

BEFORE THE ARBITRATOR

City of Manitowoc Firefighters,
IAFF, Local 368, AFL-CIO

And

MIA Case ID: 285-0015

City of Manitowoc

APPEARANCES:

Attorney Timothy Hawks and Attorney Jason Perkiser, on behalf of City of Manitowoc Firefighters, IAFF, Local 368, AFL-CIO.

Attorney Kyle Gulya and Attorney Ryan Heiden, on behalf of the City of Manitowoc.

City of Manitowoc Firefighters, IAFF, Local 368, AFL-CIO, and the City of Manitowoc (hereinafter referred to as the Union and the City, respectively) are parties to a collective bargaining agreement that expired on December 31, 2018. The parties filed an interest arbitration petition with the Wisconsin Employment Relations Commission (WERC). Peter Davis, a member of the Commission's staff, conducted an investigation which reflected that the parties were deadlocked in their negotiations. A Notice of Close of Investigation and Advice to the Commission was issued by Peter Davis on July 1, 2020. The parties selected the undersigned as arbitrator by the parties through the WERC to hear and decide the above-referenced dispute. A video hearing was held on October 21 and 22, 2020. The hearing was transcribed. The parties filed post-hearing initial and reply briefs that were exchanged by January 8, 2020, marking the close of the record.

Based upon consideration of the record and arguments in their entirety, the undersigned issues the following Award.

STATUTORY CRITERIA

§111.77 (6), Wis. Stats.:

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

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

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

LIST OF ISSUES IN DISPUTE

- 1) Definition of Work Day, Article 4, Section 1(c)
- 2) Light Duty Program Changes to Article 4, Section 4(a) and 4(c)
- 3) Promotional Procedure Article 6, Section (1)(a) and 1(c)
- 4) Continuing Education, Article 9, Section 6
- 5) Physical Examinations, Article 24 Section 1
- 6) Linen and Laundering, Article 26
- 7) Article 9, Wages

(Note: Each party's Final Offer is attached to the Award as Appendix A [Union's Final Offer] and Appendix B [City's Final Offer].)

PARTIES' POSITIONS

UNION'S POSITION

The Union's final offer resolves problems for its members and the City at a reasonable cost. It is the more reasonable of the two offers. The "greater weight" criterion of Wis. Stat. § 111.77(6)(am) focuses on the economic situation of the City. The Union proposal's cost is in close parity to the cost of the City's proposal, particularly when we consider the slight additional reduction in cost that would follow recalculation of the later step movement dates on employee's anniversaries, rather than January 1. For the period covered by the proposed contract and the future, the criterion favors neither parties' proposal.

The only evidence of economic pressure on the City is that which follows the arrival of the COVID 19 pandemic to the region around Manitowoc. Any adverse financial consequences to the City of the pandemic will be reflected mainly in the third year of this contract. The Union's offer presents a cost to the City's taxpayers that is essentially the same as the City's offer. During 2019 and 2020 the general economic conditions of the jurisdiction are positive and favor neither parties' position. If in 2021 the general conditions turn negative, the financial consequences of both parties' offers are similar. Therefore, the "greater weight" criterion neither favors, nor disfavors either proposal.

A Union exhibit reveals that Manitowoc's Fire Department has a serious retention problem. Taking into consideration only the firefighters who left their original department for the identical rank in another department, during the ten years prior to the implementation of the two-tier system, only 3 Manitowoc firefighters left for greener pastures; in the subsequent ten years 21 firefighters left. Compare that with the numbers of firefighters who resigned among the comparables: Appleton 1, DePere 0, Green Bay 5, Kaukauna 8, Neenah/Menasha 0, Oshkosh 3, Sheboygan 2, and Two Rivers 1. In absolute terms, more than 40% of the Manitowoc bargaining unit left for jobs at the same rank but in other departments in the current decade. No other unit, other than Kaukauna, saw comparable staff depreciations. No other unit had a system where people at the same rank, doing the same work were paid differently. The witnesses explain why this impasse occurred: the two-tier pay system and the damage to morale caused by it.

In its most extreme form, a Group B firefighter promoted to a leadership position, say as a lieutenant, will be paid less than a Group A Motor Pump Operation subject to his supervision. It is an aberration that should not be allowed to stand. The Union's proposal is narrowly tailored to address only the need to unify all employees' salaries.

Perhaps the most difficult issue when negotiating a salary schedule change is the challenge of accounting for the cost of implementing the change, i.e., identifying the actual cost of placing employees on the new step, determining that cost, and repeating that process for each new placement. This is particularly so, when the offer also provides other employees who are not being placed on a new schedule with an across-the-board increase.

The Union held the actual cost of its proposal to unify the salary schedule to not greater than 2.01% in 2019, 1.46% in 2020 and 1.55% in 2021. Again, the "not greater than" parameter exists because the Union assumed step movement occurred at the beginning of the year 2019 and 2020 rather than on the employee's anniversary date. Cost balancing occurred in the first year of the proposed contract, with Group A employees being held to 1% increase and the Group B employees netting a greater percentage increase than that, but on lesser annual wages, such that the actual cost in 2019 will be 1.81% greater than the year earlier cost. Thereafter, the Union offer results with a 1.46% increase in 2020 over 2019; and 1.51% increase in year 2021 over 2019. Also, each of these increases is significantly less than the percentage increase of the comparables.

The City exaggerates an imagined future cost increase as Group B employees move up to the new firefighter top step and are promoted to the higher ranks. In addition to the lower-than-average percentage increases being paid Group A employees described above, the gradual implementation of the increases for Group B employees occurs in the context of the opening up of future promotional

opportunities, positions held overwhelmingly by Group A employees. So, the actual financial consequence of that personnel transaction is a net zero.

A hypothetical example demonstrates this point. Assume that three years from now a current Group B employee is promoted to the rank of lieutenant to fill a vacancy caused by retirement or promotion of a Group A lieutenant. The promoted employee will be paid the same as the retired employee had been paid. There will be no increased cost as a consequence of the promotion. What the City appears to be complaining about is the lost savings it might realize if the two-tier system is permitted to continue three years into the future. So, it is a loss of a cost savings, not an increase cost of operations, that it is complaining about. The City has no right under this contract to a specific salary two years after this contract has expired.

Two aspects of the Union's argument below lay that out. The first is the history of the City's demand in 2012 to reverse the *quid pro quo* exchanged for the Union's agreement to the two-tier pay schedule ten years ago. Whatever equitable claim it may have had to the continuation of the two-tier salary system, it forfeited when it disrupted the exchange of value.

The second important piece of the analysis focuses on the externally comparable top-step firefighter and officer wage rates. The City seeks to perpetuate a salary schedule that is not supported by the external comparables. In fact, all collectively bargained internal and external comparables support the Union's proposed single tier salary schedule; none support the City's proposed continuation of the two-tier schedule.

There is no two-tier salary schedule among any of the comparables, internal or external. The City's desperate mischaracterization of just two units out of the entire set of external and internal comparables to claim support for a two-tier compensation, distorts reality. Sheboygan has a schedule that pays its employs who have paramedic licensure and responsibilities concomitant thereto more than it pays its employees who have only the significantly lesser EMS licensure and responsibilities. The rates differ because the parties rolled the Paramedic and EMS premiums into the base. Sheboygan does not pay employees who have the same job duties and responsibilities different base rates. Similarly, the Two Rivers contract is again a two table, not two tier. What it pertains to its employees hired before a certain date were granted into same post-employment or retirement health insurance.

It is reasonable to assume that the two rates/benefits combinations represent an approximately equal value, i.e., the value of Two Rivers post-retirement health insurance is roughly comparable to a 4% pay increase. Again, absent a lot more information than is in the record, the parties' negotiators cannot be presumed to have created a different level of compensation/benefits for employees at the same rank performing the same duties. Rather, it is reasonable to assume they found rough justice and agreed to it.

The Union's offer includes a *quid pro quo* as it includes a lower total package increase than the comparables would otherwise justify and it lowers the percentage increase for the more highly compensated bargaining unit members. The Union's negotiating team summarized this point in an exhibit, the Executive Summary of its case.

Providing a *quid pro quo* for this change, the Union has offered percentage raises of 1% in 2019 for Group A employees, 1.75% in 2020, and 1.75% in 2021 in comparison to the comparable averages of 2.31% in 2019, 2.50% in 2020, and 2.50% in 2021. This provides a difference in the Union's wage proposal and comparable raise averages of 2.81% over the 3-year contract, showing the Union's wage package raise to be on average 0.94% less than the comparable average raise per year. With the entire bargaining unit "step up" calculations of the single tier pay change, the raise calculations by year of 1.81% in 2019, 1.76% in 2020 and 1.75% in 2021 still show a contrast of 1.99% less than the average comparable raise packages over the life of the contract.

In fact, Union exhibits enumerate the ways in which the Union provides a *quid pro quo*: pay freezes in steps A-E for 2019; pay freezes in step B-E for 2020; pay step decreases in steps B-E for 2021; a leveled pay progression versus the aggressive 2018 progression; and a proposed raise package 2.81% less than comparable averages over the life of the contract. The Union's proposal provides raises 1%-1.75%-1.75% as compared to 2.31%-2.5%-2.5% for average comparable raise packages. The Union notes that the requirement of a *quid pro quo* is relaxed or eliminated when there is overwhelming

comparable support for a proposal. There is overwhelming comparable support for the Union's unified wage offer. There are no comparables that support the City's continuing two-tier wage proposal. The City's proposal of flat dollar increases and two-tier base pay salary enjoys no comparable support either internal or external. There is no comparable wage schedule that contains a flat dollar increase for bargaining unit members in 2019, 2020, or 2021. This includes the important internal comparable of the public safety unit.

The City's proposal to pay a flat dollar amount of \$5,000 for paramedic services is not supported by a demonstration of need, is not narrowly tailored, has no comparable support and is not accompanied by a reasonable quid pro quo. The current collective bargaining agreement (by virtue of an evergreen clause) provides: "All Wisconsin-licensed Paramedics 7% of Firefighter-E monthly base pay." The City proposes to substitute for that clause language (that it does not provide) offering \$5,000 annually as a lump sum payment during the contract for those firefighters who hold a paramedic license, rather than a percentage of wage. The City does not show a need, other than to implicitly provide Group B employees a few hundred dollars more than the current contract, a need that is created by the very existence of the two-tier pay schedule and better met by the Union's offer to unify the pay schedule.

However, the current contract would pay Group B employees 7% of a monthly salary of \$5,167. Annualized, that amounts to \$4,340.28. The Union's offer proposes to increase the Firefighter H pay rate to \$5,798 monthly. Maintaining the current contract language and applying it to the Union's final offer would pay the former Group B paramedics \$4,870.32 annually. The City's proposal would pay \$129.68 annually more to the Group B paramedics than the Union would pay them.

Meanwhile, the current Group A, Firefighter E monthly salary is \$5,741. The paramedic premium paid to them is \$4,822.44. For their service in 2019 the City would pay them \$5,000. The Union would pay them the same as the former Group B employees per the unified salary schedule, or \$4,870.32. But what is important is not the \$177.56 dollar difference in favor of the employer's proposal in 2019, it is the \$42.52 more that the Union's proposal would pay the paramedics annually in 2021.

Typically, there is a quid pro quo exchanged by the Unions to support a proposal to index a premium payment to a value that is regularly increased as part of the negotiations over the annual ATB increase. Once done, it never has to be done again. And, a fixed dollar premium for a specialized service provided by only certain employees in the bargaining unit is not deflated over time by the unwillingness of the employer to negotiate a CPI increase for all of the contract's fixed dollar premiums. Here that is lost in time and detail, but it would be a mistake to believe that it did not occur. Most importantly, it is not the Union's burden to defend the status quo of the current contract language but rather the City's burden to show a need for the change, comparables that support it, and that it provides a quid pro quo to the Union in exchange. It has done none of these things. The burden does not lie on the party proposing a change to the status quo when the opposing party demands a withdrawal of the quid pro quo that supported it.

The Union's agreement to adopt the two-tier pay schedule was grounded by the City's agreement to increase the total number of bargaining unit positions by three. It is undisputed that within a year of making the promise in writing, the City demanded that the Union agree to reverse it. The doctrine of equitable estoppel bars the City from now arguing that the Union must offer a quid pro quo for a proposed unified salary schedule. This aspect of the Union's argument and the facts relevant to it are continued below in context of the "other factors" criterion to be applied to this dispute.

Among the remaining statutory criteria only §111.77(6)(bm) 4 and 8 bear upon the parties' wage dispute. They favor the Union's offer. A comparison of the wages of employees performing similar services requires close attention here. There is an extraordinary gap of \$7,304 between the City's Group B proposal and the average of the comparables. That problem is only made worse with the City's "flat dollar" increase, as it expands the shortfall to \$8,083 dollars during the life of the contract.

Similarly, even the Union's offer does not bring its firefighters to the average of the comparables, increasing the lag from \$934 to \$1,251 over the life of the contract. Despite that and despite the need to address the two-tier pay crisis, the City's proposal offers Group A firefighters a greater increase than does the Union's offer. Criterion 8, "other factors" normally taken into consideration, includes the inequitable

reward claimed by the City after failing in its 2012 staffing promise and the bargaining history in this case. An exhibit includes excerpts from the 2010-2012 labor contract. For the first time the contract contains a two-tier wage schedule with the new, lower pay scale applicable to employees hired after August 1, 2009. Also, for the first time it contains the following promise by the City: "For the contract period January 1, 2010 through December 31, 2012, the City of Manitowoc agrees to hire three additional firefighters, with no less then (sic) one firefighter hired per year of the contract." It continues to provide that the agreement applies to duration of this contract, but that it shall not serve "as a precedent requiring or suggesting that the City is bound to hire additional firefighters in any future labor agreements." The problem for the City is that it not did not hire the 3rd additional firefighter before that agreement expired.

Instead, on February 6, 2012, the City and Union entered into a successor 2013-2014 contract and a separate Memorandum of Understanding (MOU). The MOU expressly voided Article 29 of the then current 2010-2012 contract; the future contract did not include it, nor any staffing substitute for it. On the face of both the MOU and the 2013-14 labor contract there is no obvious exchange of some other benefit to the members of the bargaining unit comparables to the staffing promise.

This was the period of time that the City's reserves fell to \$16,000, near bankruptcy. The Union subsequently negotiated limited minimum staffing impact provisions and then in February of 2014 grieved the City's violation of those, but elected to pursue what it thought would be a more responsible means of redress: collective bargaining. On September 22, 2014 its negotiating team submitted the Union's proposals for a 2015-16 labor agreement. First among its proposals was to reform Schedule B; move all employees off of it after 9 years of service and pay all employees on it with 7 or more years of service an additional \$250/month. The City would not, and did not agree, to either proposal, nor offer any other modification to Schedule B. The same experience followed in the 2017-18 round of bargaining.

That brings us to the bargain leading to the current impasse. Again, the Union proposed to reform the two-tier schedule. Its first priority was to maintain competitive pay for the Union's membership while creating equal pay for each categorized and leveled position essentially creating a singular compensation schedule. At the very beginning it appeared that the logjam was breaking up. The very first of the City's June 7, 2018 "Top Priorities" was to: Move all employees to Schedule A to remove disparity between Schedule A and Schedule B, with the understanding that any EMS premium pay and other premiums (education, longevity, etc.) would be frozen at 2018 dollar levels for employees already on Schedule A and not offered to employees hired after July 1, 2009 to alleviate impact of change. Oddly, with no explanation to the Union's negotiating team for the regression, only one week later, on June 14, 2014, the City dramatically cut its first proposal. In a memorandum to the Union, the City's negotiating team wrote: "Move Schedule B employees to Schedule A upon promotion to MPO to maintain a competitive wage schedule. Freeze EMT pay at current Firefighter E levels for current employees and eliminate for new employees."

This is the context. Some firefighter/paramedics work their entire career in that rank. Not unusually he or she will start their career in the mid to late '20's and finish in the mid-50's. That is roughly a 30-year career. As of July 1, 2018, there was a \$5,000 difference between the B and A Schedule top-step firefighter base salary. So, the Union's B firefighters who remain at the rank for a career suffer a \$150,000 loss of income over their careers as a result of the two-tier system. The City's opening proposal cut that loss from 30 years to 9, potentially improving the future earnings of a B firefighter by \$105,000. One week later, the City pulled the sweet aroma of progress entirely off the table. Only employees that were promoted would be able to move off Schedule B.

