying the wage rates of the HEO classification to any other classification or classifications in the MPA or the MPSO bargaining units.

(2) Additionally, and as discussed in greater detail below, the negotiations history of the parties, including the previous offers of the Employer leading to the present impasse, clearly detract from the City's arguments that the adoption of the final offer of the Union would do irreparable harm to the collective bargaining processes within the City of Milwaukee.

(3) Finally, it must be observed that the principles of wage parity do not extend to all elements of negotiated agreements. The arbitral conclusion that all adjustments in wages and benefits do not have to be evaluated and measured on the basis of wage parity between the protective services units, was described in part as follows, by Arbitrator Vernon in his MPA interest arbitration decision of May 5, 1990:

> "...when comparing a final offer, it shouldn't be compared to internal settlements on the basis of 'package parity', but on the terms of fitting into the 'package pattern'. By thinking in terms of the 'pattern', there is, while seeking as much consistency as possible, a tolerable degree of latitude to accommodate for individual differences between units.
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> .....It is sufficient to say consistency ought to be the goal as much as reasonably possible, depending upon the unique facts and circumstances of each individual case." [5]

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the nature of the parties' wage dispute in these proceedings does not lend itself to measurement within the wage parity criterion. Paraphrasing the words of Arbitrator Vernon, the disputed wage adjustments for the HEO classification would not fall outside of the package pattern within the three protective services units.

In connection with the parking reimbursement component of the final offer of the Union, the Arbitrator agrees with the arguments of both parties, that the outcome of the case depends upon the relative merits of the HEO wage increase components of the two final offers. The Arbitrator need not, therefore, extensively address the parking reimbursement component of the final offer of the Union.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the theoretically valid arguments of the City relating to the primacy of internal over external comparables in situations involving general

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[5] Union Exhibit #1003, pp. 42-43.

wage disagreement in the face of a pattern of negotiated internal parity, have no application to the HEO wage differential component of the dispute at hand. The Arbitrator has further concluded that the parking reimbursement component of the final offer of the Union cannot be assigned determinative weight in the final offer selection process in these proceedings.

The Most Appropriate Method(s) of Wage Comparison to be Utilized by the Arbitrator in these Proceedings, and the Relative Weights to be Placed Upon Internal Versus External Intraindustry Comparisons in these Proceedings

Apart from the matter of the weight to be placed upon the comparison criterion, is the matter of the most appropriate method(s) of wage comparison to be utilized in the final offer selection process, and this determination depends principally upon the specific nature of wage impasse in each case.

(1) In the most typical wage dispute, parties find themselves in agreement with respect to the relative worth of the various classifications within the wage structure, but they disagree relative to the pricing of the structure. In presenting their cases in such disputes, various possibilities are available: they may present evidence of percentage or dollar adjustments, total package costs, or total lift, and compare these to the wage structures of comparable employers; they may select various benchmark jobs that are equivalent in content between comparable employers, and then compare them on the basis of rank or dollars with the comparable employers; or they may use refinements or variations of the more typical approaches.

(2) The dispute at hand is not typical of the hypothetical described above, in that the parties have agreed upon the overall pricing of the wage structure in general, but they disagree relative to the appropriate internal percentage wage differential between the Firefighter and the HEO classifications. Different methods of wage comparisons are more meaningful and persuasive in connection with such job evaluation/job slotting disputes.

Various reasons exist for differences in the overall pricing of the wage structure within the Fire Department unit in the City of Milwaukee, versus other employers. It is logical to infer, however, that evaluations of the Firefighter and the HEO classifications by comparable fire departments which utilize both classifications, should result in comparable percentage pay differentials between the two classifications. Accordingly, the Impartial Arbitrator has preliminarily concluded that the most persuasive wage comparisons to utilize in addressing the appropriateness of the pay differential between the Firefighter and the HEO classifications, are the percentage pay differentials between the two classifications in comparable fire departments.

As discussed earlier, the most important of the various statutory arbitral criteria is generally comparisons, and the most important of the various possible comparisons typically consists of external intraindustry comparisons. While various types of evidence, including negotiations history, may elevate other criteria, such as internal comparisons, to a position of greater importance, there is no appropriate evidentiary basis for such a result in the case at hand. The Union presented well documented and persuasive testimony at the hearing from Labor Economist James J. Kilgallon, that the percentage wage differential between the Firefighter and the HEO classifications in Milwaukee was significantly less than those in comparable cities. His testimony was accompanied by various exhibits detailing these differentials within three separate universes:

(1) In comparing Milwaukee with the nine cities nationally ranked immediately above, and the nine ranked immediately below in terms of relative populations, the mean percentage differential for cities employing both Firefighters and HEOs (or equivalents), is 108.1%, as compared to the Milwaukee percentage differentials of 102.9% under the City's final offer and 104.9% under the Union's final offer. (Union Exhibit #501)

