WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration Between

MILWAUKEE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 215, IAFF, AFL-CIO

and

CITY OF MILWAUKEE (FIRE DEPARTMENT)

Case 400
No. 48996
MIA-1807
Decision No. 27788-A

Appearances: For the Union, Attorney Timothy E. Hawks, Milwaukee
(Attorney Jeffrey P. Sweetland also on the brief).

For the City, Assistant City Attorney Thomas C. Goeldner
and Special Deputy City Attorney Thomas E. Hayes.

When the Milwaukee Professional Fire Fighters Association, Local 215, IAFF, AFL-CIO (referred to as the Union) and the City of Milwaukee (Fire Department) (referred to as the Employer or City) were unable to resolve a negotiations impasse for a successor to their expired collective bargaining agreement, the Union filed a petition dated March 22, 1993 requesting the Wisconsin Employment Relations Commission (WERC) to initiate arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act (MERA). On September 1, 1993, the WERC determined that an impasse existed and that arbitration should be initiated. The parties notified the WERC and the undersigned that she had been selected to serve as arbitrator and she was so appointed by the WERC.

By agreement of the parties, hearings were held in Milwaukee, Wisconsin, on December 20, 21, 22, 23, 1993, and February 15, 1994. At several points during the December hearings, the Union objected to the introduction of City evidence, testimony, and arguments regarding the legality of the Union's final offer on the Duty Disability Retirement Allowance (DDRA) benefit. This issue was separately briefed and the undersigned issued a written ruling dated February 2, 1994 on the Union's motion. (A copy of this ruling is attached as Annex "1".) A transcript of the entire proceeding was made. Before the record was closed, the parties were provided with a full opportunity to present testimony, documentary evidence, and arguments. The parties submitted post-hearing briefs and reply briefs.

ISSUES AT IMPASSE

The City's final offer is attached to this decision as Annex "A"; the Union's final offer is attached to this decision as Annex "B". Issues at impasse are:

1. percentage of across-the-board salary increases for 1993 and 1994;

2. changes relating to pension benefit escalators;

3. changes in the Duty Disability Retirement Allowance (DDRA); and

4. changes in the Sick Leave Incentive Plan (SLIP).

(This decision refers to all members of the bargaining unit as "fire fighters" although the unit consists of fire fighters and other classifications of fire fighter personnel.)

STATUTORY FACTORS

The criteria to be utilized by an arbitrator in rendering an award are set forth in Section 111.77(6) as follows:

(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 those 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 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.

POSITIONS OF THE PARTIES

The Union

The Union affirmatively emphasizes data presented in testimony and numerous exhibits from external comparables consisting of suburban, state, regional, and national fire fighters bargaining units. Specifically, external comparability data relied upon by the Union comes from 16 suburban Milwaukee communities,[1] the 10 largest Wisconsin cities,[2] the "Vernon 18" national cities (the 9 cities next more populous and the 9 cities next less populous than Milwaukee,[3] comparables suggested by Arbitrator Gil Vernon in his 1990 Milwaukee Police Association arbitration decision), and selected large Midwest cities[4] (comparables suggested by Arbitrator Joseph Kerkman in his 1988 Milwaukee Police Association arbitration decision). It argues that such external comparisons support a final salary offer in excess of the Union's 3.5% for each of the two years in dispute.

The Union rejects the City's heavy reliance upon internal comparables in this proceeding as inappropriate and inapplicable because there are no 1993 and 1994 settlements or arbitration awards yet for the two other units of Milwaukee protective services employees (represented by the Milwaukee Police Association and the Milwaukee Police Supervisors' Organization). The Union specifically argues against the City's emphasis on its voluntary 1993-1994 settlement with District Council 48 AFSCME (and

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[1]Brookfield, Brown Deer, Cudahy, Franklin, Fox Point, Glendale, Greenfield, Greendale, Oak Creek, St. Francis, Shorewood, South Milwaukee, Waukesha, Wauwatosa, West Allis, and Whitefish Bay.

[2]Appleton, Eau Claire, Green Bay, Janesville, Kenosha, Madison, Oshkosh, Racine, Waukesha, and West Allis.

[3]Baltimore, Boston, Cleveland, Columbus, Dallas, Denver, El Paso, Indianapolis, Jacksonville, Memphis, Nashville, New Orleans, Phoenix, San Antonio, San Francisco, San Jose, Seattle, and Washington.

[4]Chicago, Cincinnati, Cleveland, Columbus, Detroit, Indianapolis, Kansas City, Minneapolis, Omaha, St. Louis, and Toledo.

with other units of general City employees) since there is no history linking bargaining for fire fighters with the unit represented by District Council 48 (or with other general City employee bargaining units). The Union notes that during the past twelve years, there have been only two years (1985 and 1986) when salary increases for this bargaining unit and the unit represented by District Council 48 were the same. In addition, there is a history of significant differences in retirement and disability benefits between these two units. Moreover, at the time of this arbitration hearing, the Union points out that City 1993-1994 settlements cover fewer than one-half of the City's unionized workforce. Even the existing settlements contain special economic features such as reallocations, reclassification, or an additional pay step which increase the economic value of the settlements significantly beyond the City's salary offer herein of 2.5% in 1993 and 2.5% in 1994. Thus, in the Union's judgment, there are no appropriate internal City settlements supporting the City's offer.

In examining Wisconsin fire fighters' comparables, the Union contends that Milwaukee fire fighters' salary and total compensation should be the highest in the state because the work of Milwaukee fire fighters involves older housing, structures with stored chemicals, hazardous industries, trucks transporting flammable materials, heavy highway traffic, etc. This greater exposure and increased work hazards for Milwaukee fire fighters are combined with greater work loads due to more frequent runs per item of apparatus per day in Milwaukee -- in significant contrast to the lesser hazards and work load required of fire fighters in suburban and other Wisconsin urban communities. Based upon several arbitrators' conclusions that Milwaukee Police Officers deserve to be number one in suburban and state-wide rankings, the Union asserts that this conclusion is also applicable to Milwaukee fire fighters and should be a key consideration in this proceeding.

The Union further notes that the City has not argued in this proceeding that it is unable to pay for the Union's final offer. In fact, the Union has introduced documents to demonstrate that the City's tax levies and budget have decreased in each of the last five years and that its diminished contributions to the Milwaukee pension system (ERS) have substantially offset salary increases. Thus, the City has the ability to pay for the Union's offer.

In addition to these general arguments, the Union addresses specific components of the parties' dispute to support the reasonableness of its final offer.

1. Salaries for 1993 and 1994

The Union points out that mean 1993 and 1994 rates of salary increase for the appropriate groupings of external comparables range from more than 3.5% to more than 5% per year, strong support for the Union's salary final offer. Although there is limited information about 1994 wage settlements in other Wisconsin cities, of 4 fire fighters bargaining units, three have settled for 4% and one for 3%, all more than the City's final salary offer. Comparable external data relating to total compensation similarly

demonstrate, according to the Union, that the Milwaukee fire fighters' 1992 ranking will be seriously eroded in 1993 and 1994 because even the Union's salary offer will not maintain this unit's relative ranking. (This is primarily due to generous holiday pay, longevity pay, and other such "salary enhancements" elsewhere.) The Union also relies upon exhibits setting forth its calculations on "Compensation Comparisons Averaged Over a Twenty Year Career" and "Cost per Hour Worked" for the "Vernon 18" and the Midwest urban comparables and emphasizes the reduction in total compensation ranking for the Milwaukee fire fighters in comparison with Milwaukee suburban communities and other Wisconsin cities for 1993 and 1994.

The Union stresses that the City has failed to offer significant evidence about comparable fire fighter units and has also failed to offer evidence justifying why Milwaukee fire fighters should be treated less favorable from most of the other comparable bargaining units of the fire fighters. Thus, the Union believes its evidence establishing an eroding total compensation ranking under the City's salary offer for Milwaukee fire fighters as compared to other Wisconsin units of fire fighters makes the City's offer unreasonable to the Union while the Union's offer helps toward its goal of making this unit "number one" in Wisconsin.

2. Pension Escalator

The Union explicitly notes that, in addition to a reasonable salary increase, its other highest priority for 1993 and 1994 negotiations was to obtain a satisfactory pension COLA escalator. The Union again relies upon national, regional, state, and suburban comparables to reenforce its conclusion that external comparability, particularly fire fighter units elsewhere in Wisconsin, strongly favors the Union's pension COLA proposal while none support the City's proposal of a 2% annual increase which is delayed until a retired fire fighter has completed 11 years of retirement (in addition to changing eligibility for its present $50 per month increase after completion of 4 years, 7 years, and 10 years of retirement to after completion of 3 years, 6 years, and 9 years of retirement).

Because the Union is aware that adding a COLA escalator to pension benefits may be a substantial cost to the City and, therefore, a controversial bargaining issue, it emphasizes that it has carefully structured its pension escalator proposal in three distinct ways so that it is a reasonable demand. First, the Union's COLA escalator replaces current retirement increases and is capped at 3%. Second, it applies only to bargaining unit members who are or become eligible to retire between January 1, 1993 and December 31, 1994. Third, the Union's offer contains a substantial employee contribution or quid pro quo amounting to 1% of compensation for 1993 and an additional 1% (totaling 2%) for 1994 toward the cost of this new pension benefit.