The City also proposed to freeze what was then about \$4,700 of EMS pay into perpetuity by destroying the "index" feature in the contract for all current employees. And if that is not enough it cuts it altogether for new employees. This, even as other units, like Sheboygan, are rolling the EMT into the base salary. But it's not over. The City demands that 17 provisions of the contract "be removed" because, according to the City's negotiating team, they are permissive subjects of bargaining. Rather than make incremental progress forward from its opening proposal, the City lurched backwards.

The Union's proposal to convert the duty day article to impact language is preferred in light of the City's decision to challenge the ability to bargain the language it now peculiarly proposes to continue unchanged. The history of bargaining and litigation related to the "duty day" article is important. The concept is that certain routine daily functions of firefighters are to be performed only during a conventional eight-hour day, and that the firefighters are to be ready and waiting in the event an emergency arises during the balance of their 24-hour shift. The Union did not propose to change this language initially. But the City proposed to delete important aspects of it, claiming that it was a permissive subject of bargaining. The significance of the deletion was that the administration of the department could, at its discretion, schedule routine duties at any time of the evening or night.

The Union disagreed with the City, but concluded that there was a risk in litigation that the WERC's Commissioner might distinguish precedent favorable to the Union's position and rule that it is permissive. Because the "duty day" concept commonly embodied in firefighter contracts, standard operating procedures or past practices throughout the State, any adverse decision would affect many other firefighter unions. So, the Union elected to pursue a less risky compromise, well-worn in Wisconsin's public sector labor law, it proposed to substitute "impact" language for "decision" language. In short, where the prior contract language prohibited outright the performance of "training and other regular duties" outside of the duty day. The Union proposed to amend the contract in management's favor, expressly permitting management to assign employees such duties outside the "duty day," provided only that the City would compensate employees with a half-time premium when it elected to do so. Important to this case, and a refutation of the City's ill-conceived argument, that the Union had engaged in ambiguity that its members could drive a \$90,000 truck, the Union's proposal does not change a word of the current definition of "training and other regular duties." Just as important, there is a long-standing, continuous past practice known to both parties as to what duties were, and were not, prohibited outside the regular duty day.

The Union has not proposed a fundamental change to the existing contract. As a result, the criteria used to test a party's proposal for a new benefit should not be applied. Needless to say, the Union was disappointed that the City would take a broadside Declaratory Ruling attack on the contract, much less persist in the attack losing on every issue it pursued. It simply could not afford to leave language in the contract that the City had already challenged as a permissive subject of bargaining.

The City's proposed change to the promotional process, must meet all four criteria to support the reform of a language provision such as this. It meets none of them. Like the issue related to the duty day, the Union would have proposed the continuation of the current promotional procedure, but the City challenged the right to bargain the current language. In response to the City's claim that it is merely proposing a procedure in which seniority may be a consideration, the Union retorts that it may not be. Specifically, the City proposes to delete the sentence in the contract that reads: "The senior qualified candidate shall be promoted."

Like the Union's response to the duty day issue, it is in the image of the current language, "most senior qualified," where the Chief determines the qualifications, within reason. Again, the Union preserves the essence of the current contract provision. It does not materially alter the status quo.

The City proclaims that it is the party bringing dramatic, progressive change to the contract. To paraphrase counsel's opening statement, young employees will no longer have to wait until they are the most senior to be promoted (they do not now). Only under the City's proposed language would firefighters be promoted based on skills and interviews. (The City attacked as permissive the current contract language requiring written tests, oral interviews and the Chief's assessment of "ability and past performance.") The City argued that the Union's insistence on preserving the status quo is "archaic." The Union preserves the status quo and the City is the party proposing a new policy. Considering the arbitral criteria to test a new approach to long-standing contract language, where is its proof of need? It does not offer any proof, other than the unproven and likely unprovable argument that only the most senior employees can be promoted. Where is the narrow tailoring to accomplish only the remedy to that unproven need? It has not shown a comparable to support its progressive step into the future. There is nothing anywhere in its final offer that is close to a quid pro quo for this change, or any other.

In order to resolve the dispute, the Union adopted a proposal that aligned with the past provision and was clearly a mandatory subject of bargaining. The City's proposal is a radical departure from the past, essentially providing the Chief with unlimited discretion to promote. Chief Blaser admitted in his testimony that under the City's proposal there is no contract language that would allow an unsuccessful candidate to grieve the Chief's exercise of discretion. The City has not identified a problem with the use of seniority as the deciding factor among employees who meet the Chief's qualifications to perform the duties of the vacant position.

The City proposes to diminish the continuing education benefit, Article 24, Section 1, provided by the contract, but fails to meet any of the criteria necessary to support a proposal to eliminate a benefit. In this case, we see another rising abuse of the collective bargaining process. The City unilaterally adopts a policy or work rules applicable to its non-union employees and then comes to the collective bargaining table and informs the Union that it must agree to that policy lock, stock and barrel. Firefighters did not elect the general employees of the City to be their collective bargaining agent.

One of the purposes of the decisional criteria is to preserve meaningful collective bargaining over such matters as the educational benefits to be provided by the employer. So, the City must show a need to support its proposed deletion of nearly five detailed paragraphs of benefits to employees. If it does so, it must show how its proposed change meets that need, and only that need. It must show that its proposed revision enjoys comparable support and that it offers the Union a quid pro quo for the change. The Union is not arguing that the City cannot meet all of these criteria relative to this specific issue, but the record is devoid of evidence that it has tried to meet each of them, making collective bargaining on this issue impossible.

There are also drafting issues associated with the remainder of the language left in the contract. In sum, the Union's chief negotiator's frustration was palpable on re-direct and re-cross, a casualty of the City's proposal and its depiction of this being a relatively minor matter.

The Union repeats every one of its arguments relative to the "educational benefit" issue in response to the City's proposal to gut the contract's "Light Duty" and "Light Duty - Non-duty related" provisions of the contract; the "Physical Examination" provisions, and the "Linen and Laundering" provisions.

With respect to the external comparables, as the City's own exhibit reflects, the bargaining units it wishes to add are all about 134 miles distant, like Wausau. The breadbasket of goods purchased by Manitowoc's Fire Department come from the Northeast Wisconsin markets, those on the lakeshore and in the Fox River Valley, not the Wisconsin River Valley. The labor talent is often trained in the Technical Colleges nearest the Fire Department and not Midstate Tech. More frequently, new talent begins first in paid-on-call or volunteer positions in the very small rural communities within 50 miles of their subsequent full-time departments.

Union exhibits lay out the basis for the Union's assertion that the City agreed in negotiations to those identified by Lieutenant Johnsrud. Additionally, Johnsrud testified specifically that then counsel for the City, Attorney Mark Olson, reviewed the list of comparables during a joint bargaining session on August 21st and that he checked off the list of the units that Attorney Olson agreed were comparable. Subsequent to that negotiating session, Johnsrud, relying on the agreement reached at the meeting, notified the IAFF Research unit of the contracts that would need to be analyzed for the hearing, this occurred in 2018 and again in 2020 as the analysis had to be updated due to the long delay.

First, none of the four additional communities the City offers as external comparables have a two-tier pay structure. Second, as the City seeks to continue the Group B schedule in perpetuity and thereby eliminate through attrition all Group A wages the only meaningful wage comparison is of the Group B schedule and the wage schedules in the external comparable communities' collective bargaining agreements. Under the City's proposal, a Manitowoc Group B Firefighter's pay continues to significantly lag behind even in those comparable communities the City's offers in support of its position.

Disparities in Emergency Medical Services (EMS) pay premiums makes an apples-to-apples comparison difficult when analyzing the City's chosen four communities. Both West Bend and Wausau receive a paramedic premium calculated on percentage of base pay. In West Bend, paramedics receive an

additional five percent of their base pay as compensation. In Wausau, paramedics receive an additional six percent of their base pay as compensation; paramedics who have been licensed greater than five years receive an additional seven percent of their base pay; and, any paramedic who maintains a Critical Care Paramedic License receives an additional one percent on top of paramedic compensation.

Both, Stevens Point and Wisconsin Rapids rolled EMS pay incentives into their base pay structures at some point. However, Wisconsin Rapids pays each paramedic a \$20 daily premium for ambulance duties along with a stipend for Critical Care licensure and additional pay for each mile traveled when performing inter-facility transfers off-duty.

Based on the evidence admitted into this record, the testimony of the witnesses at the hearing and the argument, the Union respectfully requests that the Arbitrator find, upon application of §111.77 (6), Wis. Stats., the final offer of the Union is the more appropriate of the two, and order its terms to be incorporated into the 2019-2021 collective bargaining agreement between the Union and the City of Manitowoc. The Union cites arbitral authority in support of their position.

REPLY BY THE CITY TO THE UNION'S POSITION

This case is about more than the money. This case is about: organizational culture grounded in innovation, fiscal efficiency, and maintaining predictable and sustainable budgeting practices; professional development through contemporary concepts rather than stifling development by retaining antiquated approaches; normalizing common benefits available to all City employees and avoiding divergence in benefits available to City employees; about helping the City continue its City-wide efforts at controlling and eradicating overtime, not needlessly enhancing overtime opportunities for work performed during one's shift; and offering a significant and meaningful wage adjustment to employees that respects the means of the City and embraces the City's continued fiscally responsible budgeting culture and approach to reducing and eliminating overtime. Each of these objectives is well supported through the City's Offer.

The Union asserts that it provides a quid pro quo for their proposed substantial deviation from the long-standing dual wage schedules. As the Union's brief notes, arbitrators have historically held that, when a party is seeking to change the status quo, the burden is on that party to establish: (1) there is a compelling need for change; (2), that its proposal will, in fact, remedy, the problem addressed; and (3), that it has offered a sufficient enough quid pro quo in exchange for the new benefit. Further, arbitrators have noted that with status quo changes the proposal in question must address the need in as limited a manner as possible. Despite the Union's claims, the Union's proposal to transform the wage schedules does not satisfy these required elements and is by no means limited in nature.

The Union casts its decimation of the parties' two-tier wage schedule—which the parties voluntarily and mutually bargained into the contract 10 years ago—as a quid pro quo due to the pay freezes implemented to steps A-E for 2019 and steps B-E for 2020 and the pay decreases applied to steps B-E for 2021. However, the Union's contention is undercut by various data points the Union conveniently ignores, as well as the Union's attempt to attack the City's costing of the parties' wage proposals.

The Union points to three isolated instances of cost savings to the City as the quid pro quo while simultaneously arguing its wage proposal costs more than the City's during the life of the contract. However, a proposal that costs more than the other party's proposal does not constitute a quid pro quo merely because it could have cost more but did not. But this is what the Union argues and, in doing so, the Union is effectively saying: we could have taken more from the City, but we did not, so be grateful and consider it a quid pro quo. But this ignores the daunting fact that the Union's proposal contains an explosion of perpetuating costs by 2025 when compared to the City's proposal, even further demonstrating the lack of a quid pro quo within the Union's proposal.

The data shows that, under the Union's proposal, roughly 20 members of the bargaining unit would be immediately shifted to a wage schedule that provides a top-step firefighter/paramedic wage approximately \$5,700 more than what a top step firefighter/paramedic would receive on Schedule B

under the City's proposal. Further, the data shows this shift would move those 20 bargaining unit members to a wage schedule that pays top step firefighters/paramedics approximately \$4,000 to \$8,500 more per year than all of the parties' mutually identified external comparables, with the exception of Fond du Lac. It cannot seriously be concluded that the Union's wage proposal, which results in a monumental shift of the top wage rate currently available to 20 bargaining unit members and which so drastically escalates the earning capacity of them and all future bargaining unit members above the earning capacity of the parties' mutual external comparables, is a quid pro quo in any sense of the term.

Throughout the Union's brief, it repeatedly complains that the City suffers from morale and retention issues in the Fire Department and that Schedule B bargaining unit members have lower morale because they are paid less than their fellow Schedule A bargaining unit members for doing the same work. According to the Union, it is this morale and turnover that serves, in part, the "need for a compelling change" supporting implementation of its one-tier wage schedule. Even if one accepts the Union's contention that this "claimed need" exists, the City's proposal is more effective than the Union's in addressing any morale, recruitment, and turnover issues, and the City's proposal achieves this outcome in a careful and limited fashion than the Union's proposal.

Specifically, the City's proposal maintains the status quo of Schedules A and B while compressing the present wage gap within the bargaining unit by providing a greater total wage increase to workers on Schedule B and to newer employees on lower steps due to the flat-payment nature of the City's wage proposal and paramedic premium. To the contrary, the Union's proposal decimates the status quo, and creates a new schedule that needlessly reduces the starting and lowest tier wage rates while increasing the wage gap between the top and bottom earners within the bargaining unit. The Union Offer also provides a lesser wage increase to lower-tiered earners due to the Union's percentage-based proposal and wage schedule restructuring. The obvious greed exercised by the Union in creating its one-tier wage schedule to preserve and enhance the top wage rates at the expense of all else precludes the Union's proposal from addressing the claimed "need" from poor morale and retention. Making the City a less attractive employer for new hires is not a consequence the City should bear from the Union's Offer.

Based on the Union's argument that morale and retention issues are due to the two-tier wage schedule, it would be expected that the Union's wage schedule would bring the two schedules into harmony by compressing the top steps of Schedule A toward B and raising the lower steps on Schedule B. However, the Union's one tier wage schedule actually creates a greater disparity between the "haves" and the "have nots."

If the Union's one-tier wage schedule is implemented, starting firefighter/paramedics would receive anywhere from \$1,300 to \$1,900 less per year than starting firefighter/paramedics under the City's proposal. The structure of the Union's wage proposal completely undermines the Union's contention that the need for its one-tier wage schedule is to address morale and retention, because the Union's wage schedule provides a lower starting wage rate to future applicants while simultaneously creating an even larger pay disparity than what would exist under the City's wage proposal. For example, in 2019, there would be a \$21,240 pay gap between the bottom of the City's B Schedule and the top of the City's A Schedule, but there would be a \$21,394 pay gap between the bottom and top steps of the Union's one-tier schedule (i.e., there is a \$154 greater wage gap under the Union's one-tier schedule in 2019). What is more, this discrepancy gets worse as the years go on.

Comparing the yearly total base wage increases awarded to new hires and top earners under each party's proposal further undercuts the Union's claim that its one-tier wage schedule is designed to address morale and retention. Specifically, under the City's proposal a brand-new firefighter/paramedic hired on January 1, 2019 would receive 21.30% base wage increase over the life of the 2019-21 contract, inclusive of step progressions (i.e., a 0%, 11.18%, and 10.12% base wage increase for 2019, 2020, and 2021, respectively). But under the Union's proposal, that same brand-new firefighter/paramedic hired on January 1, 2019, would receive only a 13.48% base wage increase over the life of the contract, inclusive of step progressions (i.e., a 0%, 8.93%, and 4.55% base wage increase for 2019, 2020, 2021, respectively). Likewise, under the City's proposal a firefighter/paramedic on the top step of Schedule A would receive a 5.13% base wage increase over the life of the contract (i.e., a 1.74%, 1.71%, and 1.68%

base wage increase for 2019 through 2021, respectively), and a firefighter/paramedic on the top step of the Union's one-tier wage schedule would receive a base wage increase of 4.50% base wage increase over the life of the contract (i.e., a 1.00%, 1.75%, and 1.75% base wage increase for 2019 through 2021). In sum, these numbers establish the City's proposal provides 7.19% more in total base wage increases to the lowest earners than the Union's proposal (i.e., $(21.30\% - 5.13\%) - (13.48\% - 4.50\%) = 7.19\%$). Importantly, this disparity becomes even greater when one factors in the parties' respective paramedic premium proposals due to the flat-nature of the City's proposal and the greater impact the flat-fee premium has on the bargaining unit's lower earners. This significant disparity within the Union's Offer could affect recruitment and retention, especially when considering the City's Offer still provides a vigorous and competitive wage adjustment for top-step employees.

If the Union were really concerned about morale and retention, then the Union would not have pushed the starting rate so low as to reduce the City's standing under the Union's proposed external comparables. A comparison of the parties' wage proposals against the parties' mutual external comparables—Fond du Lac, Kaukauna, Sheboygan, and Two Rivers—yields the same conclusion:

Instead of continuing to be one of the most attractive and competitive starting wage rates under the City's proposal and continuation of Schedule B, the Union proposal needlessly reduces the City's standing against these four communities which, the parties mutual agree, should be external comparables. Thus, no matter which comparables are used, it is unquestionable the City's wage proposal not only provides a larger pay increase to the bargaining units' lowest earners than the Union's proposal, but the City's wage proposal also provides for the more competitive starting wage rate than the Union's proposal and preserves the City's standing in the pack rather than reducing the City to the bottom half of starting rates for no good reason.