(2) In comparing Milwaukee with the other cities nationally ranked in the top thirty in population, the mean percentage differential for cities employing both Firefighters and HEOs (or equivalents), is 108.0%, as compared to the Milwaukee percentages. (Union Exhibit #503)

(3) In comparing Milwaukee with the selected regional cities of Chicago, Cincinnati, Cleveland, Columbus, OH, Detroit, Indianapolis, Kansas City, MO, Minneapolis, Omaha, St. Louis and Toledo, the mean percentage differential for those cities employing both Firefighters and HEOs (or equivalents), is 107.2%, as compared to the Milwaukee percentages. (Union Exhibit #505)

(4) Even if the mean percentage differentials were determined on the basis of all cities, including those with no separate classifications/differentials, the mean percentage differentials within the three universes would be 106.6%, 106.8% and 104.6%, respectively. (Union Exhibits #501, #503 and #505)

When an examination of the principal intraindustry comparables indicates that an employer has a percentage differential between comparable classifications that is significantly below the percentage differential of comparable employers, it shifts the burden to the Employer to justify the apparent job evaluation/job slotting disparity. Hypothetically, such justification could take the form of questioning the job content comparability of the particular classification or classifications involved in the dispute, or it could take the form of evidence of negotiations history indicating that the parties had knowingly retained the existing percentage differential due to other considerations inherent in their prior settlement(s). An example of the latter could be the existence of previously negotiated, internal classification parity between specific police and fire classifications. Despite the very significant evidence referenced above, no persuasive explanation or evidence was advanced by the Employer which would explain the significant disparity in percentage wage differentials between the HEO and the Firefighter classifications in Milwaukee, versus the intraindustry comparables; in this connection, it must be emphasized that Employer advanced comparisons based upon such factors as total package costs, total lift, or relative ranking, simply do not address the Union's evidence of insufficient relative percentage wage differentials between HEOs and Firefighters in Milwaukee, versus other comparable employers.

The above referenced evidence relating to three separate universes of intraindustry comparables, clearly and persuasively favors arbitral selection of the HEO wage component of the final offer of the Union in these proceedings.

At this point in time it will be noted that in Arbitrator Vernon's MPA interest arbitration decision of May 5, 1990 (Union Exhibit #1003), he determined that three external intraindustry comparison groups were appropriate for arbitral consideration, one of which is identical to the first of the three comparisons groups utilized by Union Witness Kilgallon and described above.

The Application of the Bargaining History Criterion in the Final Offer Selection Process in these Proceedings

As referenced earlier, the bargaining history criterion falls well within the general scope of Section 111.77(6)(h) of the Wisconsin Statutes, and it is frequently assigned significant weight by interest arbitrators in attempting to place the parties into the same position they would have reached but for their pre-impasse inability to arrive at a complete negotiated agreement.

An examination of the parties' most recent bargaining history, which immediately preceded the appeal of the dispute to statutory interest arbitration, reflects the fact that the Employer had proposed to the Union on December 13, 1990 and retained on the table until the evening of February 22, 1991, a proposal for a 4% additional increase for HEOs in the first year of the 22 month renewal labor agreement; the record is also quite clear that this offer had remained on the table until after the City's settlements with the MPA and the MPSO units on their two year renewal agreements. While the parties differed relative to the Employer's motivation underlying the significant reduction in its final offer on the evening of February 22, 1991, it is unnecessary for the Impartial Arbitrator to address and to attempt to reconcile these differences. It is sufficient to observe and conclude at this point that the fact that the Employer had previously proposed a 4% increase in the top rates for HEOs effective in the first year of its proposed renewal agreement, very persuasively undermines its later contention that the two separate 2% increases for HEOs contained in the final offer of the Union would do irreparable harm to the collective bargaining processes in the City of Milwaukee, would discourage future voluntary settlements, and/or would encourage labor turmoil. The Employer's characterization of its earlier offer as a negotiations position, and its certified final offer as an arbitration position, simply does not support its arguments suggesting that massive negative labor relations implications would flow from arbitral selection of the final offer of the Union in these proceedings. While it is obvious that neither party is precluded from modifying, amending or withdrawing interim offers during the contract negotiations process, their bargaining history is one of the arbitral criteria included in the statutory interest arbitration process in Wisconsin.

Apart from the above, the record is quite clear that in their earlier contract renewal agreements, the parties had been maintaining a wage differential between HEO and Firefighters of approximately 3.9%, but the final offer of the Employer would reduce this differential to approximately 2.9%. Clearly, therefore, the selection of the final offer of the Employer would be inconsistent with and unsupported by arbitral consideration of the parties' negotiations history as reflected in their prior renewal agreements.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that arbitral consideration of the negotiations history criterion significantly and persuasively favors the selection of the wage component of the final offer of the Union in these proceedings.