The Union rejects the City's comparisons between this unit's ERS retirement benefits and ERS retirement benefits for other City employees who are not in the protective services. It notes that general City employees have a different normal retirement age, a different multiplier for service credit, a different period for the final

average salary (FAS) upon which retirement benefits are calculated, and different rules relating to DDRA. Even the new 1993-1994 2% escalator negotiated by the City with District Council 48 (covering other general City employees as well) differs from the offer to this unit because the District Council 48 escalator begins after completion of 8 years of retirement while the offer to the fire fighters begins after completion of 11 years of retirement. The Union further emphasizes that general City employees, unlike police and fire fighters, are covered by Social Security based upon their City employment and, as is well known, Social Security retirement benefits have an annual COLA adjustment. In contrast, Milwaukee police and fire fighters are not covered by Social Security based upon their City protective services employment.

The Union points out that all other Wisconsin municipal fire fighter bargaining units are part of the Wisconsin Retirement System (WRS) which has provided its participants with a significant annual retirement pay adjustment averaging slightly more than 6% in the last 11 years. While there are some differences in how ERS fire fighter benefits are calculated in contrast to WRS fire fighter benefit calculations which favor ERS participants, the Union points to two important additional WRS rules which favor WRS fire fighter participants. One relates to the broader definition of what is "pensionable" income or earnings under WRS in contrast to the narrower ERS definition. Another is that WRS' 2.5 benefit formula multiplier for fire fighters (and police) covers all years of a participant's employment while under ERS the benefit formula multiplier of 2.5 only applies to years of service since 1983 (for years of service prior to 1983, the ERS multiplier is either 2.25 or 2.4, depending upon whether the fire fighter has completed 25 years of service) and the 2.5 multiplier needs to be renegotiated with each collective bargaining agreement covering Milwaukee fire fighters (and police).

During the hearing and in its brief, the Union devotes much time and space challenging the City's method of costing the Union's pension COLA escalator proposal. The Union challenges the calculations made by the two experts who testified for the City that good accounting/actuarial practices require that the Union's COLA proposal be financed by means of two annual payments by the City to ERS amounting to 18.25% per year. In contrast, the Union's expert testified that a more reasonable method to finance the Union's pension escalator and the method presently required by City Charter is over a period of 10 to 15 years. Thus, the City's contribution to finance this benefit should be approximately 3.14% per year.

The Union's expert, however, does not even believe that a 3.14% annual level of funding is reasonably required because there is an overfunding or "surplus" which presently exists in ERS when its reserves attributable to City fire fighters are compared with its future liabilities attributable to City fire fighters.[5] Even if the City's assumption is correct that future collective bargaining agreements will include a pension escalator

[5]Although there is no formal separation of reserves and liabilities among the three ERS groups (police, fire fighters, and general City employees), informal allocations have been a standard method used by ERS for years to determine rates for City contributions.

equal to the one the Union is currently proposing for all unit members as they become qualified for their future retirements, the Union's expert concludes that City payments to ERS will not be at all close to the City's unreasonable high predictions. (There are 139 employees eligible to retire during the term of this agreement. Only 50-60 employees will become eligible to retire every two years thereafter.) When the Union's proposal for an employee contribution of 1% for 1993 and 2% for 1994 is taken into account, the Union concludes that its proposal for employee contributions plus the ERS "surplus" make the Union's proposal very reasonable and affordable for the City.

The Union further emphasizes the long history of this COLA pension proposal, starting with the negotiations which resulted in the following language becoming part of the parties' 1975-76 collective bargaining agreement:

> . . .
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> As soon as practical after the execution of this agreement, but not later than 60 days, a Pension Study Committee shall be formed. . . . The committee shall request the Employes' Retirement System (ERS) Annuity and Pension Board . . . to have their actuaries prepare and deliver an actuarial study and report of the cost and feasibility of:
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> a. Escalation of the pensions at the rate of up to 3% per year for each member of the bargaining unit retiring under both the ERS and FA&BF Plans.
>
> . . .

The Union notes that the present increase of $50 per month after the 4th, 7th, and 10th year of retirement was not established until the parties' 1989-1991 agreement. The issue of ERS pension inadequacies was picked up in 1992 by two state representatives who requested that the State's Retirement Research Committee (RRC) study the ERS. One of the principal reasons stated for this request was that information they received concerned the number of ERS retirees and their spouses receiving benefits below the poverty level, particularly those who are not covered by Social Security. The report which resulted from this request noted the significant WRS experience which saw an increase in excess of 6% over the last 11 years while ERS only provided for protective services the $50 increases in after the 4th, 7th, and 10th years of retirement. Prior correspondence from Blair Testin, RRC Director, to a former Union official (and a City Pension Board member) noted that the COLA provision under consideration then for ERS did not start until after the 8th year of retirement "an unusually long period to qualify. . ."

Finally, the Union stresses that the City's own consultant (also ERS' actuary who was hired by the City pursuant to a 1992 Common Council resolution) recommended in 1993 (prior to impasse herein) that the City make a commitment to contribute a fixed

minimum level of contribution "say at the amount equal to the member contribution [for fire fighters, this is 7% per year] to generate sufficient funds to allow expensing of the costs of COLA's currently while they are being earned."[6] Instead, the City's most recent employer contribution to ERS for 1993 (excluding the City's contractual obligation to pay a fire fighter's required member contribution of 7%) was $0 on 1/31/94, in complete disregard of the recommendation of the City's own consultant.

Also, while a merger between ERS and WRS was being studied, the City's consultant concluded that, for the Milwaukee protective services, the WRS escalation produced more "significantly greater values" than under ERS. The report suggested that, instead of a WRS-type benefit increase based upon investment performance, ERS should consider such alternatives as a CPI escalator with a cap, the first listed option. This recommended option is the Union's final offer in this proceeding. The expert also reported that ERS' assets to liabilities ratio was 127.4% while WRS' ratio was 103.7%. This is the basis for the Union's conclusion that ERS is "overfunded" and contains a "surplus." This point is further discussed by the Union's expert witness who concluded that ". . . these allocable to the protective service [ERS] surpluses amount to $80.2 million, sufficient to fully fund the COLA with the 4% cap."[7]

In conclusion, the Union argues that its pension final offer follows the reasoning of Arbitrators Joseph Kerkman and Gil Vernon because its offer is supported by pension escalators commonly found in all four sets of external comparables, is affordable, and incorporates a valuable quid pro quo. In contrast, the Union believes that the City's final pension offer fails to make reasonable progress toward a long needed and realistic COLA escalator for City employees covered by ERS, particularly those protective service employees without Social Security coverage based upon their City employment.

3. Duty Disability Retirement Allowance (DDRA)

The DDRA issue is also one of special interest to the Union in this proceeding. The parties' final offers are directly related to the Older Workers Benefit Protection Act (OWBPA), a key 1990 amendment to the 1967 Age Discrimination in Employment Act (ADEA). Under OWBPA, the City had until October 16, 1992 to bring its DDRA benefits into compliance with OWBPA. (A copy of ERS' pre-July 28, 1992 DDRA

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[6]Other reasons given by the City's consultant to support a recommendation for a fixed minimum level of contributions (in the range of 7%) by the City were: level out City contributions to ERS, assure members that the City contribution is at least equal to that of the members, and provide a reserve for contingencies or future benefit improvements. The report noted that the: "portion of the City contribution determined by the actuarial valuation has declined continuously for some time ad is less than that for many PERS."

[7]The Union's expert also pointed out that the City's own exhibits set for assets (allocable to fire fighters) of $212,000,000 with liabilities amounting to $201,000,000 -- or an $11,000,000 "surplus."

benefit for fire fighters is attached as Annex "C.") There is a pending federal district court action brought by the Union (together with the Milwaukee Police Association, the Milwaukee Police Supervisors' Organization, and the Milwaukee Teachers' Education Association) against the City (and the Milwaukee Board of School Directors). The lawsuit challenges the unilateral change made on July 28, 1992 by the Common Council to the City Charter by charging that the ordinance enacted on that date is in violation of OWBPA and the ADEA. (A copy of the July 28, 1992 Charter Ordinance is attached as Annex "D.") Some related state claims are also included. A number of arguments made by the Union in this proceeding are similar to the arguments it is presenting in the lawsuit.

The Union contends that the City's DDRA offer is deficient because it fails to take into account pension savings in calculating its DDRA rates ad also it fails to use relevant data based on actual experiences of bargaining unit members, available from ERS' actuary at the end of 1992. Instead, the City has relied upon faulty actuarial assumptions which are contradicted by the actual experience data. These incorrect assumptions include: 1) older fire fighters experience more duty related disabilities than younger employees; and 2) disabled fire fighters will not select a regular service retirement. The actual experience data reflect a higher than assumed incidence of disability among younger fire fighters and a lower than assumed incidence of disability among older fire fighters. In other words, the actual rate of fire fighter disability generally declined with greater age in contrast to the assumption that it would generally increase. Also, in contrast to the actuarial assumption that no fire fighters will retire before age 58 even though they may have sufficient service to qualify to begin retiring at age 52, actual experience for the 5 year period (1987-1991) indicates that almost 25% of fire fighters who could have retired at age 52 did so. The higher the rate of regular service retirement in a particular age bracket, the lower the cost of the disability. Thus, failure to take retirement rates into account when calculating the cost of DDRA for different age brackets is a serious flaw in a "cost neutral" calculation.

In contrast, the Union believes its final offer is preferable because it applies to all members of the bargaining unit, provides a lifetime duration for an adjusted DDRA, and does not reduce benefits at age 62. Although the City raised some issues concerning the legality of the Union's proposal, the Union's expert testified and submitted an exhibit indicating that he tested the Union's proposal with four "test cells" for OWBPA compliance. Using that methodology, he concluded that, in each case, the cost to the City for the reduced benefits for the older employees under the Union's proposal was higher than the cost incurred on behalf of younger fire fighters. Therefore, in his professional judgment the Union's proposal is legal since there is no OWBPA prohibition against higher DDRA costs for older employees.