When one considers the parties' respective paramedic premium proposals, the City's proposal once again out-performs the Union's proposal with respect to benefiting the lowest earners in the bargaining unit and aiding the City in recruitment and retention of those firefighters. The City proposal provides a flat payment of \$5,000 per year under the City's proposal (an increase from \$4340 for Schedule B earners in 2018) versus the Union's proposal to index paramedic pay on new Step H resulting in \$4,870 per year in 2019 (which is still a jump from \$4340 under the status quo Step E at the end of 2018). The Union repeatedly claims the City's flat paramedic premium constitutes a change to the status quo without establishing a "compelling need" to support that change. The Union's argument is self-defeating and ignores the importance of the City's objectives with paramedic pay. First, the Union's own proposal constitutes a change to the status quo. The Union escalates the paramedic premium from seven-percent of step E on the parties' current two-tier wage schedule to seven-percent of the new Step H on the Union's new wage scale. While it is true the Union's proposal maintains a seven-percent paramedic premium pay, it indexes the premium to an entirely new, higher wage step that does not presently exist and which will only be created if another status quo of the parties is upended. Such drastic adjustments to the parties' contract cannot be considered maintaining the status quo. Second, both at hearing and within its brief, the City repeatedly stated its proposal is designed to make the City an attractive place to work and to provide the City with predictable and stable costs moving forward. The City's flat paramedic premium achieves both of these goals. Third, while the Union claims the need to provide lower-paid bargaining unit members with a greater pay increase only exists due to the parties' two-tier schedule, this argument ignores the reality of the proposals. Total starting wages, including paramedic pay, under the City's proposal are higher than the total starting wages under the Union's proposal. Fourth, the Union's proposal on Paramedic pay also contains another flaw. The Union proposal reflects "having your cake and eating it too," because the Union wants to not only move all employees to be eligible for the higher top wage step, the Union also wants a \$600 bump in paramedic premium pay for all employees by indexing paramedic pay on the new Step H. In sum, the Union's arguments regarding the City deviating so far from the status quo on paramedic premium pay should not be given any serious weight. The City proposal reflects an amount that is more than 7% of pay for most employees and is well within the ballpark of the paramedic premium amounts offered by the external comparables.

In being too covetous to secure a significant, new top-wage rate for current Schedule B bargaining unit members, the Union neglected the less senior members of its bargaining unit and future new hires. This error is fatal to the Union's claim that its wage schedule seeks to address morale and retention issues for two other reasons. First, the Union's one-tier wage schedule ignores the obvious premise that new hires will only come to the City if they are offered a competitive wage. The City's offer provides for such a good competitive starting wage; the Union's offer does not. Second, despite bemoaning morale is low because employees are being paid unequally for doing the same work, the Union's wage proposal expands the pay disparity within the bargaining unit by freezing steps rather than growing those rates to encourage retention like the City proposal. The City's proposal on the other hand shrinks the pay disparity and is more beneficial to those moving through the steps A–E on Schedule B. The City's proposal shrinks the disparity immediately through a more competitive wage structure and ends the disparity over time through the eventual self-evaporation of Schedule A and preservation of Schedule B as the lone schedule. It is therefore evident the City's proposal is more effective than the Union's in addressing any existing but also future morale, recruitment, and turnover issues.

Furthermore, the City's proposal addresses the claimed "need" in a tailored and more limited fashion than the drastic wholesale changes of the Union's proposal. This can be seen by comparing long-term costs of the Union's and City's respective wage proposals for a firefighter/paramedic hired on January 1, 2019, during the years 2025–2028 (i.e., the years in which a firefighter/paramedic is climbing the top of the wage schedule).

A firefighter/paramedic hired on January 1, 2019, would receive \$19,364 more in the back-half of their career under the Union's proposal than under the City's proposal (\$301,780 less \$282,416 equals \$19,364). Importantly, this cost is significantly underrepresented, as it is the cost for one employee out of a fifty-one-member bargaining unit (at least half of which would be at the top step of the Union's wage schedule), and this cost does not include the \$5,729 cost difference between the parties' proposals that perpetuates year-over-year once a firefighter/paramedic reaches the top step of the parties' respective wage proposals (i.e., \$76,333 (the Union's top step) less \$70,604 (the City's top step) equals \$5,729). While the Union claims its wage schedule distributes implementation costs over time, the aforementioned data unequivocally shows that the Union's implementation costs are felt both immediately and long-term due to the Union's decision to elongate, instead of compressing together, Schedules A and B. This data also shows the Union's one-tier wage schedule does not address the claimed need. Instead it makes the pay disparity within the bargaining unit worse. And what's more, the Union approached the claimed need in much too broad of a fashion, as its proposal unnecessarily decimates the parties' voluntarily and mutually bargained status quo while imposing an unavoidable and perpetuating explosion of costs on the City by 2025.

The above-costing of a new firefighter/paramedic hired under either parties' proposal during 2025–2028 also undercuts the hypothetical in the Union's Brief, wherein the Union contends that the City's long-term costing fails to account for costing savings of a top-step Schedule B firefighter/paramedic promoted to lieutenant under the Union's wage schedule. The Union's hypothetical fails to recognize a top-step firefighter/paramedic promoted to lieutenant would not automatically be replaced by a new hire. Instead, a vacancy created in the Lieutenant ranks might be filled by a lateral hire of equal experience. If this were to occur under the Union's proposal, the City would be required to pay that lateral hire approximately \$5,700 per year more than if that same lateral hire were brought in under the City's proposal. Despite the Union's attempt to portray it otherwise, this increase of costs under the Union's proposal represents an increase of \$5,700 in operational costs. Further, these added operational costs would be incurred for every firefighter/paramedic at the top step of the Union's wage schedule, and they reoccur year-after-year. Thus, even if the Union's hypothetical occurs more often than not, any savings experienced by the City would still be subsumed by the higher wages paid to top-step firefighter/paramedics.

Throughout the Union's brief, it also attacks the City's costing of the Union's wage proposal, claiming Finance Director Corbeille made "no effort." As an initial matter, it is unreasonable to expect Finance Director Corbeille to predict with precision when each and every retirement will occur and the

experience level of the employee that retiree will be replaced with. Further, as is the case in every interest arbitration, it is much easier for each party to cost their own proposal than it is to cost the other party's proposal. This is simply a matter of fact given each party knows the intent behind their proposal and has access to all necessary data. Each party could spend eternity attacking the other's costing methods, but at the end of the day, all that matters is what the result of each party's proposal would be.

In this regard, it is abundantly clear that, despite the Union's claims of low morale and poor recruitment and retention, the Union's wage scale fails to address this claimed "need." Instead, the Union's wage scale makes these issues permanently worse, as the Union's proposal provides for lower starting pay than the City's proposal and it elongates the wage scale keeping those newer employees at the lower end of the pay steps. This issue only grows worse as the years pass under the Union's proposal. On the contrary, the City's proposal is both consistent with the status quo and provides a self-resolving solution to the Union's claimed issues because it continues to keep bargaining unit wages steady under Schedule B and competitive among both internal and external comparables, it eliminates the pay disparity between Schedules A and B due to the self-evaporating nature of Schedule A, and it provides a more competitive starting wage than the Union's proposal. Importantly, the City's proposal achieves all of these outcomes while providing the City with predictable and stable short-term and long-term operational costs. Simply put, over the next decade as Schedule A likely grows closer to its end, the City's proposal will have resolved the Union's claimed "need" for a change while simultaneously protecting the financial stability interests of the City and its taxpayers, whereas the Union's proposal will have worsened its claimed "need" for a change and subjected the City and its taxpayers to an explosion in operating costs.

The Union appears to cite two needs for a change as supporting the replacement of the parties' decade-old, voluntarily bargained two-tier wage schedule (designed to phase out Schedule A over time) with the Union's new one-tier wage schedule. The Union cites to morale and turnover within the Fire Department, as well as claiming the Union offer receives support from external comparables. The Union cited turnover numbers between 2010 and present and attempted to add context to those numbers by citing to the testimony of a current Schedule B firefighter/paramedic and two former Schedule B firefighter/paramedics who transferred to Green Bay Metro. For a variety of reasons, the Union's attempt to establish a compelling need in this area has fallen significantly short.

As an initial matter, as thoroughly established above, it is unquestionable the City's proposal does more to shrink the current pay gap between the lowest and highest paid members of the bargaining unit and provides a more competitive starting wage rate than the Union's proposal. Further, the issue is self-resolving under the City's proposal and the status quo, as it will evaporate once the last Schedule A employee ends employment. These self-executing outcomes under the City's proposal, which result from maintaining the status quo, sharply cut against the Union's argument that a compelling need exists to so drastically change the status quo.

Additionally, the Union's repeated attempt to hold Green Bay Metro out as a comparable for purposes of establishing a morale and retention issue is absurd. A basic comparison of Manitowoc's and Green Bay's fire department budgets, total number of employees, different service levels, populations, and economic and socioeconomic data makes it abundantly clear Manitowoc and Green Bay are nothing alike. Simply because employees chose to go from one employer to another does not render that employer a comparable or one that Manitowoc must be like. This is particularly true when one considers the Union was only able to put forth three witnesses who are unhappy with the City's two-tier wage schedule despite asserting all 21 employees who left between 2010 and present were disgruntled and left because of Schedules A and B. Further, it is not as if employees are flocking to Sheboygan, Two Rivers, Fond Du Lac or Kaukauna—communities both parties agree are comparables. The Union's attempt to conflate a few employees leaving for another, wholly non-comparable fire department as proof positive of a compelling need to upend the parties' decade-old status quo is nonsensical.

Similarly, the Union's claim that the lack of support among external comparables with regard to the parties' two-tier wage system represents a compelling "need," should be given little weight. The City and Union voluntarily bargained Schedules A and B into existence a decade ago when the City was on the verge of being financially bankrupt. The City was at that time faced with the prospect of drastically

adjusting future firefighter wages or implementing substantial layoffs. Just as Two Rivers found “rough justice” with its bargaining unit when it implemented a two-tiered wage schedule providing a four-percent higher wage to firefighters hired without the option of retiree health insurance, the City of Manitowoc and this Union found their “rough justice” in 2010 when they voluntarily bargained Schedules A and B into the contract. The City received a reduction in future top wages and, in exchange, the parties received greater certainty of future staffing levels and avoided other cost reductions and at the same time the Union received significant percentage wage increases all of those years. The unique circumstance faced by the parties in 2010 resulted in this contractual wage structure unique to these parties. Since 2010, the parties have bargained for additional contracts with Schedules A and B present in each contract. Simply because the Union may now regret the “rough justice” the parties found in 2010 (and have voluntarily continued for the benefit of the majority of their members for a decade) does not provide a compelling “need” to change the parties’ status quo through unilateral implementation of a broken new wage schedule through an interest arbitration decision.

The Union further alleges the bargaining history supports their claim and that the City is barred by equitable estoppel, without any authority for such an assertion, from claiming the Union must offer a quid pro quo for the Union’s proposed Wage Schedule change. The Union’s argument misses the point and fails to embrace the rough justice the parties found in 2010 and through subsequent voluntary settlements thereafter. When the Union and City negotiated the 2010–2012 collective bargaining agreement, both sides knew that a top-level firefighter or a lieutenant under Schedule B would make less per year than a Schedule A employee. They agreed in 2010 that a Step E firefighter under Schedule B should earn \$371 less per month in 2010 (\$4709 per month under Schedule A versus \$4238 per month under Schedule B), \$485 less in 2011, and \$500 less by 2012. That 2010–2012 agreement also resulted in the Union receiving more than 9% in wage increases for Schedule A firefighters over those three years, even though the City faced significant financial turmoil. The parties then voluntarily agreed to continue that disparity in Step E top rates between Schedule A and B for 2013 and 2014 when they agreed to apportion a percentage wage adjustment to both wage schedules, which actually pushed the top rates in Schedule A and B further apart. That 2013–2014 agreement also resulted in the Union receiving more than 4% in wage increases. If the Union was upset the City did not uphold their prior deal, then the Union should not have agreed to that significant wage increase. And once again for 2015 through 2018, the City and Union agreed again that Schedule A and B should continue for the next four years. That 2015–2018 agreement resulted in the Union receiving more than 9% in wage increases over those four years. As part of each of those three voluntary settlements, the Union voluntarily agreed to receive substantial wage adjustments each year and they waived their interest in claiming unfairness by not pushing their issues in those negotiations. Yet the Union has the nerve to argue that the City should be equitably estopped from claiming a quid pro quo is needed to end the continuation of Schedule A and B. Such an unsupported argument by the Union begs the following question: should the Union first return to the City the wage adjustments and other benefits they received as part of those three contract settlements? The irrationality of the Union’s argument is exactly why arbitrators do not re-litigate past voluntary settlements of the parties and why the City argued as such in its Initial post-hearing Brief.

The voluntary agreements reached between these parties matter. The Union incorrectly asserts that a Schedule B firefighter who remains “at a rank for a career can suffer a \$150,000 loss of income” and that somehow this is the City’s fault. That argument is misleading. Both parties agreed in 2010 through the creation of Schedules A and B that the firefighters placed on Schedule B would not earn that income—they never agreed an employee would lose income. The Union and City agreed in 2010 what the starting point for Schedule B firefighters would be going forward and with the intention that all new hires would move forward on Schedule B and would not be entitled to any compensation from Schedule A. Now, the Union attempts to portray this as a “loss,” even when it was never considered earned by their own agreement. Even so, if the Union wants to play that game of suggesting the firefighters incurred a “loss” and must now recoup that loss, then the Union must accept the City’s forecasting of the dire consequences of the Union’s Offer to end Schedule B. That “loss” which they seek to recoup for

Schedule B firefighters will cost the City dearly in the future. That dire outcome by 2025 was never intended by the parties when they created Schedules A and B a decade ago.

The bargaining history of this current round of negotiations for this 2019–2021 agreement clearly shows that the Union and City could not come up with a way to address Schedule A and B with a single wage schedule in this most-recent round of negotiations. They tried, and the City should not be penalized for trying to work with the Union. Nor should the City be penalized by having a new flawed wage schedule forced upon them. Rather than force the parties to deal with the consequences of the Union’s proposed single flawed wage schedule in the next rounds of negotiations, the parties can continue the status quo structure and try again.

The Union addresses the other language proposals of the parties. A few important considerations are worth noting. First, even though the Union proposes new external comparables, the Union puts forth no support from those external comparables for its language proposals. Second, the Union ignores all other City internal groups, including the police and transit unions. There is good reason because neither internal nor external comparables provide meaningful support for the Union’s positions on these language issues. Likewise, the Union has shown no quid pro quo for the Union’s overtime proposal to modify Article 4, Section 1.C.

Before addressing the Union’s arguments, it is important to reassert the importance of commonality of an employer’s standard benefits available to all employees. Arbitrators give greater deference to those common benefits that are standardized and provided to employees across the employer.

It is appropriate for employers to seek consistency and commonality of standard benefits across the employer for both represented and non-represented employees. In the City of Manitowoc there are more than 300 other full-time employees subject to the same light duty and education reimbursement programs being offered by the City to this Union. Arbitrators have recognized that once a certain benefit becomes the norm, the burden to demonstrate a compelling need in a quid pro quo is diminished.

Because all of the other employees of the City are covered by these similar benefits, the firefighters should follow the pattern and practice set as the City’s approach reflects an important, common sense and practical goal. Such an approach favors internal comparability and the interests and welfare of the public.

The Union offers no defense of the merits of the Union’s overtime proposal to amend Article IV, Section 1.C, to provide an overtime premium for work performed during the employee’s normal shift but outside the regular duty day. Instead, the Union attacks the process that led them to proposing their change to Article IV, Section 1. C., and this nonsensical obligation for the City to pay an overtime premium to employees for performing their normal work at parades, football games, trainings, and other activities outside of the duty day but still within the firefighter’s normal shift. The City has a legal right to pursue a declaratory ruling. The City has every right to not like the status quo, to view specific language as inefficient and intrusive of the policy-making authority of the City. That does not mean the City did something wrong by challenging various parts of the contract through a declaratory ruling. It also does not make the Union’s proposed language justifiable. The City has articulated ample reasons why the Union’s proposed overtime change must fail, including reasons showing the Union’s proposal has no support from any comparable, internal or external, and compromises the interests and welfare of the public and the City’s long-standing fiscal efficiency and City-wide approach to reduce and eliminate overtime.