Consideration of the Remaining Statutory Criteria

The Arbitrator is unable to assign determinative weight in the final offer selection process to the cost of living criterion. Not only were the parties apart with respect to the appropriate time frame for measuring changes in cost of living, but the nature of the wage dispute (the job evaluation/job slotting of the HEO classification), is simply not the type of wage dispute upon which cost of living changes would significantly impact. In this respect, it will be noted that the Union's proposed reslotting of the HEO classification is distinguishable from a demand for an across-the-board wage increase. By way of analogy, if an employee were promoted to a higher paying

classification during the life of an agreement, it would be specious to argue that he should be reduced in pay or should receive slower future wage increases due to the fact that his aggregate general wage and promotional increases had exceeded the rate of inflation.

At this point the Arbitrator will observe that the parties disagree relative to the extent that the overall compensation criterion, as referenced in Section 111.77(6)(f), should be utilized in connection with application of the comparison criterion. When the parties have reached agreement on all items except wages, an arbitrator will not normally comprehensively address comparisons of non-wage items, due to the fact that such items are not in dispute; while the Wisconsin Statutes direct the Arbitrator to consider overall compensation, it normally carries significant weight only to the extent that it relates to specific impasse item(s). Hypothetically, if parties had characteristically negotiated low benefits in favor of higher than normal wages, this factor would be considered by an interest arbitrator in selecting from the final wage offers of the parties; similarly, if parties had negotiated a higher than normal benefits package, this might well justify the maintenance of comparatively lower wages than might otherwise have been appropriate. On the basis of an examination of the entire record in these proceedings, however, the Impartial Arbitrator has preliminarily concluded that no unusual weight should be placed upon the overall compensation criterion.

The remaining statutory criteria have been reviewed by the undersigned, but they are not significantly in dispute in these proceedings.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

(1) It is widely recognized in Wisconsin and elsewhere that the comparison criterion is normally the most important of the various arbitral criteria, and that the so-called intraindustry comparisons are the most important of the various possible comparisons.

(2) When parties are in dispute with respect to the makeup of particular comparison groups, and/or relative to the weight to be placed upon the various possible comparisons, interest arbitrators frequently consider their bargaining history, and they are extremely reluctant to abandon or to distinguish the comparisons used by the parties in the past, or to modify the wages, benefits or language comparisons utilized by the parties in the past.

(3) Interest arbitrators in Wisconsin operate as an extension of the bargaining process, and they normally attempt to put the parties into the same position they would have occupied but for their inability to reach a voluntary settlement. The bargaining history criterion falls well within the general scope of Section 111.77(6) of the Wisconsin Statutes, and is frequently assigned significant weight by interest arbitrators in the final offer selection process.

(4) The specific nature of a wage dispute can have a significant impact upon the application of the various arbitral criteria, and the City is quite correct with respect to the need for interest arbitrators to balance the weights to be placed upon external versus internal comparisons on case-by-case bases, and sometimes to place primary weight upon the latter.

(5) The theoretically valid arguments of the City relating to the primacy of internal over external comparables in situations involving general wage disagreements in the face of a pattern of negotiated internal parity, have no application to the HEO wage differential component of the final offer of the Union, and cannot be assigned determinative weight in the final offer selection process in these proceedings.

(6) The parking reimbursement component of the final offer of the Union should not be assigned determinative weight in the final offer selection process in these proceedings.

(7) The most persuasive comparisons to utilize in these proceedings, in determining the appropriateness of the pay differential between the Firefighter and the Heavy Equipment Operator classifications, are the mean percentage pay differentials between the two classifications within comparable fire departments. The Union advanced evidence relating to such differentials within three separate universes of intraindustry comparables, clearly and persuasively favors arbitral selection of the HEO wage component of the final offer of the Union in these proceedings.

(8) Arbitral consideration of the negotiations history criterion significantly favors the selection of the wage component of the final offer of the Union in these proceedings.

(9) The cost of living criterion cannot be assigned determinative weight in the final offer selection process in these proceedings.

(10) No unusual weight can be placed upon the overall compensation criterion in the final offer selection process in these proceedings.

(11) None of the remaining statutory arbitral criteria can be assigned significant weight in the final offer selection process in these proceedings.

Selection of Final Offer

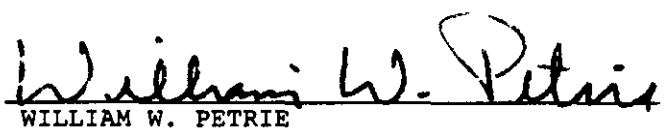
After a careful review of the entire record, including arbitral consideration of all of the various statutory criteria contained in Section 111.77(6) of the Wisconsin Statutes, the Impartial Arbitrator has preliminarily concluded, for the various reasons described above, that the final offer of the Association is the more appropriate of the two final offers.

AWARD

Based upon a careful consideration of all of the evidence and argument, and after a review of all of the various arbitral criteria contained in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Association is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the Association's final offer, hereby incorporated by reference into this award, is ordered implemented by the parties.



WILLIAM W. PETRIE
Impartial Arbitrator

June 16, 1992