The Union further criticizes the City's conduct in raising a challenge to the legality of the Union's DDRA final offer during the early hearing days but then, after the undersigned had ruled against the Union on its motion objecting to consideration of this issue in this proceeding (Annex "1"), the City failed to pursue this line of argument

seriously.

From the above, the Union concludes that the City's DDRA final offer is not cost justified based upon the best reasonably available data and thus is in violation of OWBPA. In contrast, the Union's DDRA final offer is cost justified, has the additional advantage of applying to all in the bargaining unit (including those who elected to continue with the original DDRA plan) and is in compliance with OWBPA.

4. Sick Leave Incentive Plan (SLIP)

The Union's briefs do not address comprehensively either its SLIP proposal or the City's SLIP proposal. The Union challenges the City's position that a uniform SLIP is needed by the City since it is undisputed that due to the dangerous nature of fire fighters work, their rates of injury, particularly permanent disabilities, are far higher for City fire fighters than for general City employees. Moreover, there is no evidence that fire fighters have abused current SLIP benefits. Therefore, there is no rational support for the City's proposed SLIP changes while the Union's SLIP offer has been drafted to address the City's concerns about perceived abuses of its present SLIP policy.

The Employer

For the City, comparables consisting of 1993 and 1994 internal voluntary settlements with a majority of its bargaining units are entitled to the greatest weight in this proceeding. The Employer cites language from several Wisconsin impasse arbitration decisions as authority for its position. The City stresses that the burden is on the Union to demonstrate that adherence to such internal settlement patterns would result in substantial deviations from external comparability data before such external comparables are entitled to significant weight. Otherwise, according to the City, internal consistency is paramount and internal comparables provide compelling support for all parts of the City's offer.

In addition to the key importance of internal comparables, the City also contends that external comparables support its positions in this dispute. It has a number of objections to many of the specifics of external comparability data presented by the Union. For example, the City argues that: 1) Detroit and Chicago are clearly inappropriate external comparables due to size differences; 2) the Union erroneously calculated the comparable working hours for Madison fire fighters; 3) compensation data from suburban Whitefish Bay should not be considered because fire fighter pay in that community includes EMT and driver pay while in Milwaukee such pay is either a separate item apart from base salary or a higher paid job classification; and 4) the settlement with the City nurses unit falls within the same pattern as District Council 48 and other City units with voluntary settlements, despite Union arguments to the contrary. Thus, for the City, significant portions of Union comparability data are misleading and should not be given weight in this proceeding. The City concludes that the Union's final offer is out of line with many external as well as internal comparables, particularly when

total compensation amounts (including rapidly increasing health insurance costs) are considered.

The City also challenges apparatus run data submitted by the Union (which the Union uses to support its productivity argument) because the data are insufficient and do not permit appropriate or accurate comparisons as to fire fighters' work loads from one bargaining unit to another.

Turning to another statutory factor, the Employer emphasizes recent cost of living data, specifically CPI-U, U.S. City Average, for the period December 1991 through December 1993. It finds the change in CPI for this two year period totals 5.7% from the end of 1991 to the end of 1993. Depending upon the methodology used, the City computes its total package cost as 7.32% or 7.78%. In contrast, the City costs the Union's two year offer as ranging from 17.23% to 25.29%, depending upon the methodology used. In the City's view, the prohibitive cost of the Union's offer disqualifies it from serious consideration for many apparent reasons, including the statutory cost-of-living factor.

Lastly, the Employer makes a general argument that if the Union prevails in this proceeding, there will be irreparable harm to the collective bargaining process in the City of Milwaukee. Voluntary settlements will be discouraged and the City will experience turmoil instead of labor peace with its various employee bargaining units and groups.

The City continues its arguments supporting the reasonableness of its final offer by addressing specific features of both its own as well as the Union's final offer.

1. Salaries for 1993 and 1994

The Employer argues that internal salary comparables based upon voluntary settlements are crucial in this proceeding and entitled to controlling weight. It points out that 12 out of the 18 City bargaining units have all settled for 1993 and 1994 with a uniform across-the-board increase of 2.5% in 1993 and 2.5% in 1994, the City's final salary offer to the Union in this dispute. Moreover, this salary increase pattern has been extended by the City to its approximately 1000 managerial employees and 400 to 500 unrepresented nonsupervisory employees. In the City's judgment, such internal uniformity and consistency should be determinative in this proceeding.

In addition, the Employer contends that its salary offer is in line with appropriate and accurate external comparables, particularly when Union exhibits are revised to reflect the City's final offer and the other data corrections which the City contends are needed. When these revisions are made, the City concludes that Milwaukee is not out of line with the Union's external comparables. The City points out that Milwaukee's relative position in the "Vernon 18" will remain the same (7th out of 19) regardless of which offer is selected; there is only a de minimus difference between the City's salary

offer and the highest paid fire fighters in Wisconsin suburban and city communities; and the Union's "Cost per Hour Worked" data are worthless due to inappropriate and inaccurate comparisons. For these many reasons, the City concludes that its salary offer should be selected.

2. Pension Escalator

To support its final offer on this key issue, the City details the multiple components of its pension improvement offer. First, the City notes that its offer continues the existing ERS fire fighters' benefit multiplier formula of 2.5% for 1993 and 1994. (Without this explicit provision, the formula multiplier would revert to a lower level effective January 1, 1993.) The City next points out that its offer changes the $50 per month benefit which increases retirement benefits under the prior agreement after completion of the 4th, 7th, and 10th years so that, pursuant to the City's offer, it will be paid after completion of the 3rd, 6th, and 9th years of retirement. Finally, the City emphasizes the importance of its proposed 2% annual increase once a retiree has completed 11 years of retirement. According to the Employer, this pension package represents a substantial and reasonable step to meet the Union's historic interest in a pension escalator by targeting those presumed to need the increase the most while maintaining internal comparability, two City priorities.

In contrast, the City is very critical of the Union's pension escalator proposal, citing a number of different objections. First, the 3% capped pension COLA proposed by the Union is only available under the Union's final offer to bargaining unit members who are eligible to retire during the term of this agreement. The City believes that this limitation is completely unrealistic and that future bargaining will inevitably extend this important and expensive benefit to all bargaining unit members. Therefore, the Union's offer is very costly, particularly when the long term financial implications to the City are understood, costed, and taken into account.

Second, in view of the high costs of the Union's pension offer, the City does not view the Union's proposal of 1% in 1993 and 2% in 1994 as an adequate quid pro quo for such an expensive benefit. Even assuming that the 2% contribution is continued beyond this contract, that still is a very low employee contribution rate in comparison to the non-Wisconsin external comparables submitted by the Union.

Third, according to the two expert witnesses called by the City, the only responsible way to finance the Union's limited proposal is over a two year period. If the Union's pension proposal is thus analyzed, the cost to the City would be 18.25% per year for a period of two years. If costing is based upon an inevitable universal coverage for all bargaining unit members, then the cost spread over 10 years to the City would be 12.66% per year. These two expert witnesses also testified that following the Union's "pay as you go" method would be using unsound financing and accounting methodology because ERS basically operates a defined benefit plan with an objective of fully funding retirement benefits by the time the covered employee retires or leaves the system for any

reason.

The City further argues that its costing and funding approach for pensions is particularly appropriate because ERS depends heavily on investment appreciation and earnings in contrast to contributions. The present "very well funded" status of ERS is one of its strengths but one which may be threatened by future investment outcomes. Poor performance of ERS stock or bond investments may require unanticipated additional contributions by the City. As the City points out, since ERS is a defined benefit plan, the City and not employees bear the investment risk. During the hearing, one of the City's experts recommended modification of current ERS actuarial assumptions (which in large part are based on five year data from 1987 through 1991) by reducing the 8 1/2% anticipated rate of investment return to a more realistic 7 1/2% and the anticipated pay increase rate from 5 1/2% to a more realistic 4 1/2%. While the "spread" remains at 3%, using a 7 1/2% anticipated rate of investment return has a direct effect upon pension benefit costing calculations by requiring greater City contributions.

The City also objects to the comparisons which the Union makes between ERS and WRS benefits which lead the Union to conclude that fire fighter coverage under WRS is clearly superior to fire fighter coverage under ERS. The City notes ERS favors Milwaukee fire fighters over WRS and non-Wisconsin comparables in such areas as: 1) ERS' maximum benefit of 90% versus WRS' maximum benefit of 85%; 2) ERS' final average salary (FAS) is calculated on the highest 12 months in contrast to WRS' three year period; 3) only under ERS is a subsidized spouse option available whereby the retiree receives 95% of normal service retirement and a surviving spouse receives 50%; and 4) the employee's entire (7%) contribution is paid by the City to ERS while WRS covered employees do not typically receive such a favorable benefit.

In response to the Union's argument that general City employees are not comparable because general City employees are entitled to ERS and are covered by Social Security based upon their City employment, the City responds by noting that fire fighters, unlike general City employees, do not have any FICA deductions from their City pay and thus are free to invest or spend this additional sum as they wish.

The City also rejects the Union's characterization of an ERS "surplus." It notes that ERS is considered to be only funded at 91.4%. In any case, the level of current ERS assets represent a sound actuarial approach in light of ERS liabilities.

The City concludes that its pension escalator offer is more prudent and represents steady progress in line with the City's internal pattern and the principles described by Arbitrator Gil Vernon in his 1990 Milwaukee Police Association arbitration award.