The need for a change to promotions is apparent. The current promotional system has not produced any lieutenants except for those who are senior and on Schedule A. The current system complicates those efforts and both sides agreed to change the current system by making proposals to change Article 6. The Union claims the City has not shown any comparable support for its proposal. But the City has presented such evidence and the evidence shows that both internal and external comparables support the Chief not promoting the most-senior qualified employee like the Union proposal demands. The Union asserts the City has not provided narrow tailoring. The Arbitrator should examine the detailed and reasoned promotional process prepared by Chief Blaser. Chief Blaser’s thoughtful approach respects the Mission, Vision, and Values of the Fire Department, sets forth expectations for the promotional

process and for outcomes, and his process creates opportunity for all bargaining unit members, not just the most senior who are qualified and apply. The Union claims this is radical. If it is, then so is the promotional approach used by the Manitowoc Chief of Police and the external comparables who are not bound to promote the most-senior qualified applicant and which clearly support the City's proposal.

The Union attacks the City for proposing changes to the education benefit and proposing to utilize the City's tuition reimbursement program, accusing the City of adopting a policy for all City employees and then attempting to force the Union to accept it while striking multiple paragraphs from the contract. Such an assertion is contrary to the evidence presented at the hearing. What the City's proposal does to Article 9, Section 6 is important. The City's proposal preserves the maximum \$64.00 per month tuition credit for firefighters while striking archaic language in those paragraphs. The City then pursues administrative efficiency by having firefighters utilize the Tuition Reimbursement Policy for determination of eligibility for tuition reimbursement, just like all other City employees. As noted at the hearing and in the City's Initial Brief, the firefighters (and the police officers and all other City employees) already use this Tuition Reimbursement program and have for several years. The need for the change is clear: the City is simply codifying what is already being done. Likewise, the City is working to streamline administration of common benefits for all City employees. The proposal is also properly tailored as it preserves the up to \$64.00 per month credit firefighters currently receive and sets those firefighters up to use the tuition reimbursement program that the City already uses for them. The City's proposal has internal support since it is in line with the program for all other City employees, including police and transit union employees.

The Union provides no direct arguments addressing the City's proposal to modify the light duty program, the Union and City proposals to modify Article 24 involving physical examinations, and the City's laundry and linens proposed change. The City has provided significant evidence and argument as to the need to change the light duty program, the support from internal and external comparability, and the need for the other proposed changes and careful approach taken by the City. These proposed changes by the City are important, both for administration of benefits and also for commonality of similar benefits as to the administration of light duty. As the Union has not argued the merits of these proposals, the Arbitrator should weigh the City's arguments favorably and select the City's Final Offer.

The Union asserts three challenges to the City's proposed external comparables: geographic remoteness, the purported agreement reached at the bargaining table, and a suggestion for the Arbitrator to withhold a decision on the comparables until "the time that they count." The Union's last argument undermines their second argument and begs the question—if such an agreement as to comparables was reached by the parties, then why disregard the comparables and suggest no comparables be decided by the Arbitrator? And if that is the Union's position, then the Union's argument that low morale is causing employees to flock to Green Bay Metro thus rendering Green Bay Metro as a comparable also must get tossed to the wayside.

The Union claims the City purchases the "breadbasket of goods" from northeast Wisconsin. However, the City does not purchase labor from northeast Wisconsin. Chief Blaser testified that he stopped using the Fox Valley hiring consortium. The City found that purchasing labor through the Fox Valley hiring consortium was a flawed approach; the City now uses NeoGov with an approach that is specific and tailored to Manitowoc and focuses statewide rather than on the Fox Valley. Without authority, the Union then claims "new talent begins first in paid-on-call or volunteer positions in the very small rural communities within 50 miles of their subsequent full-time departments." No evidence supports that or suggests that is how the City recruits and hires. Even so, if the Union believes that Fond Du Lac should be a comparable at 62 miles from Manitowoc, then why not West Bend at 65 miles (especially since West Bend quite closely resembles Manitowoc in population, geographic style as a standalone community, service level, and other criteria). The City has provided ample authority suggesting the City's proposed comparables are communities that closely resemble Manitowoc. The Union has provided no authority suggesting that only close geographic proximity matters and is dispositive of other considerations the issue of comparability. The City in its Post-Hearing Brief provided authority to the contrary suggesting a broad view of geographic proximity is appropriate for selection of

comparables. That is also why the City considered other communities like Janesville and Beloit but ultimately rejected those communities on other grounds.

The Union attempts to claim there was a deal struck. But the testimony of Lieutenant Johnsrud shows no deal was struck. Johnsrud claims he was “under the impression” an agreement was reached. But nothing suggests the City shared in that “impression.” Instead, the City’s witnesses, including Director Lillibridge (who prepared the Union exhibit) testified that no agreement was reached at that meeting and that the City took no action in reliance of such an agreement.

The Union suggests the Arbitrator could punt and not address the inclusion of additional communities as comparables. The Union then mischaracterizes the evidence by suggesting that Schedule B firefighters “continue to significantly lag behind even in those comparable communities” proposed by the City. But that is not the case. The City’s proposal maintains its competitive position and ranking in the middle of the pack in those communities for Firefighters in Schedule B. Further, Schedule A firefighters remain at the top of the pack under the City’s Offer. The City’s Initial Brief analyzes this information.

Of note is the Union’s analysis that suggests an “apples-to-apples comparison [is] difficult” for Manitowoc to the communities of West Bend, Wausau, Stevens Point, and Wisconsin Rapids because of how the communities calculate EMS and paramedic premiums. That is not the case, as the City calculated this data and presented the compensation structures for consideration by the Arbitrator. But the Union’s argument raises the following important consideration: communities who have employees perform paramedic-level duties and critical care paramedic level services recognize the difference in the job responsibilities than communities that do not have employees performing these services like Appleton and Neenah-Menasha. While the way these paramedic-certified employees are paid is more complicated in each of these communities, the point is that these employees are paid more for doing different work. That is exactly why the communities of Appleton and Neenah-Menasha are not comparables of Manitowoc. Those employees do not perform paramedic-level duties and only perform basic emergency medical rescue. The Union’s point also supports the City’s position of paying paramedics with a flat lump sum, because as the Union notes in their analysis on pages 33–34, each community pays a different premium level for paramedic pay. Manitowoc’s \$5000.00 paramedic premium is well within the ballpark of the premiums paid by these external comparables, but the sum is designed to provide a recruiting advantage for the City.

CITY’S POSITION

Turning first to the appropriate external comparables, the City agrees with the Union that the two primary comparables of Sheboygan and Two Rivers should continue to be applied here. With respect to secondary comparables, the City believes they should be “standalone and self sustaining.” The City considered the level of fire and emergency services, budgets, population and percentage change in population. The City submits that: Kaukana, Fond du Lac, West Bend, Stevens Point, Wausau, and Wisconsin Rapids are appropriate secondary comparables.

The Union did not conduct an economic and service-level analysis when it chose: Appleton, De Pere, Fond du Lac, Green Bay Metro, Kaukana, Neenah-Menasha, and Oshkosh. However, the City agrees that Fond du Lac and Kaukana are appropriate secondary comparables.

One of the most important functions of a firefighter relates to the level of emergency medical services provided for the community. Manitowoc’s firefighters offer critical care paramedic level services which are the highest achievable level of emergency medical services for Wisconsin municipalities. Every single community identified by the City as a secondary external comparable provide paramedic services.

The service area of the Department also matters. Green Bay Metro is entirely unlike Manitowoc as Green Bay Metro is a metro department nearly four times the size of Manitowoc Fire and Rescue that serves both the City of Green Bay and the Village of Allouez.

The City's proposed secondary external comparables also have fire departments with operational budgets more akin to Manitowoc's fire department operational budget than the operational budgets of the Union's proposed secondary comparables. Each community identified by the City is close to the operational department budget of the City's. On the contrary, many of the Union's comparables have operational fire department budgets two to four times larger than Manitowoc's budget. Based on this data point alone, there is no question the City's secondary comparables are far more like Manitowoc than the Union's proposed secondary comparables.

The City's proposed secondary comparables are also more alike Manitowoc than the Union's comparables with respect to population and change in population. On the other hand, three of the Union's comparables, Green Bay, Appleton, and Oshkosh, are much larger than Manitowoc, respectively. Each of these communities is anywhere from twice to three times the entire population size of Manitowoc.

The lack of comparability within the Union's pool of communities is drawn out even further when you look to the change in population over the past decade. Shrinking population is reflective of the community that Manitowoc is based on in their ability to raise revenues. Without growth, revenues risk remain stagnant and thus require a comparison of Manitowoc to similar communities facing similar growth challenges.

The median household income data gathered by the City also establishes the unreasonableness of the Union's proposed comparables that includes DePere as a comparable. De Pere, Neenah and Appleton are affluent communities with access to substantially greater resources and growth than Manitowoc and with a completely different socioeconomic base. Yet, unlike the Union's comparables, the City's comparables do not include a major outlier. The City proposes communities with median household incomes like Manitowoc. The mean of the median income of the City's proposed comparables is \$47,972. The City ranks in the middle at fifth out of nine of the City's proposed pool.

The 2019 equalized value data gathered by the City likewise demonstrates the unreasonableness of the Union's pool of comparables when compared to the City's comparables. The Union's pool shows gaping discrepancies in equalized value between the Union's selected external comparables.

Another important data point is the residential share of property taxes, which is reflective of how much of the tax burden is placed on residents. Here too, the City's proposed secondary external comparables are more akin to the City than the Union's proposed external comparables. Because the external comparables identified by Manitowoc share a more similar tax base and trajectory in negative population growth than the external comparables identified by the Union, it is clear the City's external comparables are more reasonable due to the similar financial hardships and challenges faced among them as compared to the Union's proposed comparables.

The final data point of consideration is geographic location. While Wausau (137 miles), Wisconsin Rapids (122 miles), and Stevens Point (110 miles) are further away from Manitowoc than the Union's furthest selected comparable of Fond du Lac (62 miles), there is more to a community's geographic location than just distance. One must also consider a community's surrounding communities (i.e., is the community a stand-alone community, a bedroom community of a major metropolitan area, a community that is one of many similar sized communities, or the major metropolitan community), as well as where a community is situated within the State (i.e., is the community near a major expressway and in between major metropolitan areas rather than part of or immediately next to major metropolitan areas). These geographical characteristics cause the City's selected external comparables to have similar economic makeups, similar fire department service offerings, and similar fire department budgets to Manitowoc.

The Union claims the parties agreed to a pool of secondary external comparables at an August 21, 2018 bargaining session. The testimony presented about the creation of that document and the actions of the City following that August 21st meeting show uncontested evidence that such an agreement as to comparables was never reached. Director Lillibrige and Attorney McDaniel likewise provided

unequivocal testimony that the parties never agreed on any secondary comparable communities. The City would have promptly researched relevant economic data for those communities and obtained other relevant information. It is abundantly clear the parties never reached an agreement as to secondary external comparable communities, leaving the composition of the comparables to be decided by the Arbitrator.

Unlike the City's comprehensive and thoughtful analysis, it appears the Union relied solely on geographic proximity alone when identifying its external comparables. While geographic proximity is one factor ordinarily considered by arbitrators in selecting a pool of external comparables, arbitrators focus on a multitude of factors when assessing comparability.

Unlike the large Fox Valley communities identified by the Union, the City's labor market is broader than the Fox Valley. The City's labor market includes communities like West Bend and other stand-alone communities in the east central half of Wisconsin due to the fact that Chief Blaser does not seek his subordinates from the Fox Valley hiring consortium. Chief Blaser ended his use of the consortium in 2015. He recruits through NeoGov which casts a wide net and allows targeted hiring approaches favoring Manitowoc specifically. As such, economic indicators, population, service level offerings, and fire department budgets must be considered in addition to the geographic proximity when identifying external comparables.

All of the external comparable communities selected by the City provide the same paramedic level of fire services, operate under more comparable department budgets, have more comparable population sizes, have more comparable median household incomes, have a more comparable downward trend of population growth, and have more comparable equalized values. These staggering economic, socioeconomic, and financial differences between the City's and Union's selected external comparables make it abundantly clear that the City's proposed pool of external comparables is much more akin to Manitowoc than the Union's proposed pool of external comparables. This conclusion favoring the City's proposed comparables is supported by a line of interest arbitration decisions.

The City's offer maintains the City's positioning within external comparables, and it provides bargaining unit members with a wage increase that is more akin to the historical, annualized wage increases provided to City bargaining units during the lifetime of the parties' A and B Wage Schedules. On the contrary, the Union's offer, although lesser in initial base wage increases, provides the bargaining unit with substantial wage increases via step increases, which has the impact of sharply moving the City's entire bargaining unit to the top of external comparables and providing the bargaining unit with a significantly greater total wage increase than the historical, annualized wage increases provided to City bargaining units since the inception of Schedules A and B.

In sum, the City's proposal is the only proposal that seeks to largely maintain the parties' status quo and which is supported by the internal and external comparables.

Budgetary predictability and stability are critical for the City and best serve the interests and welfare of the public while also preserving the City's ability to meet service level demands. When considering the statutory factors relevant to the parties' wage proposals, it is clear that the interests and welfare of the public is the most important factor in light of the City's financial positioning. This is because, although the City has reached a position of financial stability, this stability was only achieved as of April 15, 2020 when the City's bond rating was increased from A back to AA, and it remains in a state of fragility for the foreseeable future. For management to maintain balanced operations moving forward, it is critical that the City continue the approach adopted eight-years ago of maintaining a stable and predictable budget so as to minimize long-term debt and maximize budgetary flexibility. This is the only approach that has worked for the City and which will work moving forward, as the City has perpetually faced, and continues to face, diminishing state aids and limited local revenue sources. The City has worked diligently over the past eight years to completely revamp the City's approach to finances, taking the City from a high-debt position to a pay-as-you go structure. This is evidenced by the City's unassigned fund balance, which went from a dismal \$16,981 in 2010 to \$5,642,771 in 2019, as well as the City's OPEB liability, which went from \$2,917,061 in 2012 to \$319,377. While these are significant achievements, they could only be accomplished through continuous extreme fiscal discipline and

creativity across all City departments due to the City's historically diminishing state aids, limited local revenue sources, and capped expenditures.

Between 2009 to 2020, the City's overall state aids decreased \$500,000 and it is unlikely these aids will go up in the future due to political pressures at the State level and the impending impact of COVID-19 on the State's gas tax and income tax collections. To address these diminishing state aids, the City has had to be continuously creative in locating additional sources of revenue. While that has generated additional revenue for the City, the City does not have the ability to directly increase these revenue sources beyond their present levels, nor has the City been able to identify unexplored alternative revenues sources. Further, the City's participation in the Expenditure Restraint Program requires the City to limit yearly expenditure increases to CPI plus sixty percent of net new construction. Failure to maintain expenditure increases within this threshold would result in the City losing \$440,000 of annual revenue, which would represent a significant blow to the City's budget. Thus, while the City is presently financially stable, the City's financial positioning remains challenging due to limited aid and revenue sources and capped expenditures.

While the City's proposal would cost approximately \$104,000 more than the Union's wage proposal over the period of 2019–2021 (\$445,119.84 for the City's proposal vs. \$341,011.79), focusing merely on the short-term costs of the parties' respective offers misses the true financial impact of each proposal. This is established through the City's 10-year costing, which shows that between 2025 and 2028 the Union's proposal creates a budgetary hole of \$580,930. While this number is stark, it under represents the truly significant long-term cost impact of the Union's proposal, as the costing doesn't include wage increases for years following 2021 and it is premised on the Department's entire rank of firefighter being hired on January 1, 2019.

While the Union argues that the \$580,930 budgetary hole created by its proposal is nearly offset by the cost savings realized in 2019 through 2024, this is again a red herring. First, the number is under represented. Second, it would be nonsensical to ignore an explosion of costs that permanently perpetuates, which will only get worse as the parties negotiate future wage increases simply because there was a one-time cost savings that might be realized by the City. Ignoring this cost explosion in 2025 would represent fiscal recklessness on behalf of the City and would jeopardize the City's newfound financial stability, as the City would need to locate at least \$580,000 in new revenue over a four-year period just to maintain its present level of services and staffing. Third, the expenditure restraint limitations placed on the City through its participation in the State's Expenditure Restraint Program would also present tremendous challenges if the budget exploded in such a manner. While the City could navigate this, the consequences would almost surely be significant and might include budgetary cuts, potential loss of the Expenditure Restraint Program funding, and the AA bond rating. Fourth, the money must come from somewhere and there may be needless impact to other City services, improvements, and staffing levels, potentially contrary to community expectations for those important services and programs. All of these consequences are plausible impacts to the Fire Department and other departments if the City must fund the Union's proposal to provide additional, long-term pay to firefighters who are already some of the highest paid City employees.

The City's wage proposal to preserve Schedule A and B avoids all of these negative economic consequences. Although initially more expensive by a small margin, the City's offer provides the City with a predictable and stable set of costs, both within the term of the 2019-2021 contract and moving forward. For all of these reasons, the City's proposal is the only proposal that seeks to protect the interests and welfare of the public.

Another issue that must be considered are the ever-changing circumstances the City faces with respect to its 2021 and 2022 budgets following the onset of the COVID-19 pandemic and its devastating blow to the City's, County's, and State's collective economy. It is anticipated that a 5% to 10% decrease in State shared revenues in 2021 and 2022 due to COVID-19's negative impact on the State's collection of other revenue sources, which may include State income and gas tax revenues. COVID-19 has also negatively impacted City revenue sources, as 2020 year-to-date room tax revenue is down about \$400,000 from 2019, and 2020 year-to-date building permit revenue is down about \$340,000 from 2019.

In an effort to offset this significant reduction in revenue, on May 18, 2020 the City implemented a hiring freeze for all non-sworn positions in the City and for all non-essential positions that must be filled through promotion or hiring, as well as a spending freeze that requires the approval of department heads for any purchase. These freezes are to remain in place through 2020 and may be subject to extension by the Common Council. The intent behind them is to allow the City to immediately save costs and move those savings into the City's general fund for use in 2021 and 2022 as a backstop.

With respect to the issue of internal comparability, the City's offer best reflects the pattern of internal comparable settlements. Fire Department Wage Schedules A and B have existed for employees since August 1, 2009, negotiated for the 2010–2012 collective bargaining agreement. During that time, the City and its fire, police and transit unions have negotiated multiple settlements reflecting the existence of Wage Schedules A and B. A City exhibit shows the pattern of settlements since 2009. Of note, aside from years where the Police Union did not agree to contribute to WRS in 2013 and 2014, the chart reflects similarity in wage settlements, all while Schedules A and B were in place.

Here, the City's Offer reflects the continuation of that pattern by preserving Schedules A and B and providing a wage adjustment of \$1200 per year, which is similar to the annualized wage increases provided to City bargaining units since the inception of Schedules A and B. While the Union's offer initially appears consistent with the parties' internal comparable settlements because its year-over-year base wage increases are less than the City's, the Union's proposal implements step increases that will yield significant wage increases to employees on the bottom of the B schedule (and all new hires moving forward) that are far outside the annualized average wage increases provided to internal bargaining units the past 10 years.

The City's exhibits undercut the Union's contention that the City's proposal fails to close the pay disparity between Schedule B and Schedule A employees, because it shows the City's proposal provides employees on the bottom of Schedule B anywhere from a 2.29% to 10.14% base wage increase and the employees on Schedule A with only a .94% to 1.64% base wage increase. The tables also undercut the narrative that both parties' wage proposals are supported by the historical, annualized wage increases provided to City bargaining units over the past 10 years and clarifies that it is only the City's proposal that is supported by the internal comparables. This is because, while the City's proposal provides a higher year-over-year base wage increase than the Union's proposal, the step increases under the Union's proposal would provide employees on the bottom of the B Schedule a staggering 27.20% wage increase between 2022-2028 via step progression, whereas the City's proposal would only provide an 8.65% wage increase via step progression. Importantly, this result will occur even if the parties never agree to another wage increase between now and 2028, which is highly unlikely. Thus, when one considers the full impact of the parties' respective proposals, the City's proposal maintains relative comparability to the historical pattern of internal wage settlements, whereas the Union's proposal far exceeds such internal settlements and would result in significant upward movement within the City.

Such a drastic upward move among internal comparables is unnecessary by the Union, particularly absent a significant quid pro quo for the City. The reasoning is simple: the City-wide wage table reflected in a City exhibit makes clear that the City's Fire Department employees are already among the highest paid employees within the entire City. Of the City's 70 highest paid employees, 32 of them are Fire Department employees (not including the Fire Chief) while only 23 are Police Department employees (not including the Police Chief). This discrepancy will not change drastically one way or the other under the City's wage proposal. The City's firefighters are paid quite well and thus any change that makes them even more well-paid raises risk as to relations between the City and police union for a bidding war to raise the police union's standing.

With respect to external comparability, the external comparables support the City's wage proposal over the Union's wage proposal, as the City's offer maintains the stability of Schedules A and B within the rankings of external comparable communities over all three years of the 2019-2021 contract. When comparing the parties' respective wage proposals to the external comparables, it is critical to compare apples to apples. This requires an analysis of firefighter paramedic wages, particularly because

Sheboygan, Two Rivers, and Stevens Point, like Manitowoc, do not hire firefighters without a paramedic certification and, therefore, do not have firefighter only wage data.

The City's wage proposal keeps Manitowoc's Schedule A wages ranked first out of ten among external comparable communities for each year of the 2019–2021 contract, and it likewise keeps the Manitowoc Schedule B wages ranked fifth out of ten among external comparable communities for all three years.

On the other hand, the Union's wage proposal would represent a significant shift among the external comparables, because it immediately causes the entire bargaining unit to move to first among all of the external comparable communities. The Union's wage proposal immediately moves 20 or more bargaining unit members presently on the Schedule B from fifth in overall compensation to an opportunity for being in first. This monumental swing in overall positioning among the external comparables precludes the Union's wage proposal from being consistent with the City's external comparables.

Manitowoc firefighters are paid well. They are by no means underpaid or near the bottom when matched against the external comparables. The top rate Schedule B firefighter in Manitowoc still earns considerably more than firefighters in Kaukauna, Two Rivers, Wisconsin Rapids, and Stevens Point. There is no supportable catch-up argument that the Union can make to absolve them of showing the need for a substantial quid pro quo. Schedule B firefighters are in the middle of the pack at the start of the contract term under the City Offer, and they remain there at the end of the contract term. But notably absent from the Union is a true meaningful quid pro quo for the economic explosion they cause by 2025 and moving from fifth to first, or any meaningful proposal from the Union to help the City afford that impact.

The City's wage proposal keeps Schedule A wages in the top of the comparable pool with a ranking of first in 2019 and 2020 and second in 2020, and likewise keeps the Schedule B wages at their historical ranking of ninth throughout the life of the 2019-2021 contract. The Union's wage proposal would shift the entire bargaining unit to the first or second among external comparables for the entirety of the 2019-2021 contract. While lieutenants on the B wage schedule under the City's proposal rank ninth, this is misleading as total annual wages for lieutenants on the B wage schedule remain within \$1,500 of annual wages for lieutenants within half of the external comparable communities. These statistics undeniably point to the City's proposal as being the only proposal consistent with the external comparables, both as to overall wages and the City's historical positioning among external comparables. Simply put, the City's proposal reflects stability and consistency and the Union's proposal reflects a monumental shift without providing an adequate quid pro quo.

Turning to the parties' proposals for paramedic premium pay, the City proposes to move from paramedic premium pay of seven percent of Firefighter Step-E monthly base pay to a flat \$5,000 per year, and the Union proposes to change paramedic premium pay from seven-percent of Firefighter Step-E monthly base pay to seven-percent of Firefighter Step-H monthly base pay. The Union's proposal represents a much larger shift in the status quo than what appears on the surface, because in addition to moving the paramedic premium pay up multiple steps on the wage scale, the Union's proposal ties its new paramedic premium pay to a wage scale that would move approximately half the bargaining unit from the middle of the external comparables to the top of the external comparables. The significant increase in paramedic premium pay set forth by the Union's proposal is not supported by the external comparables, as the City is presently ranked only second behind Fond du Lac among external comparables for paramedic premium pay, and five out of the eight external comparables either provide a significantly lower paramedic premium than that proposed by the Union or only hire paramedic-licensed applicants and, thus, do not identify a paramedic premium as it is included in their base pay.

Although the City proposes a flat paramedic premium of \$5,000, the City's proposal effectively maintains its positioning among the external comparables and overall compensation received by City firefighters. For example, a seven percent increase on the January 1, 2019, starting firefighter wage under the City's proposal would be \$59,667, and a \$5,000 increase on that same starting firefighter wage would be \$60,764. Although the City's proposal seeks to move to a flat-fee, the administration of paramedic

premium pay among the comparables is too varied to support either a percentage base or flat-fee proposal, as some communities provide percentages and some do not identify any premium payment and simply roll it into the wage schedule. Instead, focus should be paid to how much movement either parties' proposal causes within the external comparables and, in that regard, it is evident the City's proposal is the only one that represents stability within the rankings and a lesser change from the status quo while also maintaining a competitive position for the City among external comparables.

We expect the Union will argue that external comparables do not support a two-tiered wage schedule and thus they will try to use that assertion to suggest they need not offer a quid pro quo (or much of one) for their proposed change. But such an assertion by the Union is flawed and is a decoy in that the Union's proposed change causes a significant disruption to predictability and an economic explosion by 2025. One must specifically see the tremendous movement within the rankings through the Union's proposed change as beyond the pale of reasonableness. Further, the absence of any meaningful quid pro quo from the Union for such change has bearing and must be considered.

We also expect the Union will rely on the testimony of prior City firefighters who lateraled to Green Bay Metro Fire Department as a means of undercutting the parties' two-tiered wage schedule system. Specifically, the primary contention of prior City firefighters who left for Green Bay was they wanted to seek higher wages than attainable under the City's two-tier wage system. As an initial matter, the Union's testimony failed to acknowledge that these firefighters were either employed by the City when the two-tier wage scale was implemented and, thus, participated in the Union's approval of the two-tier wage scale or they joined the City after the two-tier wage scale had already been implemented, thus, voluntarily accepted employment under the two-tier wage scale.

First, the Union points to employees leaving for Green Bay. Green Bay has a lateral entry program that allows them to poach firefighters from other communities. That makes them an attractive lateral hiring entity. The Union does not point to other Departments like Kaukauna, Two Rivers, Fond Du Lac, or Sheboygan as places where Manitowoc firefighters are leaving to join. Second, the Union's reliance on this testimony as evidence that the two-tiered wage system is the basis for employees leaving is fatally flawed due to absolute lack of comparability between Green Bay and Manitowoc. Firefighters leaving a smaller community like Manitowoc to join a massive community like Green Bay that performs different services is akin to firefighters leaving Beaver Dam to join the City of Madison Fire Department.

In the end, were the Union truly desirous of ending the two-tiered wage schedule system, then that system should end through voluntary compromise yielding gradual change, just as it was created and negotiated to be kept in good faith for many years. The City has offered to negotiate modifying the wage schedules and did not hide from that at the hearing as the City openly testified to that approach during this bargaining cycle. But the evidence is clear the City believed it was "financially unsustainable" to merge the schedules in the way the Union desired without a quid pro quo from the Fire Union based on the Union's proposals, and the parties could not reach agreement during this round of negotiations.

Public outreach, education, training, and risk prevention are essential for the safety and success of a safe community. As part of a firefighter's normal 24-hour shift, the firefighter receives straight time for work at school events, football games, evening training with neighboring Departments, parades, county fairs, and public education events. The very essence of the job of a firefighter is to perform these types of responsibilities, as noted in the Firefighter/Paramedic Job Description.

One of the most significant and odd proposals from the Union is to amend Article 4, Section 1(c), Definition of Work Day, to require the City to pay firefighters an overtime rate for work performed during the employee's regularly scheduled 24-hour shift outside of the standard duty day. The City proposes to maintain the status quo which respects the employer's obligation to pay straight time for all work performed during an employee's scheduled shift, including straight time when employees are already working on shift for school events, football games, evening training with neighboring Departments, parades, County fairs, and public education events.

There is no internal or external support for the Union's overtime proposal. No other represented City employee group receives overtime for work performed during the employee's normal shift. Instead, significant efforts have been undertaken in the Police Department to reduce overtime. Those employees

obviously do not benefit from the reduced overtime opportunities. For them to see firefighters receiving enhanced overtime opportunities, let alone opportunities where the firefighter is earning overtime for work performed during the employee's normal shift, could have a profound impact on the morale and direction of the City and its efforts to reduce and control overtime. The police may propose to receive overtime for having to deal with exceptionally stressful circumstances on duty such as testifying in court or for responding to civil unrest during one's normal shift. The City would be in an awful position to reject such a proposal when the firefighters receive overtime for less stress inducing activities such as conducting a CPR training or working on site at a high school parade or football game.

The external comparables also provide no support for the Union's proposal. This is seemingly because those fire departments and municipal governments have recognized that only paying straight time rates for work that is performed during regularly scheduled hours is the standard and not the exception. Of the comparables proposed by the City, only Sheboygan provides a narrow level of premium pay for employees performing specific duties associated with public education or public relations events outside the standard workday. This scope of duties in Sheboygan subject to premium pay is much narrower than the ambiguous language proposed by this Union where employees get overtime for "all regular routine duties that they are assigned to work outside the standard work day." By no means are limited activities of public education and public relations events in Sheboygan the same as this Union's proposal to provide premium overtime pay for "all regular routine duties" or the laundry list of areas identified by the parties where Manitowoc firefighters could earn "premium" pay during their regularly scheduled shift. As such, the City's proposal to preserve the status quo best reflects the statutory factor involving internal and external comparability.

With respect to the City's Offer on promotions, it seeks to create promotional opportunity for all bargaining unit members by amending Article 6 to provide the Fire Chief with greater flexibility and discretion in the Department's promotional process by eliminating the current three-criteria promotional process, which results in the promotion of only the most-senior qualified candidate, and replacing it with a process that is forward-thinking and welcoming of all candidates by fairly assessing all interested candidates based on skill stations, an oral interview, and a record of service review. The Union's proposal seeks to eliminate the current three-criteria promotional process while continuing to undermine professional development opportunities for younger firefighters by hamstringing the Fire Chief's authority and discretion by requiring the Fire Chief to select only the most senior, qualified candidate for promotion.

The public should reasonably expect the City to operate at the highest level of efficiency and it is critical through sound leadership through the Department's command staff to achieve this expectation. Merely possessing minimum qualifications and the most experience at the City does not make one a respected and effective station leader. Leadership is integral to the command staff member's success, as well as the overall success of the Department, for a number of reasons. Chief Blaser must manage 51 bargaining unit members and four fire stations with only one non-union supervisor serving as Deputy Chief, Chief Blaser recently lost his second Deputy Chief position, leaving him and one Deputy Chief as nonunion leadership. This requires Chief Blaser to place great trust and reliance on lieutenants to lead the day-to-day operations of each station.

Presently, the Chief is restricted to choosing the senior qualified candidate for promotions, which significantly limits his ability to assess a candidate's tangible and intangible qualities and consistently select the best fit for the Department. The Union's antiquated proposal seeks to entrench the City in a manner wholly contrary to the interests and welfare of the public by mandating that only the most-senior qualified person be promoted. The City proposal also seeks to create opportunity for all bargaining unit members. The opportunity for a newer and less senior firefighter to legitimately pursue promotion is important for professional development.

Specifically, the City's proposal seeks to replace the current three-criteria promotional process, which requires the most senior qualified candidate be promoted, with a process that assesses candidates based on skill stations, an oral interview, and a record of service review. While seniority is a factor considered under the record of service review, the guideposts to the Chief's decision of who should be

appointed for approval by the Police and Fire Commission for promotion is the chosen candidate's adherence and commitment to the Department's Mission, Vision, and Core Values.

The Union argues that, despite its proposal requiring the Chief to promote the senior minimally qualified candidate, the Union's proposal provides the Chief with the flexibility he desires, because the Chief has the authority to establish the minimum qualifications a promotional candidate must meet so long as those criteria are not "arbitrary or capricious." The Union's proposal forces the Chief to keep his promotional process narrow and only look to numerical or data-based criteria when establishing qualifications a promotional candidate must meet, as it impairs the Chief from considering certain qualifications which the Union might label as "arbitrary and capricious" qualifications, in other words, subjective intangible qualities. In effect, the Union's Offer boxes the Chief into only considering criteria such as certifications, technical skills, and education levels. The Union's proposal also limits the Chief to selecting the most senior "qualified" individual among this pool of candidates, further prohibiting the Chief from considering an up and coming firefighter who demonstrates leadership capabilities.