3. Duty Disability Retirement Allowance (DDRA)

The DDRA issue, like the pension escalator issue, looms large in this impasse

dispute. The City stresses that its DDRA offer is based upon a recommendation from its actuary consultant who is a professional with special expertise in OWBPA. He used actuarial assumptions provided by the ERS' actuary to help draft the City's offer which is designed to maximize employee benefit levels by use of durational limitations, stay as close as possible to the previous DDRA, be cost neutral to both Employer and employees, and comply with the ADEA and OWBPA (including EEOC Interpretive Rules). The City's offer is also the fire fighters' equivalent of the DDRA negotiated with the 12 bargaining units which have reached a voluntary settlement with the City for 1993-1994 and is appropriately designed to apply only to those fire fighters who elected the new DDRA formula contained in the July 28, 1992 Charter ordinance (and new employees hired after October 16, 1992).

The City criticizes the Union's DDRA offer on the grounds that it is more expensive, permits retirees who have made an "irrevocable election" to exercise a new option, and conflicts with OWBPA, in the judgment of its expert DDRA consultant, because it provides for a reduction in benefits based on age.

For these reasons, the City contends that its DDRA offer is more reasonable in contrast to the Union's flawed DDRA offer.

4. Sick Leave Incentive Pay (SLIP)

The City supports its new SLIP language by noting that there is a need for internal uniformity in this area. The City also presents its SLIP amendment as a realistic incentive plan to discourage employees from using sick or injury leave and to encourage them to report for work on time. To date, 15 City units have accepted the City's proposed language including the City's units of fire dispatchers and repair shop employees. As applied to this unit, the City's offer would not change an employee's SLIP eligibility if he or she started a duty day and during that day went on injury pay leave for the remainder of that duty day only. However, if the injury pay leave continues beyond one entire 24 hour work day (that is, the employee does not return to work for the next regularly scheduled work shift), then under the new language the fire fighter would be ineligible for SLIP that trimester. According to the City, the present contractual SLIP language has the potential for abuse because if a fire fighter is on injury duty pay for all but one work day during a trimester, then the fire fighter qualifies for SLIP. For the City, the Union's proposed language fails to address its concerns and breaks the City's need for a uniform SLIP policy.

DISCUSSION

The arbitrator believes that several issues raised by the parties' general arguments need to be addressed, before she turns to the four specific issues at impasse.

First, the City strongly contends that internal comparability, supported by cost-of-living data, should be determinative in this case while the Union vigorously points to

external comparability, particularly fire fighter units in the larger Wisconsin cities and in suburban Milwaukee communities, as strong support for the basic provisions of the Union's final offer. Thus, the undersigned must resolve at an early point in her analysis the issue of what appropriate weight should be given to internal comparability data versus external comparability data in this proceeding.

In this arbitrator's view, the City's primary emphasis on internal comparability is not justified in this case. While there is a history of parity requiring comparability among the three bargaining units of City protective service employees (those represented by the Union, MPA, and MPSO), there does not appear to be a history linking City fire fighters' salaries and fringe benefits with those of general City employees. It is understandable that the City emphasizes voluntary 1993-94 settlements with its unionized general employees as well as the City's 1993 unilateral decisions covering its approximately 1000 managerial employees and 400-500 unrepresented nonsupervisory employees. There is little indication, however, that salary negotiations with this Union have been tied at any prior time in any significant manner to other general City employee negotiations. The City emphasizes as its primary internal comparable the bargaining unit represented by Milwaukee District Council 48. Evidence indicates that these two units have only shared comparable salary increases during two of the past twelve years. Moreover, although all City employees are covered by the same Milwaukee retirement system (ERS), there are significant pension benefit differences for City fire fighters and for general City employees. In addition to different benefit formula multipliers, different calculations for Final Average Salary (FAS), and differences in normal age of retirement (due to the special nature of protective services employment), etc., the City's 1993-94 settlement with Milwaukee District Council 48 in the ERS pension escalator area does not directly correspond to its pension offer to the Union. City fire fighters have received a pension benefit of $50 per month increase after the 4th, 7th, and 10th year of retirement since March 1989. District Council 48's 1993-1994 agreement contains a 2% increase per year following completion of 8 years of retirement but contains no provisions similar to the $50 per month benefit provided to retired fire fighters while the City's final offer to the fire fighters includes a 2% increase per year following completion of 11 years of retirement and changes the $50 per month increase so that it is receivable after the 3rd, 6th, and 9th year of retirement. Accordingly, these facts provide solid support for the arbitrator's conclusion that general City employee comparability data are not entitled to much weight herein as compared to appropriate external comparability data. (This conclusion, of course, does not automatically result in a preference for the Union's final salary offer since the City also contends that external comparability data support its final offer.)

Second, in this proceeding the Union argues that Milwaukee's unit of fire fighters should be number one among all bargaining units of Wisconsin fire fighters as to salary and other economic benefits. It justifies this conclusion by pointing out that Milwaukee fire fighters are called upon to handle a heavier work load and more complex, hazardous duties when compared to other Wisconsin fire fighters. The Union finds support for its position on this point in language from a 1988 arbitration decision by Arbitrator Joseph

Kerkman and a 1990 arbitration decision by Arbitrator Gil Vernon:

> Just as there can be no serious dispute about the applicability of the parity concept in this case, there can be no serious dispute that the Milwaukee Police Officer deserves to be number one in suburban and state-wide rankings. (Emphasis added)

Although this statement was made about Milwaukee police officers, the Union believes it is equally applicable to Milwaukee fire fighters. The City does not directly challenge this contention, although it argues that there are often only de minimus differences among the top rankings, when the City's offer is considered. The City views its final offer and the resulting economic improvements for its fire fighters as placing Milwaukee among the highest of external comparables. While the undersigned takes arbitral notice of current problems of financing City services that may cause the City to be satisfied with high but not top rankings for its protective services employees, she agrees with the Union that Arbitrators Kerkman's and Vernon's statements that Milwaukee police officers deserve to be ranked and compensated as number one among Wisconsin police officers is also applicable to Milwaukee fire fighters.

Third, the arbitrator notes there the parties agree that total compensation and the relationship between compensation and hours worked are more important than base salary comparisons only. She agrees with these points. However, she notes that, as one of the witnesses observed, comparisons of total compensation and cost per hour worked are not simple to make because it is difficult to collect and present all relevant information in a uniform manner with an appropriate value on all of it. For example, it is not simple to value or equate pension benefits when there are numerous differences among various public employee retirement systems. It is also difficult to quantify and compare fire fighters' work loads, even when the comparability pool is restricted to Wisconsin. She notes that a key item of total compensation, health insurance, has only been referred to in terms of total City contribution and not in total compensation calculations presented by either party. Thus, where feasible and to the maximum extent possible, the undersigned will look to comprehensive total compensation and work hours data but she is conscious of problems with the completeness and accuracy of such data.

Fourth, the City correctly notes that one of the statutory factors listed in Section 111.77(6) which must be considered in this proceeding is cost-of-living. Regardless of whether the increase in the cost-of-living is based upon the two year period immediately prior to the beginning of the term of this contract (December 1990-December 1992) or upon the most recent two year period (December 1991-December 1993), it is apparent that the respective two year increases totaling 6.1% and 5.7% are both lower than the total cost of the City's or the Union's final offer, no matter how those total offers are costed. The offers of both parties include provisions for pension escalators designed by each party to make some reasonable progress in an important area where Milwaukee's public employee pension system lags behind its Wisconsin and national counterparts. Accordingly, in view of the need acknowledged by the parties for a significant step to

address a long-standing pension area problem, the arbitrator believes that other statutory factors, particularly comparisons with Milwaukee suburban and urban Wisconsin fire fighters' bargaining units, should be given greater weight under these circumstances than the cost-of-living criterion.

1. Salaries for 1993 and 1994

As already discussed above, the undersigned believes that 1993-1994 internal comparability data relating to salary increases for general City employees is entitled to little weight herein because historically there are few examples of any linkage between salary increase or total compensation for general City employees and salary increases or total compensation for City fire fighters. (Internal comparability data covering Milwaukee police officers which would be very relevant are not yet available for 1993 and 1994.)

Although there are admitted difficulties in making meaningful comparisons between this unit and other groups of fire fighters due to such items as extra pay differences, complexities in calculating work hours, missing information on health insurance coverage and costs, disparate pension benefits and costs, etc., the undersigned believes that there is sufficient external comparability evidence to lead her to find that the Union's salary offer is more reasonable than the City's salary offer. She believes that salary and total compensation data, particularly data from other Wisconsin communities, merit special consideration and weight. For example, even under the City's analysis of suburban Milwaukee communities' maximum salary rankings, the Milwaukee fire fighters do not rank higher than number 4 if the City's salary offer is implemented. The Union's analysis of the suburban Milwaukee fire fighters' data results in an even lower ranking for Milwaukee. There is also support for the Union's salary offer from analysis of data from other Wisconsin city fire fighting units.

The arbitrator concludes that the Union's salary offer of 3.5% for 1993 and 3.5% for 1994 is more reasonable than the City's salary offer of 2.5% in 1993 and 2.5% in 1994 based upon external comparability data and the goal of making Milwaukee fire fighters "number one" among Wisconsin fire fighters in salary and total compensation.

2. Pension Escalator

The offers of both parties recognize that current ERS pension increases for fire fighters first implemented in 1989 of $50 per month after the completion of the 4th, 7th, and 10th year of retirement are inadequate adjustments to cost-of-living increases. In fact, the issue of an ERS COLA escalator has been a collective bargaining subject between these parties for at least twenty years and has received special scrutiny by various public bodies and professionals during the past few years. The parties' 1975-76 collective bargaining agreement provided for the formation of a pension study committee to review a requested ERS actuarial study and report on the cost and feasibility of

several proposals, including a pension escalator of up to 3%.[8] In more recent years, the Milwaukee Common Council has asked for studies and recommendations regarding this issue and, in addition, Blair Testin, Staff Director of the State's Retirement Research Committee (RRC), was requested in 1992 to study ERS and compare it to WRS. These requests were prompted by public officials' stated concerns about the adequacy of ERS retirement payments, particularly for those retirees (fire fighters and police) not covered by Social Security in their protective services employment.