Turning to the internal comparables, there really is no debate that the City's proposal is the only proposal supported by the internal comparables. The Police Chief presently has unfettered authority and discretion to appoint any internal or external candidate he or she wants for promotion for Police and Fire Commission approval. On the contrary, the Fire Chief is presently hamstrung to appointing only the most-senior qualified candidate and he remains so under the Union offer. Of equal importance, it also does not respect the Police and Fire Commission's interest in carrying out its lawful authority under Wis. Stat. § 62.13(4)(a) of approving the Chiefs' respective appointments, as it fails to ensure both the Fire Chief and Police Chief present the PFC with only the strongest and most qualified candidates. Under the City's Offer, both Chiefs can satisfy that interest.

The discrepancies between the Fire Department's and Transit Department's current promotional processes are similar in nature. While the Transit promotional process includes criteria to consider during a promotion, including seniority, the Transit Division Manager is not required to select the most-senior qualified candidate when promoting a candidate. Once again, this creates inequities of opportunity for promotion within the Fire and Transit Departments. Arbitrators have resoundingly recognized the importance of internal consistency with respect to the treatment of employees so as to avoid poor employee morale and poor labor relations, both in and out of the bargaining unit.

The City's Article 9, Section 6, education incentive and tuition reimbursement proposal seeks to remove archaic language from the collective bargaining agreement while simultaneously revising the agreement to reflect the parties' actual and historical practice of addressing education incentive payments under Article 9, Section 6(a), and addressing tuition reimbursement under the City's Training, Membership, and Tuition Reimbursement Policy which is presently used by bargaining unit members and other City employees. This tuition reimbursement practice has been followed by the parties since at least 2017, and the City's proposal does not seek to change any aspect of the practice. Instead, it continues the practice by continuing to permit qualified bargaining unit members to receive tuition reimbursement under City Policy and to receive up to \$64 per month in education incentive payments under the collective bargaining agreement. The Union's proposal seeks to maintain the status quo and leave archaic, inapplicable language within the parties' collective bargaining agreement, thereby creating unnecessary confusion.

The City's tuition reimbursement proposal is designed to provide training and educational assistance to employees in order to improve the quality of City services, to improve performance and to prepare employees for promotional opportunities, the very purpose of the Training, Membership, and Tuition Reimbursement Policy. Such objectives clearly enhance the public's interests and welfare. Although the City's proposal will not alter the parties' actual practice of issuing education incentive payments and tuition reimbursement under the policy, the interests and welfare of the public is still worth considering here. It is clear that the City's proposal is more favorable to the interests and welfare of the public than the Union's proposal. Since at least 2017, the parties' practice regarding tuition reimbursement has been consistent with how tuition reimbursement is handled for all City employees, yet the collective bargaining agreement does not reflect this.

The City's proposal seeks to establish commonality of a standard benefit with other City employees and eliminate the administrative burden of City human resources staff staying on top of this unwritten practice by clarifying the parties' actual practice within the collective bargaining agreement and the City proposal eliminates the needless burden of forcing the City to administer different benefit programs that should otherwise be common across the City. The Human Resources Department administers benefit programs for approximately 350–500 full-time and seasonal City employees. Human Resources strives to maintain consistency across all City departments and the benefit plans. The City, like any employer, also experiences turnover within its management and human resources personnel. This turnover can make it difficult to track and comply with practices across the City's numerous departments, and it is increasingly difficult if these practices are unwritten. Unwritten practices create the potential for unnecessary administrative and legal costs, as well as unnecessary poor labor relations. By clarifying the parties' actual practice through the City's proposal, the City's proposal eliminates the potential for these unnecessary burdens. The Union's proposal accomplishes none of these objectives and, instead, preserves potential for unnecessary confusion.

Neither parties' proposal is conclusively supported by the external comparables given that three of the eight communities do not offer any tuition reimbursement or education incentive payment (Sheboygan, Wausau, and Kaukauna), and only two of the remaining five communities offer both tuition reimbursement and education incentive payment, a factor favoring the City (Fond du Lac and Wisconsin Rapids). Due to the varying and inconsistent treatment of education incentives and tuition reimbursements, external comparables carry little weight when selecting either party's proposal, particularly given neither party is proposing substantive changes to the parties' current, underlying practice.

The issue of internal comparability is a different story. Here, it is clear the City's proposal has significantly greater support from the internal comparable police and transit bargaining units than the Union's proposal. Since at least 2017 the City has been applying the City's Training, Membership, and Tuition Reimbursement Policy to all employees within the City, including police, transit, and fire bargaining unit employees. A careful analysis of the parties' proposal leads to the conclusion that the City's proposal seeks to bring the parties' collective bargaining agreement into harmony with the parties' internal comparables and the practice shared among them.

The Union attempts to distract from this conclusion by arguing the City's proposal is not consistent with the status quo, because the City has historically paid for paramedic training attended by employees and the City's Training, Membership, and Tuition Reimbursement Policy contains language permitting the City to impose costs for certification-based training employees. However, the Union's argument is nothing more than a straw man. The City has applied its Training, Membership, and Tuition Reimbursement Policy to firefighters since at least 2017, and the Policy has contained the language the Union now complains about during that entire time period. Despite this, the City has not required firefighters to pay for their own paramedic training and in fact continues to offer this training to firefighters while at work at no cost to the firefighter. Based on all of the foregoing, it is clear that the City's education incentive and tuition reimbursement proposal has greater support from the internal comparables than the Union's proposal.

The City's Light Duty proposal seeks to modify Article 4, Section 4(a) and (c), light duty program to have the program mirror the light duty program administered for the rest of the City employees. Employees under the City proposal will continue to have access to light duty for work-related injuries and may continue to use paid leave or short-term disability benefits. The Union Proposal seeks to retain the inefficient and archaic structure unique to the Fire Department.

The public reasonably can expect and demand that the Fire Department provide the highest quality services through the most efficient and effective means possible. Essentially, the taxpayer should receive the fullest work from the employee for the value of the services paid. Other City employees perform light duty during normal Monday through Friday business hours in order to help ensure productive work is performed during work time while under supervision. This work helps the taxpayers receive good value. Such a system also benefits coworkers by reducing the burden on the coworkers

when productive work is performed during the entire light duty assigned time rather than an employee performing light duty work for a brief period and then enjoying a rest period for many hours.

The status quo, which the Union seeks to maintain, does not satisfy these expectations, as it requires the Department to provide light duty assignments for both on-duty and off-duty injuries and to guarantee at least the first four firefighters placed on light duty the ability to remain on the firefighter's standard 24-hour work schedule instead of transferring to a 40-hour, Monday through Friday workweek like all other City employees. This archaic light duty arrangement has routinely resulted in employees being scheduled to work regular 24-hour shifts despite being unable to perform any meaningful duties after the first 8 hours of their shift when the Command Staff leaves and duties consistent with their medical restrictions are no longer needed to be performed (e.g., administrative duties). The impact of this is significant, because the current collective bargaining agreement requires the City to permit up to four employees on a light duty assignment to remain on their regular 24-hour shift, meaning the City may, at any time, be left with four firefighters on-duty who are incapable of performing the regular duties of a firefighter and yet who linger at the station in the evening and at night while adding little value for the taxpayers. Such an arrangement is clearly contrary to the provision of effective and efficient services and, thus, contrary to the interests and welfare of the public.

The City's proposal will result in greater productivity from all of its employees, as light duty assignment employees will be able to complete a significantly greater volume of job duties consistent with their work restrictions by being present under supervision during the standard Monday through Friday 40-hour schedule. Moreover, the 24-hour shifts will be staffed with firefighters who are capable of performing all of the required job duties needed to respond to service calls.

While the Union argues the City's proposal will create childcare issues for firefighters due to their lack of daytime availability upon switching to a Monday through Friday 40-hour workweek, this is once again a red herring. Firefighters are all provided with significant leave banks which they can elect to use and the option to obtain short-term disability insurance. In addition to paid leave, employees also have access to short-term disability insurance, yet only nine of the forty-nine bargaining unit members have taken advantage of this valuable benefit.

A City exhibit shows that most of the use of light duty was for work-related injuries. These employees continue to have access to light duty for work-related injuries under the City proposal. Further, use of light duty for work-related injuries has been quite limited with only one employee in 2020 and one employee in 2019 using light duty for a work-related injury, and only three employees in 2018.

Finally, the City's expectations that employees working light duty during a Monday through Friday standard workweek is reasonable. By no means is this a monumental change when employees in all other City departments modify their work schedules (including moving from third or second shift to first shift) in order to work light duty.

This change is also about establishing commonality of standard benefits available City-wide to employees and about streamlining the Human Resources' administration of benefit programs as worker's compensation and related light duty are administered by Human Resources. Both of these objectives also satisfy the public's interests and promote internal labor peace and stability. Thus, it is clear that the City's proposal is the only proposal that is compatible with the interests and welfare of the public, and it achieves this outcome while also ensuring bargaining unit members can work light duty when required or be allowed to use their significant leave banks to provide childcare while receiving pay for most of, if not all, of their light duty assignment.

With respect to external comparability, the City's light duty proposal is more consistent with the light duty programs administered by the external comparables than the Union's proposal. Four out of the eight communities' collective bargaining agreements do not explicitly require light duty for off-duty injuries (Two Rivers, Wisconsin Rapids, West Bend, and Kaukauna); however, seven of the eight external communities, if light duty is provided to employees, require employees to work a 40-hour workweek, either immediately or upon certain short-term conditions being met, such as the failure to be cleared by a doctor after working light duty through one full 24-hour shift rotation or provided the employee cannot present circumstances of an undue hardship upon being transferred to a 40-hour workweek (Two Rivers,

Wisconsin Rapids, West Bend, Kaukauna, Sheboygan, Wausau, Stevens Point). While the provision of light duty for off-duty injuries is a mixed bag among external comparables, the City's proposal is substantially more consistent with external comparable communities and their scheduling of employees assigned to light duty.

There is also no debate that the City's proposal is the only proposal supported by the parties' internal comparables. Neither the Police Department nor the Transit Department bargaining units are provided with light duty after suffering an off-duty injury, and both bargaining units are required to transfer to a first-shift, Monday through Friday 40-hour workweek upon suffering an on-duty injury and being assigned light duty. These are precisely the parameters the City's light duty proposal seeks to implement. While the Union claims the City's proposal would be unworkable due to issues such as childcare, the police and transit bargaining units utilize these light duty programs despite many of their respective bargaining unit members also working second or third shift on a rotational basis. Thus, the internal comparables not only support the City's proposal, but they also refute the Union's preposterous claim that the only way to ensure fire bargaining unit members have appropriate childcare is for the Fire Department to be permanently hindered with an ineffective and inefficient light duty program.

The City proposes to clean up existing language within Article 26 of the collective bargaining agreement involving laundry and linens. Much of the existing contract language is archaic and no longer reflects the reality of the organization. The City is leaving in the contract and inserting language that reflects the reality of the organization. The City continues to provide linens and washers and dryers for employees to wash their bed linens. Ambulance linens are not washed by Union members; it has been at least 12 years since they have done so.

Most members of the community likely are completely unaware of how bed linens are offered to firefighters and whether the firefighters even wash those bed linens at work or at home. Neither offer truly influences the interests and welfare of the public. Further, as the City does not require ambulance linens to be washed by Union members, the removal of this language from the contract also does not truly affect the interests and welfare of the community.

Other collective bargaining agreements within the City of Manitowoc are devoid of language involving the laundering of items. Other City employees are not provided with bed linens or the ability to launder their bed linens while on duty. Nonetheless, external comparable agreements are silent as to the language removed by the City through its proposal. As such, because the City's approach reflects the reality of the status quo, the City's offer is more favorable.

In conclusion, this case can be examined on two separate but related levels, statutory factors and important organizational policy and culture. The statutory factors of internal and external comparability and the ability to pay and the interest and welfare of the public demonstrate support for the City's status quo-driven position to preserve Schedule A and B and the future ability to manage its financial affairs through predictable and stable fiscal policy akin to the thirty-year mortgage. Internal and external comparability are overwhelmingly in the City's favor as the City's offer provides a highly competitive wage offer that preserves the City's firefighters as some of the highest paid City employees and maintains their standing among the proposed external comparables. While the parties may have a good faith debate about exactly how to apply the external comparables, the Union cannot claim unequivocal or uniform support for its position to so drastically change the status quo, especially without an adequate quid pro quo to address the ticking time bomb within their wage schedule change. Rather, it is clear that the Union seeks to gain more than nearly all of the internal and external comparables, while the City's proposal is in line with the pay and benefits afforded to the comparables and is an offer that maintains high quality services in the interests and welfare of the public.

Even on an organizational policy and culture level, the City prevails as well. This case will decide the City's fiscal policy management priorities, the City's professional development opportunities for fire department employees, and the City's efforts to achieve commonality of standard benefits shared by all City employees. Creative, decisive and disciplined fiscal management have helped the City rise from horribly challenging times. That fiscally responsible culture has reduced overtime, not increased it, and has generated budgetary predictability and stability. That culture must remain and attempts to disrupt

it must be rejected for the sake of all City Departments. During that time this culture has been in place, the City has been a good partner with the Fire Union. Their prior settlements during the last ten years show the City has been agreeable with this Union to achieve fair substantial wage settlements to the point where the Union leads all employee groups in pay. Their prior settlements show they have worked to address problems unique to Manitowoc. This history, plus the increasing pressures on public employers to “do more with less”—especially in a pandemic-driven environment—and to creatively manage and improve services while continuing to eliminate wasteful spending wherever possible, dictates that the Union’s Final Offer must be rejected by this Arbitrator. The City cites arbitral authority in support of their position.

REPLY BY THE UNION TO THE CITY’S POSITION

With respect to the external comparables, the parties reached an agreement as to which communities would serve as external comparables at a meeting on August 28, 2018. Lieutenant Johnsrud kept careful notes from that meeting and indicated the agreed to external comparable communities on a document that the City provided at a previous meeting. Those communities are Sheboygan, Neenah-Menasha, Green Bay, Two Rivers, Appleton, Fond du Lac, Oshkosh, Kaukauna, and De Pere. Relying on that agreement, the Union contacted the International Association of Fire Fighters and requested that it provide a study of the comparable unit’s compensation packages.

It should come as no surprise that the parties agreed to the above listed communities as they have long relied on those same communities to measure their proposals. In fact, for a greater than 45-year history of interest arbitration between the City and its represented employees Sheboygan, Neenah-Menasha, Green Bay, Two Rivers, Appleton, Fond du Lac, Oshkosh, Kaukauna, and De Pere (Wisconsin Fox Valley-Northeast Region) appear time and again.

Arbitrator Bellman first answered the question of which external comparables were appropriate for the Union. The same reasoning Arbitrator Bellman applied then holds true today: along with geographic proximity, the City remains in the middle of the pack now with Green Bay being the most populous and Two Rivers being the smallest.

In 1997, Arbitrator Michelstetter provided “that Two Rivers and Sheboygan constitute the primary comparable group for the Manitowoc fire unit. In that same decision the City did not object to the use of Kaukauna, which is near the other Fox River Valley communities, however it objected to Green Bay, not because of location but, because of size. Nevertheless, the arbitrator did not find the specific composition of the secondary comparison pool necessary to reach his decision because there did not exist a significant variance in wage increases at that time, thus, leaving intact the units selected by Arbitrator Bellman.

The entirety of the City’s argument in support of its final offer relies on external communities that have never before appeared in this arena. The City seemingly plucked communities out of thin air by which to compare its offer and manufactured selection criteria such as proximity to “major expressways” to create tenuous similarities to Manitowoc. But this seems to be a thinly veiled attempt to disguise the fact that the City had no interest in comparing itself to communities like Manitowoc; instead, the City went shopping for only those communities that made its offer seem reasonable.

Never have communities located well over one hundred miles from Manitowoc been included as part of an appropriate pool of external comparable communities, not Stevens Point, nor Wausau, nor any other Wisconsin River Valley community. Such communities have never been used in the history of interest awards in the City of Manitowoc. Instead, arbitrators have consistently selected Fox River Valley communities and those communities in closer geographic proximity to Manitowoc such as Appleton, Fond du Lac, Neenah/Menasha, and Oshkosh.