The official reports which have been issued agree that the major difference between ERS and the vast majority of public employee pension systems (PERS), including WRS, is that ERS has no systematic post-retirement cost-of-living type adjustment. The majority PERS pattern is a capped 3% annual COLA adjustment. Although the WRS regular annual adjustment is not based on a COLA or defined percentage increase basis, it is based upon investment surplus which has averaged more than 6% per year since 1982. The City's own consultant, specially hired in 1992 to advise it on this matter, reached the same conclusion and made some recommendations contained in his report dated April 27, 1993. One of the recommendations in the consultant's report was:

> 7. That the City contributions beginning in 1993, as a percentage of covered pay, be not less than those for 1992, plus the increases for benefit improvements subsequent to January 1, 1992; and that such minimum in 1994 and beyond be not less than the required member contributions. The 1992 contribution was about 5.1% for general members and about 1.2$ for police and firemen. Member contributions are 5.5% for general and 7% for police and firemen. (This would be an additional amount above the member contribution now made on behalf of the member by the City.)

Instead, as the record indicates, the City made no 1993 payment on 1/31/94 (excluding its contractual obligation to pay the employee's required 7% contribution to ERS), thus rejecting one of the important recommendations of its own consultant.

As the Union emphasizes, the lack of a significant pension escalator is particularly significant for certain groups of retired public employees such as fire fighters because they are not covered by Social Security[9] as to their protective services employment. Although, as the City notes, fire fighters enjoy a short term benefit during City employment from this lack of coverage because no FICA deduction is made by the City from a fire fighter's pay, it also is true that the City is not required to make the employer's FICA contribution (an amount equal to a covered employee's FICA

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[8]Such an annual pension COLA escalator of up to 3% is the Union's position in this arbitration proceeding.

[9]There is also some question about Medicare coverage for employees not covered by Social Security retirement benefits.

deduction) for its fire fighters. For retired general City employees, they do receive an annual COLA adjustment as part of their regular Social Security retirement benefits. Thus City fire fighters are on a different footing from general City employees and all others who are eligible to receive Social Security. One City witness suggested that a number of fire fighters -- or their spouses -- are eligible for Social Security payments due to other employment. However, the extent to which this is true and the amount of Social Security payments, if any, based upon other employment covered by Social Security has not been documented at all by the City. An informal and limited Union survey on this issue indicates that retired City fire fighters receive low or no monthly Social Security retirement benefits from other employment. In addition, there is testimony in the record that current Social Security rules reduce Social Security benefits based upon other employment if the retired fire fighter receives a PERS retirement income from a public employer not participating in Social Security. Thus, it appears clear that lack of Social Security coverage for protective services employment is a significant consideration in this dispute.

Finally, it should be noted that the pension escalator incorporated into Milwaukee District Council 48's 1993-1994 agreement is more generous than the City's offer herein in that the negotiated 2% escalator begins after the 8th year of retirement in contrast to the City's offer which does not begin the 2% escalator until after the 11th year.[10] For all these reasons, the arbitrator gives significant weight to the importance of the pension escalator issue for City fire fighters particularly because they are not covered by Social Security in their fire fighting employment while general City employees are and because ERS does not presently provide the regular type of pension enhancements offered by the clear majority of other PERS, including WRS which covers all other Wisconsin fire fighters.

The Union considers the City's pension escalator offer (and its liberalization of the requirements for the $50 per month payments) as insufficient. However, there is general agreement about the appropriate way to cost or fund the City's offer. On the other hand, there is a very serious dispute as to the appropriate costing and funding of the Union's offer of a 3% capped COLA for members of this bargaining unit eligible to retire during 1993 and 1994. The City's experts testified that the most responsible way to fund the Union's proposal is to spread the cost over the two years of the contract. This amounts to a cost of 18.27% in 1993 and 18.27% in 1994, based upon an accepted accounting principle which amortizes such a benefit's cost only over the remaining career of covered active employees until their retirement. The City's experts also testified that the most responsible way to analyze the Union's proposal is to assume that this benefit, if adopted in its present form, will inevitably be extended to cover all members of the

[10]The City's pension offer also includes some already noted improvements to the $50 per month payments to retired fire fighters after specified years of retirement.

bargaining unit under future collective bargaining agreements.[11] If the Union's proposed escalator is considered as applicable to all existing bargaining unit members, then the City's experts estimate an annual cost of 12.66% on a "pay as you go" basis.

The Union vigorously objects to the appropriateness of these very high cost calculations on several different grounds. First, the Union emphasizes that current City Charter provisions governing ERS require that the benefit as proposed in the Union's final offer be costed at 3.14% per year. The City's position which costs the benefit over two years only is contrary to existing law and requires a Charter amendment. Thus the Union believes its 3.14% annual cost is proper. Second, the Union points to a crucial cost "off-set" or quid pro quo contained in its final offer. The Union's offer requires all unit members (appropriately 1000 employees) to contribute 1% of the unit's payroll in 1993 and a total of 2% of payroll in 1994. The clear intent of this employee contribution proposed by the Union is to reduce the financial impact of its COLA escalator offer even though its package means that all bargaining unit members will contribute to make feasible a benefit only available to the 139 unit members eligible to retire during 1993 and 1994. Third, the Union points to an ERS "overfunding" or "surplus" as a reasonable way to help fund the Union's pension COLA escalator. The Union believes there is such a "surplus" because the City's own exhibits and expert witness testimony establish that there are assets of $212,000,000 attributable to City fire fighters which are available to cover $201,000,000 in existing liability.[12]

If the only way to cost and fund the Union's pension escalator final offer resulted in required additional City payments of either 18.27% per year for two years or even 12.66% per year for a longer period, those costs are prohibitive for almost any public

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[11]The City also has to consider the financial implications of extending such a COLA escalator benefit to already retired fire fighters since these retirees clearly have an even greater need for some type of COLA pension escalator than do those eligible to retire in 1993-1994. However, improvements of retirement benefits for already retired fire fighters are beyond the mandatory scope of bargaining between the Union and the City and thus are not a consideration in this proceeding.

[12]The City correctly notes that ERS does not officially separate or divide assets and liabilities among the three categories of fire fighters, police, and general employee since there is no ERS authority to do so. However, such calculations have been historically made -- and continue to be made -- for the purpose of determining City rates of contributions for each of the three City employee groups. Since there is such a practice used by ERS' own actuary, it is a useful concept, for purposes of this arbitration proceeding, to refer to fire fighters' assets and liabilities, recognizing that there is only a single ERS covering the three groups.

Another indication that ERS is "well funded" is that ERS' ratio of assets to liabilities is 127.4% while WRS' ratio is 103.7%. The ERS' valuation approach was described as "conservative" by an expert witness.

employer. However, the arbitrator believes that the Union's expert has made a persuasive and responsible argument that accepted accounting principles do not require the City's costing approaches. Instead, he testified that the Union's present proposal represents an annual cost of 3.14% on a "pay as you go" basis, according to the method set forth in the City Charter.[13] Moreover, that amount is significantly "set-off" by the Union's required employee contribution of 1% of payroll in 1993 and 2% payroll in 1994. In fact, the Union's expert concludes that the net cost to the City of the Union's proposal set-off by the required employee contribution is less than the cost of the City's proposed pension escalator. The Union expert stated that the City and ERS would be acting in a thoroughly responsible manner if it was decided that some of the ERS fire fighters' "surplus" (allocated assets less allocated liabilities) which presently exists were used to fund some of the City's cost for the Union's proposal. In an April 1993 City of Milwaukee Retiree Pension Study, the ERS actuary specially hired by the City stated that:

> As a result of the favorable experience of the ERS and the change in assumptions, the recent level of City contributions to the ERS can support a higher level of benefits than at present. We assume this level of *contributions without a significant effect on the property tax levy.*
>
> . . . the ERS is currently well funded relative to current accrued benefits or liabilities and some benefit improvements are possible without a deterioration in the adequacy of current funding nor a required increase in the level of City contributions to maintain full funding of current accrued benefits for some years, if ever.

During the hearing, this recommendation was reaffirmed by its author.

The arbitrator thus concludes that the Union's pension escalator offer, although high in ultimate costs if that benefit is extended in the future to all bargaining unit members, should be considered in the context of: 1) spreading its cost on a "pay as you go" basis; 2) the Union offer's required employee contributions of 1% of payroll in 1993 and 2% of payroll in 1994;[14] and 3) ERS' current "well-funded" status.

In addition to the above, there is an undisputed historical point that is relevant. The need to provide some type of a meaningful ERS COLA-type escalator has been well known for at least twenty years. In recent years there has been a build-up of pressure to bring ERS more in line with WRS and other PERS. However, the City did not take any

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[13]Another method of costing, entry age normal, was discussed by the parties' actuaries during the hearings. A Charter change would be required for this method to be used, however.

[14]Since the next City payment due date to ERS is 1/31/95, the Union points out that the City will enjoy the benefits of investing the fire fighters' "set-off" contribution until then.

steps to anticipate a needed pension escalator such as making a voluntary ERS contribution, as recommended by the City's consultant (the ERS actuary). If the City had begun to take the recommended (or equivalent) steps, the transition to a systematic and reasonable pension escalator would be easier now. The undersigned recognizes that the current financial situation facing the City (and the City School District) may be filled with various constraints. However, it could be anticipated that the issue of adopting and implementing a comparable pension escalator for ERS participants without Social Security coverage would come to the forefront at this time. The arbitrator believes that the statutory factors require selection of the Union's pension escalator offer as the more reasonable one based upon all the facts developed in this record.