Arbitrators are rightfully reluctant to disturb the communities which the parties have long standing histories of relying upon for comparison, even those in higher paying regions. See Arbitrator

Bellman's reasoning for including the Cities of Sheboygan, Menasha, Neenah, Green Bay, Two Rivers, Appleton, Fond du Lac, Oshkosh, Kaukauna, and De Pere continues to be valid today. Accordingly, the "comparables should remain consistent in order to foster a climate of bargaining which leads to voluntary agreements;" and prior "decisions which determine the external comparable group should be respected."

Where there is an established comparable pool the party seeking the change has the burden "of proving that substantial changes have occurred in the original comparables since the prior arbitrations." The City failed to meet its burden. In support of its position, the City's numerous parenthetical explanations fail to provide vital information and reasoning.

Again, to support its supposition that it should be permitted to scour the ends of the earth to find a comparable community that it deems suitable the City cited. Here, the parties have a long history of relying on comparable communities that are much "closer-to-home" than the Wisconsin River Valley communities—the need to jettison historically utilized and appropriate comparable communities in favor of novel and inappropriate ones simply does not exist.

The inclusion of Marathon County in that case is analogous to including Green Bay as an appropriate comparable community to Manitowoc. Even over the City's objections that comparing such a community with different operational, economic, and socioeconomic characteristics is "akin to arguing a mid-size local employer should compete with the compensation package of a Fortune-500 employer." A preposterous objection indeed; it is clear the City's only true objection to inclusion is that Green Bay provides higher wages than does Manitowoc. Just as it also suddenly objects to Appleton, De Pere, and other Fox Valley communities for equally flawed reasons.

But one need look no further than the City's own handbook to find proof of its disingenuous attempt to position itself within a different and inappropriate labor market. Under the City's "Compensation Plan" the City provides that it will set pay rates and adjust pay rates annually based on its chosen labor "Market Rate." That City chosen labor market is none other than the "Wisconsin Fox Valley-Northeast Region." When adjusting wages or setting pay rates for its employees the City does not compare itself to Wausau or Stevens Point because that is not the market in which it sets; and doing so would lead to the same retention and morale issues it faces in its Fire Department. Of course, the Fox Valley provides the appropriate pool because it is geographically close to Manitowoc and generally recruits from the same labor market.

What the City attempts to do with regard to comparables amounts to an ambush. It asks the Arbitrator to cast aside decades of Manitowoc's arbitral history and mutual agreement as to the secondary external comparable communities in a feeble attempt to justify its final offer. As proof of a lack of agreement it offers its own lack of preparation. However, the City glosses over the fact that the same evidence may not demonstrate a lack of agreement, nor even a true lack of preparation, but instead it may simply demonstrate its knowledge that the long standing external comparables, those Fox Valley Northeast Region communities, supports the Union's offer and not the City's; thus, leaving the City desperate to create a new pool out of whole cloth or concede defeat.

The City writes that the Union's proposal: "converts paramedic pay from seven-percent of Firefighter Step-E monthly base pay to seven-percent of Firefighter Step-H monthly base pay."

In 2019 that is 7% of \$5,798 per month (\$405.86) or \$4,870 per year. This is \$130 less than the City's offer. There is no other schedule so, like the City's offer, all paramedics are paid the same for possessing the same skill and responsibility. The City saves money by virtue of the Union's offer to reduce the percentage increase for top-step firefighter salary to 1% of the former Schedule A top step rather than the 3% realized by the most significant internal comparable, the law enforcement bargaining unit, or the going rate for the traditional comparables: 2.25%.

The primary issue though is that the Union's proposal indexes the paramedic premium pay to a benchmark on the firefighter's salary schedule. The significance of this is to increase the paramedic premium as a function of the parties' agreement to increase the salary schedule. This Union, like many other unions, negotiated for the indexing of the premium to increase specialty pay or skill pay, when it is expressed in flat dollar amounts. This phenomenon occurs in part because it is rarely the case that an impasse in only one specialty or skill pay merits the cost of an interest arbitration. The Union's proposal

relative to paramedic premium costs the City less than the City's own offer over the life of the Agreement, it preserves the status quo of indexing the skill pay to a benchmark in the salary and because it proposes only one salary schedule all Manitowoc paramedics are paid the same, also alike the City's proposal.

The City's claims about the parties' proposals' impact on the relative rank ("positioning") of its firefighters' pay contrasted with the pool of comparably situated employees is false assuming the traditional set of comparables; it is even wrong if one adopts its imagined set of comparables. The claim that its offer is comparable to internal wage increases since 2009 is also wrong, as we will show below.

No other group of Manitowoc employees has a two-tier pay schedule. So, it requires some care to develop a reliable comparison between the groups. When the City increases salaries across-the-board (ATB) for all of its other employee groups, the budget and actual expenses will closely correspond to the ATB increase. However, in a unit with a two-tier system, some employees will be replaced by others on a pay schedule that is less, saving the City money and reducing the bargaining unit percentage increase as compared to the rest of the units.

The adjustment can be made by reckoning the savings realized by the lower tier pay schedule. This is important because it shows that the City attempts to "bake and eat its own cake" It complains about future increases due to the elimination of the two-tier schedule, but does not account for the past savings realized as a result of it.

The Union computes those savings, making conservative assumptions. In short, with each new entry to Schedule B at the first step, it is conservative to assume that the City saved at least the difference between the A rate and the B rate. In fact, the savings would be greater if an A lieutenant was replaced by a B firefighter, or A top step firefighter was replaced by a top-step B. The detail can be tedious to reckon, but the broad statement is intuitive. There were 20 (40% of the bargaining unit) Schedule B employees in 2019. They are all paid on the average 13 % less than Schedule A employees.

The City begins with the misleading and unsubstantiated claim that only its proposal serves the interests and welfare of the public. After devoting several pages of irrelevant self-adulation for recovering from its administration's fiscal mismanagement dating back to 2011, it finally gets down to its most important argument when it asserts that the Union's proposal "misses the true financial impact." Peculiar, because it assumes that 100% of the employees in the firefighter rank are and will continue to be at the top step. Peculiar, also because there is no 2025, or later, budget in which there could be a hole. Most peculiar because on close examination, on its face it proves there is no budgetary "time bomb."

On its face, the City's exhibit is most peculiar. It shows that the City saves \$552,000 between 2019 to 2024 under the Union's wage offer compared to the City's and then loses \$581,000 from 2025 to 2028. When a 2% discount rate is applied to reflect the diminished present value of future income, the City comes out ahead. Without adjusting for present value, the City exhibit forecasts a loss of \$29,000 over ten years, or \$2,900 per year. When reducing the future gains and losses to present value using a very conservative discount rate of 2% per year, the City would gain about \$29,000.

Close examination of the exhibit confirms that the author calculated the step amounts paid to a firefighter under each proposal for each year between 2019 and 2028. However, the exhibit contains an error for the first step FF in that year -- it reports \$47,652, it should be \$49,332. It also contains an error for the second step; it reports \$51,912, but should be \$50,724. He adds to that amount the value of the paramedic premium.

Then, perversely, he multiplies those amounts by 27, but there will never be 27 firefighters on the same step of the schedule. In 2020 there were 9 employees who had 8 or more years of experience and four of them were Schedule A employees. It is reasonable to assume that this number is predictive of the values at any given point in time as it is picked out at random. If so, the City exhibit exaggerates both of the losses by a third. Still, the exhibit hides the savings the City will realize as firefighters move through the steps. By using only the years in which there were losses, the City's brief cherry-picked Corbeille's data points in a way that grossly exaggerates the impact. Again, at no point in time will all 21 employees holding the rank of firefighter/paramedic be at the top step at the same time. There would be 10 at the top step of the Union's proposal in 2019, 12 in 2020 and 11 in 2021. Importantly, the data shows that

movement to the top step of the Union's proposal is gradual. In 2021 two employees would move into the Union's new top firefighter step. In 2022 and 2023 none move there. In 2024 six employees move there. In 2025 one more moves up to the 8th year of service. An even deeper look into the data reveals that some firefighter move to the step only at the end of fiscal year, whereas others move for the full year, the significance of which is to blunt the budget impact from year to year, a detail overlooked by the City's argument. As important, in terms of the budget impact, four of the firefighter incumbents are Schedule A employees. If any of them are promoted, there will a favorable impact on the budget as they will be replaced by a rookie who is paid roughly \$22,000 less. Second, if we compare the total earnings of a firefighter during the first eight years of employment at that rank, the Union's pay schedule saves the City \$12,942. The most important peculiarity though, is that which was mentioned in the Union's principal brief, there is no budget to blow up years into the future. For the most part, vacancies in any fire department result from retirements due to age or disability. In Manitowoc all retirees in the near future will be paid at Schedule A rates. Depending on the rank at which the retirement occurs there will be a domino effect as the vacancies are filled by promotion until a vacancy is created in the firefighter rank to be filled by a first step firefighter. A Schedule A firefighter or officer is the one who is retiring or has become disabled. That employee is replaced by a Schedule B employee at a lower rate than the retiree under either party's final offer. The budget impact, under either Parties' proposal is likely to reduce the City's wage cost, as compared the actual year earlier cost.

The City next falsely claims that its "offer best reflects the pattern of internal comparable settlement," blithely ignoring the fact that no internal unit has a two-tier pay schedule. The audacity of the claim that the units are being treated equally is truly outrageous. No other unit places new employees on a different and lower pay schedule. In time, the two-tier system will have all employees on Schedule B, but the City's exhibit does not account for this critical change in the unit demographics. We do know that the current rates of Schedule B are on average, 13% lower than Schedule A. In order to draw an apples-to-apples comparison in the average annual percentage increase wage costs attributable solely to the internal units' compensation plans, it is necessary to calculate the savings realized by the City by virtue of the firefighters two-tier plan design alone. It is tedious but helpful to do the homework.

It begins with reasonable assumptions. We know that the bargaining unit size is very close to 50. We know that there are 21 Schedule B employees, increasing from zero ten years ago. Assume 2 employees per year are added to Schedule. Calculate the amount less the City pays those 2 employees under Schedule B than it would have paid under Schedule A. Calculate the per capita percentage savings.

There are two important lessons here. First, the City misleads us when it claims that it has treated firefighters similarly to the internal comparables. This is intuitively obvious given the fact that the City made no effort to show the savings it has realized because new employees enter Schedule B, and their predecessor in most cases exits as a Schedule A employee. The second lesson is also intuitive. The first employee to enter Schedule B represented a tad less than 2% of the number of employees, cut by 13% of a salary that was only 60% of the average, so it is no wonder that in terms of the total wage cost the City would save only a fraction of a percent. The second, and much more important lesson, is that it shows that even a dramatic immediate 13% schedule reduction takes years to impact the budget. In the first years of its implementation Schedule B saved the City peanuts. In ten years, the savings compared to never having implemented Schedule B is only 3.44%.

The City's claim that the Union's wage proposal contains a budget time-bomb is simply wrong. The Union has previously explained the provenance of its proposal. It is rooted in the unique and twisted path taken by the City to litigate its claim that the prior "duty day" language was a permissive subject of bargaining, then confronted with a proposal that increases management's ability to assign duties outside the standard duty day at a de minimus cost reverts to the current provision. Again, the City engages in faux outrage "lethal poison pill," other phrases. All this for a proposal that the City admitted would cost only \$1,111.77 annually.

The City argues that the Union's members have performed work that the labor agreement prohibited at no cost to the City. Lieutenant Johnsrud testified that there had been an informal practice of

offsetting relief time during the duty day as a form of compensation. In fact, the Union relied on the language to insure that if assignment of a regular routine duty became abusive, it could obtain arbitral relief. Perhaps the City should have considered the consequence of its decision to litigate whether the current contract provision is a permissive or prohibited subject of bargaining. Now, should the language of the past contract remain the same, the Union cannot be sure that it has contractual protection against abuses in the future. The Union submits that just as its members found a way to get these things done in the past they will in the future. The City only needs to ask for a waiver.

The City again tries to avoid responsibility and writes that the Union should have clarified what the City claims is an ambiguity. The problem with the City's argument is that the Union never believed that there was anything ambiguous about the contract; Its officers and members knew what the practice was and more importantly, they knew that the Chief knew. They appreciate his candor and the City's revision of its costing exhibits to reflect same. What the Union does not understand is the reason that the City continues to argue that this proposal is significant in any way. There will be no meaningful difference in Department operations that result from the resolution of this issue.

The Union encourages the Arbitrator to consider developing the "common law" of interest arbitration and pen a rationale for drawing an exception to the burdens that a party bears when proposing a change to a long-standing contract provision. When either party files a declaratory ruling to argue that it is not a mandatory subject of bargaining, and the other party responds with an "impact bargaining" revision of the provision under challenge which the WERC subsequently confirms to be a mandatory subject of bargaining, the latter party should not be deemed to have proposed to change the status quo. The need to make the impact proposal is created by the party demanding litigation with the petition for a declaratory ruling. The proposal itself should be narrowly tailored to address the problem requiring resolution, but the obligation to provide a quid pro quo should also be relaxed if not eliminated altogether. That follows because the impact proposal is not truly a change to the status quo.

With regard to comparable support, the Union points to both the Sheboygan and the Appleton Fire Fighters' collective bargaining agreements both of which contains similar impact proposals.

The City argues that there is internal comparability. No other City employees are required to work a 24-hour shift, much less be ready to respond immediately and regularly to emergencies at 2 AM during which mental and physical acuity is a matter of life and death. Of course, there is no internal comparable.

The City takes issue with the Union's proposed amendments to the promotion procedure, but it does not acknowledge that they are only a reaction to the City's petition for a declaratory ruling that the existing language was a permissive subject of bargaining. That said, the City supplements the arguments it made at the time of the hearing. The Union replies to them here.

The City asserts that the citizens are entitled to be served by highly qualified officers. The Union agrees. Where is the evidence that the citizens were not receiving that service? The City has the burden of proving the need for what is a major, not minor, reform of the contract language; a reform for which it argues passionately; a reform that addresses no demonstrable need in this record. The City does not recognize that historically unfettered discretion led to nepotism, favoritism and political patronage.

The City writes that "[m]erely possessing minimum qualifications and the most experience at the City does not make one a respected and effective station leader." Sadly, neither does the Chief's favorite make such a station leader. More importantly, the City takes an inappropriate liberty with the Union's proposal: the minimum qualifications are determined at the Chief's discretion, subject only to the requirement that they be reasonably related to the duties of the position. "If a Lieutenant is incapable of effectively leading a station" as the City argues, the Chief can demote him or her. The City's arguments are made for the sake of arguing.

Among the more peculiar arguments the City makes is that the Union's proposal that requires the Chief to establish qualifications that are not "arbitrary or capricious" is a "ploy." However, the phrase "arbitrary or capricious" has been defined by arbitrators to mean "whimsical" or "without reason." Utilization of this standard does not appear to restrain the Chief's choice of qualifications unreasonably. Unless, of course, the City is arguing that the Chief should be able to set qualifications whimsically.

The balance of the City's argument adds nothing here. There is no compelling problem to support the City's proposed material change to the past department promotional standards. There is nothing to suggest that its proposal is narrowly crafted to address only that problem and not more. It offers no quid pro quo to support the change.

Given the failure of the City to meet these standards to support its departure from the past promotional procedures, there is no need to discuss whether it has comparable support for its proposal. That said, the City recognizes that it does not enjoy comparable support from the external units. It writes at "Five out of the eight communities have chosen to have convoluted promotional processes that include numerous steps, tests and criteria." This is not comparable support for the proposition that the Chief has unfettered discretion to promote who he pleases. It is the contrary.

The gravamen of the dispute here is captured by these lines from the City's where in essence the City admits that its offer on its face requires, or permits the City to require, employee payment of the cost of training needed to maintain a certification. Paramedic certification requires a continuous life-long training component and involves a substantial cost. The Union is very sensitive that the City has a written and enforceable promise that it will either provide the training or pick up this cost if it is provided externally. The City defends its proposal on the ground that it hasn't required firefighters to pay that cost since 2017, despite the contrary language in the Policy it seeks to incorporate within the contract. Common sense suggests that the City revise the proposal such that this conflict between practice and language does not exist.

Additionally, the parties disagree over the City's efforts to delete lengthy, substantive provisions of the contract and substitute for them clauses that incorporate by reference benefit programs applied to other employees of the City. Some municipalities have taken the position that they are free to amend their Citywide policies, without bargaining, because it is the policy that has been incorporated by reference not the details of each of its provisions. If the Arbitrator does not adopt the City's final offer, the Union recommends that the City consider a proviso, such that the mandatory bargainable aspects of the policy cannot be revised in the absence of collective bargaining.