3. Disability Duty Retirement Allowance (DDRA)

The final offers of both parties relating to the DDRA involve a complex and new area of age discrimination law, that covered by OWBPA, 1990 federal legislation amending the ADEA. (For the specifics of the City's DDRA pre-OWBPA, see Annex "C." For the specifics of the City's July 28, 1992 legislation in response to OWBPA, see Annex "D." For the City's final offer on DDRA, see Annex "A." For the Union's final offer on DDRA, see Annex "B.")[15] OWBPA gave public employers until October 16, 1992 to come into compliance with its provisions. Special EEOC Interpretive Rules give more specific guidance as to what may constitute OWBPA compliance. At the present time, there is a pending lawsuit in federal district court challenging the legality of the City's July 28, 1992 DDRA changes which the Common Council adopted to comply with OWBPA. The lawsuit was initiated by the Union together with the Milwaukee Police Association, the Milwaukee Police Supervisors' Organization, and the Milwaukee Teachers Education Association.

As noted earlier, the Union challenged the City's right in this proceeding to present evidence and argue that portions of the Union's DDRA offer were in conflict with OWBPA. The arbitrator issued a separate written ruling dated February 2, 1994 on the Union's motion (Annex "1"). She held that the City had the right to raise issues concerning the legality of the Union's final DDRA offer in this arbitration proceeding and recognized a corresponding Union right to challenge the legality of the City's final DDRA offer. The City, however, did not pursue in-depth arguments challenging the legality of the Union's DDRA offer. Its OWBPA expert testified that on its face the Union's DDRA offer discriminated on the basis of age by reducing DDRA benefits for older fire fighters. The City offered no testimony, documents, or arguments to dispute the Union's expert who offered testimony and a written analysis to justify his opinion that the Union's DDRA offer is in compliance with OWBPA.

There was, however, lengthy disputed testimony and arguments by both parties

[15]No attempt is made here to summarize the details of these four documents since an accurate and complete summary would be exceedingly long. The documents speak for themselves.

about whether the City's DDRA offer was in compliance with OWBPA. The Union's main challenge to the City's DDRA offer is that it is based upon actuarial assumptions and not actual experience data supplied to the City's DDRA consultant by the ERS' actuary. The actuarial assumptions which the Union argues are faulty are: 1) that duty disabilities increase as fire fighters grow older; 2) that all fire fighters retire at age 58 and none take early retirement; and 3) a failure to take into account the probability that some fire fighters will choose normal service retirement over DDRA (despite features which generally favor DDRA). Specifically, the Union criticizes the City in making its DDRA calculations because the City failed to take into account retirement savings. Although it is unclear whether OWBPA and EEOC rules require this savings calculation, the Union contends that such cost savings should be considered in this interest arbitration proceeding in calculating what is truly "cost neutral" for the City in connection with its DDRA offer.

The City does not address the particulars of the Union's arguments. Instead, it defends the analysis made by the consultant which it hired to help formulate its bargaining DDRA offers because he relied upon actuarial assumptions supplied by the ERS' actuary and such reliance is reasonable. The City also raises an additional argument that its DDRA offer is to be preferred because it is supported by internal comparability and the goal of internal consistency. Such arguments are understandable. Both the July 28, 1992 Common Council DDRA change and the City's final offer in this proceeding, however, contain differences in DDRA provisions as they relate to fire fighters, police, and general City employees. Of the three groups, fire fighters account for the largest incidence of duty disabilities and receive the least favorable DDRA benefit formula under either the July 28, 1992 change or the City's final offer.[16] Under these circumstances, City appeals for uniformity are not entitled to heavy or determinative weight.

As the above discussion indicates, both final offers present some complex issues. Although the undersigned determined in her February 2, 1994 ruling that it was appropriate to raise issues of (OWBPA) legality in this proceeding, as these issues have been subsequently developed in the record it has become clear that legality determinations relating to the parties' DDRA offers are necessarily highly technical and about issues not yet settled. Therefore, in discussing the parties' DDRA offers, the arbitrator now believes it is more appropriate to concentrate upon issues of reasonableness of the parties' offers under a traditional arbitration analysis and not focus upon issues of OWBPA legality.[17]

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[16]Eligibility for DDRA benefits is particularly important because benefits are calculated on the basis of current annual salary, employees may be eligible (or required) to return to work, and there are better health insurance benefits.

[17]It should be noted that issues concerning the legality of the July 28, 1992 Charter Ordinance are not part of this proceeding. They are part of the pending federal court litigation.

As for the Union's DDRA offer, the Union's expert offered a plausible analysis and conclusion that the Union's offer does meet OWBPA's cost justification standard and this testimony has not been specifically challenged by the City. The same expert also offered a plausible response to the City's challenge that the Union's offer was improper under OWBPA because it gave to all unit members, including those who "irrevocable" elected earlier, a new opportunity to elect. He concluded that the Union's proposal was proper because there is no OWBPA provision prohibiting such a procedure. In any case, it is clear that the Union's DDRA offer is dissimilar in many significant ways from the City's DDRA offer which was drafted to be as close as possible to the DDRA provisions already accepted by 15 other City bargaining units.

As for the City's DDRA offer, the Union has advanced some serious challenges to its reasonableness since it is based upon actuarial assumptions instead of actual experience data. Although actual experience data was not available when the City's July 28, 1992 DDRA legislation was enacted, it has been available since the end of 1992 in a report by ERS' actuary. In fact, the actual experience data are part of the same document prepared by the ERS actuary which contains the disputed actuarial assumptions that the City's DDRA consultant relied upon. In addition to this key Union argument, the Union raises other challenges to the reasonableness of the City's DDRA offer. The Union argues that a truly "cost neutral" DDRA proposal would take into account pension savings as well as DDRA costs. This argument may or may not be found to have validity in the pending federal district court lawsuit challenging the legality of the City's July 28, 1992 DDRA ordinance. In this proceeding, however, the Union's argument about pension savings raises a valid issue of concern in connection with the City's claim that its DDRA proposal is "cost neutral."

In the area of DDRA benefits, the arbitrator believes it is generally appropriate to give heavy weight to internal uniformity. Indeed external comparables have not been presented at all on this issue. However, because of the nature of this bargaining unit's work, fire fighters experience a higher incidence of duty disability than either police or general City employees. Accordingly, the pay and duration formula under the City's DDRA offer is different -- and less -- than for other City employees. Thus, there is not strict DDRA uniformity among all City employee groups, even under the City's DDRA offer. Moreover, the arbitrator believes that the Union has raised several challenges to the reasonableness of the City's DDRA -- particularly its argument that the City's offer is based upon flawed actuarial assumptions which contradict easily available actual experience data. Revised actuarial assumptions based upon actual experience data would result in increased DDRA benefits for fire fighters. Taking into account pension savings, as suggested by the Union, might also improve fire fighters' DDRA under a comprehensive "cost neutral" analysis. While the arbitrator is very concerned about not following the already established City DDRA pattern, she reluctantly concludes that Union challenges to the reasonableness of the City fire fighters' DDRA offer are sufficiently serious to make her conclude that in this proceeding the Union's DDRA

offer appears to be more reasonable.[18]

4. Sick Leave Incentive Plan (SLIP)

Both parties' final offers propose changes to the City's existing SLIP policy contained in their expired collective bargaining agreement but they have given very little attention to this remaining issue in dispute. The parties' lack of focus upon this fourth issue is, no doubt, due to the larger policy implications of the other issues already discussed. The City's new language is designed to "tighten up" SLIP eligibility due to concerns about existing SLIP abuses. The City stresses the desirability for uniformity among all City employees, noting that 15 other bargaining units have adopted the City's proposed language at this time. These units include fire dispatchers and shop employees. The City has particular concerns about this unit because a City Comptroller's report indicates that more fire fighters utilize injury pay in comparison to other City employees. The Union's SLIP offer attempts to address the City's concern about SLIP abuse by adding language that in order to qualify for SLIP, an employee "did not abuse his/her right to receive injury pay. . . ."

In the judgment of the undersigned, both the City and Union offers appear to be flawed. The City does not address at all the unique situation for fire fighters attributable to their greater job hazards which may result in greater use of injury pay and their unique 24 hour work day schedules. These two circumstances suggest that it might be appropriate for the City to address the special risks and work days of fire fighters. The Union's offer includes language difficult to apply; grievances may be unnecessarily encouraged due to the vagueness of the Union's language. Since the parties have indirectly indicated that this issue should not be determinative to the outcome of this proceeding and because the arbitrator has reservations about the merits of each party's SLIP offer, she concludes that neither SLIP offer is more reasonable than the other.

5. Conclusion: Final Offer Whole Package

Since the parties have not agreed to proceed under Section 111.77(4)(a) (Form 1) of MERA prior to the hearing, this arbitration proceeding is governed by Section 111.77(4)(b) (Form 2) of MERA. Form 2 requires that the arbitrator select the final offer (total package) of one party.

In reaching her decision, the arbitrator has taken arbitral notice of the general difficulties that urban communities have had and continue to have financing important and needed municipal services, including schools. However, this record does not contain any City testimony, exhibits, or arguments indicating that the City of Milwaukee is faced

[18]Only the major arguments raised by the parties on the DDRA issue have been discussed. There are additional points in the record concerning DDRA offer differences which the arbitrator has not discussed because she believes that they will not effect the outcome of this dispute.

with particular circumstances or financial difficulties which merit special consideration in this proceeding -- although a Union exhibit covering 1990-1994 details the decreasing City property tax rate and the declining City share of the tax levy.

For the reasons discussed above, the arbitrator believes that the Union's final offers on the issues of 1993-1994 salaries, pension escalator, and DDRA are more reasonable than the City's final offers. Since this is a Form 2 proceeding, she is, therefore, obligated to select the Union's final offer total package.

AWARD

Based upon the record in this proceeding, including testimony, exhibits, and arguments of the parties, the statutory factors set forth in Section 111.77(6) of MERA, and for the reasons discussed above, the arbitrator selects the final offer of the Union and directs that it be incorporated without modification together with all stipulations of the parties into the parties' 1993-1994 collective bargaining agreement.

June Miller Weisberger

Madison, Wisconsin
May 31, 1994

June Miller Weisberger
Arbitrator

Appendix A

CITY OF MILWAUKEE'S AMENDED FINAL OFFER TO LOCAL #215, MILWAUKEE PROFESSIONAL FIREFIGHTERS' ASSOCIATION

The amended final offer of the City of Milwaukee for a successor agreement to the 1991-1992 Agreement between the City of Milwaukee and the Milwaukee Professional Firefighters' Association is to maintain present language except as follows:

1. Incorporate those changes to the 1991-1992 collective bargaining agreement that were agreed to by the parties during the course of collective bargaining and which were signed and initialled by the parties; and,

2. incorporate changes to the 1991-1992 Agreement as proposed by the City as outlined below:

* * * * * * *

I. **Article 10, Base Salary**

a. Effective Pay Period 1, 1993, a 2.5% across-the-board increase applied to the 1992 rates of pay.

b. Effective Pay Period 1, 1994, a 2.5% across-the-board increase applied to the 1993 rates of pay.

II. **Article 22, Pension Benefits**

2. Escalator

a. Employes in active service who become eligible for a service retirement allowance under the provisions of s. 36-05-1-b or f of the Milwaukee City Charter and subsequently retire on a service retirement allowance first effective on or after January 1, 1993, employes in active service who separate from service on or after January 1, 1993 and become eligible for a deferred retirement allowance under s. 36-05-6-e of the Milwaukee City Charter and retired employes receiving a duty disability retirement allowance who, on or after January 1, 1993 convert to a service retirement allowance, shall be eligible for a pension increase in the amount of $50 per month on the 3rd annual anniversary of their being placed on the pension roll, an additional increase of $50 per month on the 6th annual anniversary of their being placed on the pension roll and an additional increase of $50 per month on the 9th annual anniversary of their being placed on the

Annex "A"

pension roll. Surviving spouses of employes eligible for an increase under this paragraph shall have their survivor allowance computed and increased in accordance with s. 36-05-1-h-3 of the Milwaukee City Charter.

b. Employes in active service who become eligible for a service retirement allowance under the provisions of s. 36-05-1-b or f of the Milwaukee City Charter and subsequently retire on a service retirement allowance first effective on or after January 1, 1993, employes in active service who separate from service on or after January 1, 1993 and become eligible for a deferred retirement allowance under s. 36-05-6-e of the Milwaukee City Charter and retired employes receiving a duty disability retirement allowance who, on or after January 1, 1993 convert to a service retirement allowance, shall have their service retirement allowance, including adjustments under paragraph a, above, increased by 2% effective with the pension check for the month following the month in which they have completed 11 years on the service retirement pension roll. After the first increase to the retirement allowance under this paragraph, there shall be an additional 2% increase to the retirement allowance in each successive year effective with the pension check on the anniversary of the first adjustment to the retirement allowance. Each successive increase under this paragraph shall be computed on the retirement allowance as previously adjusted. If a retired employe who is eligible for an adjustment under this paragraph elects a survivorship option with a 50% survivor allowance and a 5% member reduction, the spouse survivor allowance shall be computed based on the amount of the retired employe's service retirement allowance, including adjustments under paragraphs a. and b. at the date of death. If a retired employe who is eligible for an increase under this paragraph has not received an increase prior to death, a surviving spouse, who is eligible for a survivorship option with a 50% survivor allowance and a 5% member reduction, shall have his/her survivor allowance increased by 2% effective with the pension check in which the eligible retired employe would have received his/her adjustment had the retiree lived. If an eligible retired employe has received an increase under this paragraph prior to death, a surviving spouse, who is eligible for a survivorship option with a 50% survivor allowance and a 5% member reduction, shall have his/her survivor allowance increased by 2% effective with the pension check in which the eligible retired employe would have received his/her next adjustment had the retiree lived.

c. If an employe has elected a protective survivorship option and dies on or after January 1, 1993, while in active service, a surviving spouse, who is eligible for a survivorship option with a 50% survivor allowance and a 5% member reduction, shall have his/her survivor allowance increased by 2% effective with the pension check for the month following the month in

which he/she has 11 years on the survivor allowance pension roll. After the first adjustment to the survivor allowance, there shall be an additional 2% increase in the survivor allowance in each successive year effective with the pension check on the anniversary of the first adjustment to the survivor allowance. Each successive adjustment shall be computed on the survivor allowance as previously adjusted.

d. Paragraphs a and b, above, shall not apply to employes receiving a deferred retirement allowance first payable commencing at age 57 nor to an immediate retirement allowance payable upon separation.

3. Duty Disability Benefits

a. Employes hired prior to October 17, 1992 who did not elect the duty disability benefit meeting the requirements of the Older Workers Benefit Protection Act (OWBPA) (37% of Current Annual Salary) shall continue to be governed by the benefit in effect prior to October 17, 1992 (75% of Current Annual Salary).

b. For employes hired on or after October 17, 1992 and for employes hired prior to October 17, 1992, who elected a benefit meeting the requirements of OWBPA (37% of Current Annual Salary) and who first apply for a duty disability allowance on or after January 1, 1993, the duty disability retirement allowance shall equal 56% of current annual salary. Commencing the month next following the month such retired employe attains age 62, the duty disability retirement check payable to such employe shall be reduced by the amount of the service retirement allowance which would be payable to such retired employe upon voluntary conversion at age 62.

c. If an employe referred to in 3.b., above, is found to be eligible for a duty disability allowance after attaining age 50 but prior to attaining age 55, such employe shall continue to be eligible to receive a duty disability allowance during the period of eligibility until he/she becomes eligible for a normal service retirement allowance as provided under Chapter 36-05-1-b or f or the expiration of a maximum period of 25 months, whichever is later. If an employe referred to in 3.b., above, is found to be eligible for a duty disability allowance after attaining age 55 but prior to attaining age 60, such employe shall continue to be eligible to receive a duty disability allowance during the period of eligibility until he/she becomes eligible for a normal service retirement allowance as provided under Chapter 36-05-1-b or f or the expiration of a maximum period of 14 months, whichever is later. If an employe referred to in 3.b., above, is found to be eligible for a duty disability allowance after attaining the age of 60 but prior to attaining age

65, such employe shall continue to be eligible to receive a duty disability allowance during the period of eligibility until the expiration of a maximum period of 9 months. If an employe referred to in 3.b., above, is found to be eligible for a duty disability allowance after attaining the age of 65, such employe shall continue to receive a duty disability allowance during the period of eligibility until the expiration of a maximum period of 7 months.

d. An employe referred to in 3.b., above, who is found to be eligible for duty disability retirement allowance prior to attaining age 50, shall mandatorily convert to a service retirement allowance upon attaining age 52 and completion of 25 years of service or age 57, whichever shall come first. An employee referred to in 3.b., above, who is found to be eligible for duty disability retirement allowance after attaining age 50 shall mandatorily convert to a service retirement allowance upon attaining age 52 and completion of 25 years of service or age 57, whichever shall come first, or the expiration of their maximum period, whichever is later. An employe referred to in 3.b., above, who is found to be eligible for a duty disability retirement allowance after attaining age 50, whose maximum period extends beyond the sooner of age 52 and completion of 25 years of service or age 57 shall be eligible to voluntarily convert to a service retirement allowance commencing at age 52 and completion of 25 years of service or age 57, whichever shall come first.

e. The provisions of subsections a through d, above, shall not apply to an employee who is found to be eligible for a duty disability retirement allowance under Chapter 36-05-3-c-1-b of the Milwaukee City Charter.

III. **Article 26, Sick Leave**

Delete Paragraph 8.c. and substitute the following:

8. Sick Leave Control Incentive Payments

c. An employee shall be eligible for a sick leave control payment only if:

(1) During the full term of the trimester: Such employee did not use any paid sick leave (other than for funeral leave purposes as herein provided), did not receive injury pay (except in cases when the employee suffered a verifiable lost-time work-related injury and returned to work for his/her next regularly scheduled work shift following the occurence of the injury), was not on an unpaid leave of absence, was not tardy and was not suspended from duty for disciplinary reasons (including time spent suspended from duty with

pay pending disposition of charges or appeal from charges, Departmental or otherwise). In the event all charges giving rise to a suspension are subsequently dismissed, the employee's eligibility for an attendance incentive payment in a Trimester shall be re-determined and if the employee would have otherwise been eligible for the payment, but for the suspension, he/she shall be deemed eligible for the payment; and

(2) Such employee was in active service for the full term of such trimester; and

(3) At the end of the trimester, such employee had an amount of earned and unused sick leave in his/her sick leave account equivalent to seven work days for employees earning sick leave credit under the provisions of subsection 3.a. of the Sick Leave Article of this Agreement or 15 work days for employees earning sick leave credit under the provisions of subsection 3.b. of the Sick Leave Article of this Agreement.

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An Amended Final Offer

Appendix "B"

Submitted by
The Milwaukee Professional Fire Fighters' Association,
Local 215, IAFF, AFL-CIO

With Regard to
A Collective Bargaining Agreement
Between It and

The City of Milwaukee

Dated: August 20, 1993

Local 215, IAFF, AFL-CIO ("Union") proposes the following as an amended final offer for a collective bargaining agreement with the City of Milwaukee ("City") to succeed the agreement which nominally expired on December 31, 1992:

1. The terms of the 1991-1992 collective bargaining agreement between the Union and the City shall be extended without change; except for,

2. those changes to the 1991-1992 agreement initialed by the parties during the course of the negotiating process; and except further for,

3. those changes to the 1991-1992 agreement proposed by the Union, to which the City has not agreed, as set out in the Union's Proposal (attached hereto and identified as Exhibit 1).

Date: August 20, 1993

Timothy E. Hawks, Attorney
for Milwaukee Professional
Fire Fighters Association,
Local 215, AFL, AFL-CIO

Annex "B"

EXHIBIT 1

ITEM 1.

ARTICLE 10

BASE SALARY

Amend sections 1 and 2 and Appendix A to reflect an across the board increase of 3.5% effective the first day of the first pay period of 1993 and a further across the board increase of 3.5% effective the first day of the first pay period of 1994.

ARTICLE 41
PENSION BENEFITS

2. Escalator

a. For any employee who is or who becomes eligible to retire between January 1, 1993 and December 31, 1994, the City shall on March 1 of the calendar year following the first full calendar year of the employees' retirement and on March 1 of each calendar year thereafter, increase the monthly pension benefit which he/she received in the preceding December by the cost-of-living increase as measured by the increase in the Consumer Price Index (All Urban Consumers - CPI-U) as reported by the U.S. Department of Labor, Bureau of Labor Statistics, for the preceding calendar year, but in no event in an amount which exceeds 3.0%.

b. If a retired employe who is eligible for an adjustment under 2.a., above, elects a survivorship option, the spouse survivor allowance shall be computed based on the amount of the retired employe's service retirement allowance, including adjustments, at the date of death.

c. If a retired employe who is eligible for an adjustment under 2.a., above, has not received an adjustment prior to death, a surviving spouse, who is eligible for a survivorship option, shall have his/her survivor allowance increased by the amount provided in Sec. 2.a., above, effective with the pension check in which the eligible retired employe would have received his/her adjustment had the retiree lived. If an eligible retired employe has received an adjustment prior to death, a surviving spouse, who is eligible for a survivorship option, shall have his/her survivor allowance increased by the amount provided in Sec. 2.a., above, effective with the pension check in which the eligible retired employe would have received his/her next adjustment had the retiree lived. If an employe has elected a protective survivorship option and dies on or after January 1, 1993, while in active service, a surviving spouse, who is eligible for a survivorship option, shall have his/her survivor allowance increased by the amount provided, and effective on the date provided in Sec. 2.a., above. After the first adjustment to the survivor allowance, there shall be an additional increase in the survivor allowance by the amount provided in Sec. 2.a., above, in each successive year effective with the pension check on the anniversary of the first adjustment to the survivor allowance. Each successive adjustment shall be computed on the survivor allowance as previously adjusted.

d. This escalator benefit shall be in lieu of the escalator benefit provided by the terms of the prior collective bargaining agreement and City Ordinance.

3. Duty Disability Benefits

Amend the current pre-October 17, 1992 Duty Disability Retirement (DDR) benefit as necessary to:

a. Remove the mandatory conversion date.

b. Integrate DDR and ordinary service retirement benefits as follows: Require an employee who becomes simultaneously eligible for both DDR and ordinary service retirement benefits to make an irrevocable election at the time he/she would be entitled to both benefits to select either his or her ordinary pension benefit or the DDR benefit. Change the DDR benefit amount paid to the employee after the date of the election to the amount that the employee would receive if he or she took ordinary retirement as of said date, but not more than 75% nor less than 57% of current annual imputed salary.

c. Amend the annual DDR benefit adjustment for employees who have executed the election set out in 3.b. above, so that the DDR benefit adjustment (escalator) after the date that the employee executes the election, is the same as that provided by Article 41, Section 2.a.

d. Amend Article 24, 2., c., to read as follows:

Employees in active service who commence receiving a duty disability retirement allowance between January 1, 1993 and December 31, 1994, as such allowance is defined in Section 36.05(3) of the ERS Act or Section 34.01(50) of the City Charter, shall be entitled to the benefits provided in subsections 1.a. or 1.b. of this Article, above, between January 1, 1993 and December 31, 1994, so long as they continue to receive such duty disability retirement allowance and as long as they are less than age 65.

e. Allow, or as appropriate require, an employee who elects the DDR benefit under 3.b. above to return to active employment under the same terms and conditions as a DDR beneficiary below the age of eligibility for a normal retirement benefit.

Add as a New Section:

__. Effective January 1, 1993 each employee, and each member who

becomes eligible for and receives a DDR benefit after the effective date of this Agreement but who has not yet become eligible for a normal service retirement benefit, shall contribute an amount equal to 1% of his/her pensionable income, or DDR benefit, toward the cost of the pension benefit. The employee's pension contribution shall be deducted from the bi-weekly pay check of said employee.

__. Effective January 1, 1994 each employee, and each member who becomes eligible for and receives a DDR benefit after the effective date of this Agreement but who has not yet become eligible for a normal service retirement benefit, shall contribute an additional 1% for a total of 2% of his/her pensionable income, or DDR benefit, toward the cost of the pension benefit. The employee's pension contribution shall be deducted from the bi-weekly pay check of said employee

__. Members of Local 215, IAFF, who elected a protective survivorship option prior to the execution date of the 1993-1994 collective bargaining agreement will be authorized to reselect an option during the time period beginning one month following the execution date of this Agreement and ending February 29, 1994.

ITEM 3.

ARTICLE 26
SICK LEAVE

Delete Paragraph 8.c. and substitute the following:

8. Sick Leave Control Incentive Payments

c. An employee shall be eligible for a sick leave control payment only if:

(1) During the full term of the trimester: Such employee did not use any paid sick leave (other than for funeral leave purposes as herein provided), did not abuse his/her right to receive injury pay, was not on an unpaid leave of absence, was not tardy and was not suspended from duty for disciplinary reasons (including time spent suspended from duty with pay pending disposition of charges or appeal from charges, Departmental or otherwise). In the event all charges giving rise to a suspension are subsequently dismissed, the employee's eligibility for an attendance incentive payment in a Trimester shall be re-determined and if the employee would have otherwise been eligible for the payment, but for the suspension, he/she shall be deemed eligible for the payment; and

(2) Such employee was in active service for the full term of such trimester; and

(3) At the end of the trimester, such employee had an amount of earned and unused sick leave in his/her sick leave account equivalent to seven work days for employees earning sick leave credit under the provisions of subsection 3.a. of the Sick Leave Article of this Agreement or 15 work days for employees earning sick leave credit under the provisions of subsection 3.b. of the Sick Leave Article of this Agreement.

b. Allowance. The duty disability retirement allowance shall equal the service retirement allowance if such member has attained the minimum service retirement age, otherwise it shall consist of an allowance which is the actuarial equivalent of his accumulated contributions, plus an additional retirement allowance equal to 75% of his final average salary. *(Parts 12 and 13, Ch. Ord. 382, File #71-2300, Mar. 21, 1972.)*

c. Firemen and Policemen Duty Disability. c-1. Medical Panel, etc. Firemen and policemen who are eligible for duty disability retirement allowance shall file a request therefor with the board on a form provided by it for that purpose; such disability shall be determined as follows:

c-1-a. Recommendations. Such member shall be examined by a medical panel and such medical panel shall make the examination, determination and certification required under this act in accordance with the form prescribed by the board. If the panel recommends that such person is entitled to duty disability retirement allowance provided for in this section, the board shall thereupon grant such allowance. Any fireman or policeman who shall become disabled as the direct result of injury incurred in the performance of one or more specific acts of duty shall have a right to receive duty disability benefit during the period of such disability of an amount equal to 75% of the current annual salary for such position which he held at the time of such injury. The surviving spouse of such member after his or her death but only during the period prior to remarriage shall receive 70% of the amount of the duty disability which the member received at the time of his or her death, and such percentage shall thereafter be based upon the salary of the position of such member at the time of his or her death. Periodic medical examinations of such person shall be made at least once each year but the heads of the respective departments may direct more frequent examinations. *(Subpar. a am. Ch. Ord. 565, File #861820, Feb. 24, 1987; eff. May 11, 1987.)*

36-05-3 ERS

f. Optional Benefits. f-1. Members hired prior to October 17, 1992 shall be given notice of election prior to October 17, 1992 and within 180 days of such notice shall be given a one-time option to elect to have a duty disability benefit apply to them which will be offered on the same terms and conditions as the duty disability benefit which would otherwise apply to them except for duty disability benefits, other than those which would be otherwise payable at 90% of final average salary:

f-1-a. The amount of the member's benefit shall be 40% of current annual salary for a policeman, 37% of current annual salary for a fireman and 68% of final average salary for other members.

f-1-b. If the member applies for and receives a duty disability benefit within 5 years of the mandatory conversion age, mandatory conversion shall not occur for 5 years from the effective date of the duty disability benefit.

f-1-c. Upon attaining age 62, the member's duty disability benefit shall be reduced by the amount of the normal service retirement allowance payable upon conversion at age 62.

f-2. The duty disability benefit elected under this par. shall be in lieu of the duty disability benefit to which the member shall otherwise be eligible and such election shall constitute the member's consent to abrogation of the duty disability benefit to which the member would otherwise be eligible. *(Par. f cr. File #920400, July 28, 1992; eff, Oct. 19, 1992.)*

Annex "D"

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