The Union addressed each of the City's material arguments in support of its proposed reform of an existing policy in its initial brief. Particularly, the Union emphasizes the arbitral requirement that the City demonstrate a compelling need for the change and provide a quid pro quo in exchange for the Union's agreement to adopt it. It is disturbing that the City believes it can pick up this sort of significant diminution of firefighter benefits simply by demanding it.

With regard to the City's oft-repeated argument that benefits for firefighters can be the same as for other City employees, this is a useful example of why that is not true. No other City employees work a 24-hour shift. Childcare is a critical issue for a two-working spouse household. Typically, at-home "nanny" care or daycare at a facility involves a defined schedule and rigorous discipline to maintain it, often with financial penalties for a breach of the schedule. By virtue of a firefighters work schedule that allows the firefighter to be off-duty two 24-hour periods out of every three periods. The childcare and daycare schedules cannot be readily adjusted to a 40-hour work week. This problem is not one that exists for a 40-hour per week employee. So, no, the Citywide 40-hour light duty policy does not work for firefighters.

Nor for the reasons stated above does the idea of incorporating a Citywide light duty policy into the labor agreement by reference work for firefighters.

Regarding the physical exam proposal, first, the parties have worked together to create the existing contract provision and there is nothing in this record to remotely suggest that there is a compelling need to change it. Second, the Union does not need a contract provision that creates the "ability" "of working together" on this subject as it is a mandatory subject of bargaining. Finally, the City's brief misstates the City's offer. Instead it reads, after deleting the entirety of Article 24, Section 1, Physical Examinations:

The City will offer a voluntary firefighter fitness program, developed with union input, for all members of the department, designed to help members maintain fit-for-duty standards and promote general health and wellness.

The Chief will establish fit-for duty standards in consultation with the City's occupational health provider as part of department operating procedures.

Offering the parties the ability to "work together," is not the same as the "City will offer ... a program ... with union input." Either the City or the Union can demand to bargain with the Union about a revision to the existing language of the contract. The substance is a mandatory subject of bargaining primarily related to wages, hours and conditions of employment. Its provisions can jeopardize employment of the Union's members. The Union will not come to the table to "offer input," nor will it simply work together; it will arrive as an equal partner with the City to engage in mandatory collective bargaining.

Again, the City proposes to gut a provision which is a major concern to firefighters, to usurp the status of the Union as the exclusive bargaining agent, and to essentially arrogate to itself the ability to unilaterally order a change in the policy. And, it does so with the assumption that it need not demonstrate a compelling need for a change and it does not offer a quid pro quo for the Union's agreement to accept its proposed change.

With respect to the laundry proposal, the City offers only one argument in the brief that the Union did not previously address. It writes that other City employees "are not provided with bed linens." This is because they are not provided with beds. There is no internal comparable.

DISCUSSION

EXTERNAL COMPARABLES

The Union proposes: Appleton, De Pere, Fond du Lac, Green Bay Metro, Kaukana, Neenah-Menasha, and Oshkosh as secondary comparables. The Union chose cities that are geographically closer.

The City agrees with the Union that the two primary comparables of Sheboygan and Two Rivers should continue to be applied here. With respect to secondary comparables, the City believes they should be "stand alone and self sustaining." They should also be similar in size and provide the highest level of emergency medical response as Manitowoc does. The City also considered fire department operational budgets, population and percentage change in population, median household income, equalized property values and per capita property tax levy, residential share of property taxes paid, and the distance from Manitowoc in miles. While some of the cities are fairly far from Manitowoc, the City asserts that it now uses an online firefighter recruiting tool that is not limited to only the northeast corner of the state, which further supports its proposed list of comparables. The City agrees with the Union that Kaukana and Fond du Lac fit those criteria and are appropriate secondary comparables. The City submits that, applying its criteria, additional appropriate secondary comparables are: West Bend, Stevens Point, Wausau, and Wisconsin Rapids.

However, as the Union has pointed out, in 1997 Arbitrator Bellman in City of Manitowoc, Dec. 28785-A, stated:

The Arbitrator would compare this bargaining unit with its counterparts in the Cities of Sheboygan, Menasha, Neenah, Green Bay, Two Rivers, Appleton, Fond du Lac, Oshkosh, Kaukauna, and De Pere. All are in the same geographical region, and are unionized. Manitowoc is middle-sized

among these cities. Its population is approximately 33,225. Green Bay is the largest of these cities at 90,796. Kaukauna is smallest at 11,430.

In addition, in 1997 Arbitrator Michelstetter in City of Manitowoc, Dec. No. 28787-A noted that there was an objection by the City as to Green Bay's inclusion as a secondary comparable. However, Arbitrator Michelstetter decided the case without the need to consider the secondary comparables. Thus, for all intents and purposes Green Bay has continued as a secondary comparable.

The parties therefore have a history since at least 1979 of using the comparables that were found appropriate by Arbitrator Bellman, a bargaining history that stretches back for over 40 years. Moreover, as the Union points out, the City and other unions have frequently used external comparables that were in the Fox River Valley and those that are closer to the City.

Finally, there was no argument or evidence that the characteristics of the disputed secondary comparables have changed significantly over that time frame such that, while they may have been appropriate comparables before, it would be necessary to remove them from the pool. Such an extensive bargaining history and deference to prior arbitration awards must therefore receive significant weight. I therefore find that the Union's pool of secondary comparables is appropriate.

ANALYSIS OF THE ISSUES

BACKGROUND

On June 7, 2018 bargaining began over a successor agreement to the 2015-2018 labor agreement. On February 26, 2019 the City filed for a Declaratory Ruling, seeking a ruling that several provisions of the labor agreement were either permissive or prohibited subjects of bargaining. Many of the issues were resolved by the parties; however, four issues remained: Article 4, Hours of Work; Article 11, Parking; Article 18, Safety; and Article 26, Linen and Laundering. On March 5, 2020 Commissioner Daley issued the Ruling, concluding that those four issues were mandatory subjects of bargaining.

Because of the Great Recession of 2007-2009, the City was in difficult financial shape. Over time the City improved its finances and seeks to continue on that path and operate its finances as efficiently as possible.

As a result of the impact of the Great Recession on the City's finances, the Union agreed to create a lower paid wage schedule for all firefighters hired on or after August 1, 2009. In return, the City agreed to hire one additional firefighter each year from 2010-2012. However, an additional firefighter was not hired in 2012. The Union contends in part that the firefighters in the lower pay schedule have poor morale, and it has also caused a higher turnover rate. The Union has proposed integrating Schedule B Compensation Schedule (lower paid employees) into Schedule A (higher paid employees). The City disagrees for a number of reasons. Compensation is the most significant issue in both parties' Final Offers.

ISSUES

DEFINITION OF WORK DAY, ARTICLE 4, SECTION 1(c) STANDARD HOURS AND OVERTIME

The contract provides that the workday is 24 hours, starting at 0700. However, within that 24 hour work day, 7:00 a.m. to 4:30 p.m. is considered the regular workday for training and other regular routine duties. Thereafter, firefighters are on standby status. The Union wishes to add the word

“standard” throughout Section 1(c) when referring to the regular workday. I do not see anything in particular that demonstrates the need for that addition. “Regular workday” is clear and defined in the contract as 0700 to 1630. In addition, there has been a longstanding practice of what duties are performed between 0700 and 1630. I therefore find the City’s offer to not change to “standard hours” is more appropriate.

The Union also proposes the following overtime language to the contract: “The city shall pay employees a half-time premium for all regular, routine duties that they are assigned to work outside of the standard work day.”

Firefighters conduct public education a few times each year, provide rural fire department training a couple of times a year, and standby at schools’ football games and cross-country meets for potential medical services outside of their regular duty day. In addition, they standby at such events as parades and county fairs.. In the past there was an informal practice of offsetting relief time during the duty day as a form of compensation for covering such events.

The Union has proposed overtime pay outside the regular workday. At hearing Lieutenant Jacob Johnsrud testified that the intent of their proposal applies only to time firefighters attend those events. The City estimates that the overtime proposal, as outlined by Lieutenant Johnsrud, would cost approximately \$1,111 per year.

The Union points to external comparables Sheboygan and Appleton as examples that provide for certain types of overtime. The Union agrees with the City that there are no internal comparables with similar provisions, but that is because the Police and Transit employees do not work 24-hour shifts. The Union further asserts that the proposal stemmed from the City’s seeking a declaratory ruling that the provision is not a mandatory subject of bargaining, and under such circumstances the requirement of a quid pro quo should be relaxed or eliminated.

The City contends that it has been trying to cut back on overtime throughout the City, which serves the interests and welfare of the public. Moreover, it would embarrass the City to expect reimbursement from those organizations using the overtime rate.

With only two examples of external comparables providing for some types of overtime, there is not particularly strong support for the Union’s proposal. Moreover, the proposal as written does not clearly state that overtime is only paid under the limited circumstances that Johnsrud described.

Accordingly, I find the City’s offer on overtime is more appropriate.

LIGHT DUTY PROGRAM CHANGES TO ARTICLE 4, Section 4(a) and 4(c)

The current language permits up to 4 employees to work on their normal duty schedule when performing light duty. The Union asserts in particular that it is a significant benefit. In addition, no quid pro quo was offered nor has the City demonstrated a compelling need for the change. Furthermore, the City’s proposal will create childcare issues for firefighters due to their lack of daytime availability upon switching to a Monday through Friday 40-hour workweek because firefighters are unique with their 24-hour work schedule.

The City contends that its proposal mirrors the light duty program administered for the rest of the City employees. Employees under the City proposal will continue to have access to light duty for work-related injuries and may continue to use paid leave or short-term disability benefits. The impact of this is significant, the City asserts, because the current collective bargaining agreement requires the City to permit up to four employees on a light duty assignment to remain on their regular 24-hour shift, meaning the City may, at any time, be left with four firefighters on-duty who are incapable of performing the regular duties of a firefighter and yet who remain at the station in the evening and at night while adding little value for the taxpayers. Light duty assignment employees will be able to complete a significantly greater volume of job duties consistent with their work restrictions by being present under supervision during the standard Monday through Friday 40-hour schedule. Moreover, the 24-hour shifts will be

staffed with firefighters who are capable of performing all of the required job duties needed to respond to service calls. The Union's concern that requiring firefighters to switch to a 40-hour workweek creates childcare issues is unique to firefighters is inaccurate because some police officers and transit employees for the City work second and third shift and thus have the same issue.

I believe the City's arguments are persuasive. In addition, it is often recognized that a quid pro quo is not required when the proposal mirrors a similar procedure for other City employees, such as police and transit employees. I find the City's final offer on light duty is more appropriate.

PROMOTIONS, ARTICLE 6

The City proposes to change how promotions are decided by amending Article 6, Section (c). It proposes changing the standards from the most senior qualified employee to "The promotional procedure shall be developed by management, with seniority as one of the scoring factors."

The City submits that Chief Blaser would consider a candidate's adherence and commitment to the Department's mission, vision, and core values. The current language "ties the hands" of the Chief, the City contends. The City further points out that the Transit bargaining agreement allows for wide discretion in promotions.

The Union proposes amending Article 6, Section (a), by eliminating testing, oral interviews, and the "Chief's evaluation of ability and past performance," and changing it to language that only includes senior qualified candidate. Moreover, the Union asserts that the Chief shall have the discretion to determine minimum qualifications of subordinate classifications. The Union notes that there was no evidence that the "senior qualified" promotional procedure under the current language created any problems.

The external comparables are a "mixed bag" with several comparables having similar language to the current language of senior qualified while some comparables do not.

While the City's proposal makes a substantial change to Article 6, Section (c), the Union's proposal to Section (a) also would be a substantial change. On balance, I find the Union's offer adheres closer to the status quo language and is slightly favored.

CONTINUING EDUCATION, ARTICLE 9, SECTION 6

The City contends that since 2017 it has had a practice with its employees that provides for tuition reimbursement. A uniform practice diminishes mistakes that can occur with a varied procedure between groups of employees. The Union's position to keep the status quo training language is archaic according to the City. The City is simply attempting to modernize the training payment procedure. Internal comparables are now all following the same practice, including police, transit and firefighters. While the Union is concerned that changing the practice may stop paramedics training, the City contends that it will continue to pay for such training.

The Union responds that the City has unilaterally implemented a practice without bargaining over it and that the City expects the Union to accept its offer on training without objection. Moreover, there would not be a guarantee that paramedics training would be covered.

The external comparables are mixed. It is also somewhat troubling that the City sets up its bargaining position by unilaterally implementing a practice for all City employees then expects the Union employees to simply agree to it. For these reasons, I find the Union's offer on continuing education is slightly favored.

PHYSICAL EXAMINATIONS, ARTICLE 24, SECTION 1

The Union proposes to continue with the current language, which requires one physical exam every other year and outlines how they will be administered. The City proposes deleting the language entirely and replacing it with the following:

The City will offer a voluntary firefighter fitness program, developed with union input, for all members of the department, designed to help members maintain fit-for-duty standards and promote general health and wellness.

The Chief will establish fit-for-duty standards in consultation with the City's occupational health provider as part of department operating procedures.

The City contends that having physically fit firefighters is important and an agreed-to process is important to the public as well. The Union responds that the provision is of major concern to firefighters, and the parties should bargain over fit-for-duty standards, not limited to just provide input. Moreover, the City needs to demonstrate a compelling need for the change. In addition, the City has not offered the Union a quid pro quo.

I find the Union's position is more persuasive. I agree with the Union that the parties should bargain over the fit-for-duty standards. In addition, there is no demonstrated compelling need for the change and the City has not offered a quid pro quo. I, therefore, find the Union's offer on Physical Examinations, Article 24, Section 1, is more appropriate.

LINENS AND LAUNDRY, ARTICLE 26

The City proposes deleting most of the provisions of Article 26 and adding a provision because, the City argues, the language is archaic. One of the key concerns raised by the Union is the fear that with this proposal firefighters may be required to wash ambulance linens, particularly in light of the current pandemic.

Neither party presented particular support from internal or external comparables or the proposal's effect on the interests or welfare of the public. The City offered no quid pro quo with this proposal.

With respect to the Union's concern over potentially washing ambulance linens with the proposal, the City responds that it has not required firefighters to wash ambulance linens for at least 12 years. Nonetheless, the status quo language of Article 26 includes the following:

Manitowoc Fire Department agrees that on-duty Local 368 members shall not be required to wash and dry linen and towels other than kitchen towels, kitchen wash cloths, and assorted drying rags used in the course of drying vehicles. Specifically, no ambulance linen shall be washed by Local 368 members. (Emphasis added.)

Such a prohibition on washing ambulance linens provides protection to the firefighters should the City attempt to change the current practice.

Given that no quid pro quo was offered by the City, no strong comparable support was presented, and the City offer would delete the prohibition of washing ambulance linen, I find the Union's offer on Laundry and Linen is more appropriate.

With respect to each of the above issues and the statutory criteria, after careful consideration, I find the determinative criteria include internal and external comparables. The remaining statutory criteria have negligible impact.

WAGES

The wage offers are the most significant, dominant component of the parties' final offers. As noted above, because the City was in substantial financial difficulties as the result of the 2007-2009 Great Recession, the Union agreed to create a second, lower paying wage schedule. Employees hired after August 1, 2009 would be placed on Schedule B, the lower paying schedule. It has been in effect since then.

The Union asserts that Schedule B employees have had morale problems because they are paid less than Schedule A employees who are doing exactly the same jobs. In addition, the Union submits that there is now a higher turnover rate caused by the implementation of Schedule B. The City responds that the Union did not clearly demonstrate either of those assertions.

I found the Union's testimony regarding morale problems was credible. It is understandable that morale would be adversely affected when a Schedule B firefighter is paid less than a Schedule A employee performing exactly the same job. The Union's firefighter retention exhibit is also very telling. For the 10 years prior to 2010 only 3 firefighters left the City for another fire department, while over the next 10 years 21 firefighters resigned from the City to take a position with a different city's fire department. It is further noted that none of the external comparables have seen such a significant increase in turnover for the 10-year period from 2010 to 2020. The only significant difference for this bargaining unit is the change to a 2-tier wage schedule.

In addition, at the beginning of bargaining over this contract, in a June 7, 2018 memorandum the City included a priority in bargaining to: "[m]ove all employees to Schedule A to remove disparity between Schedule A and Schedule B..." While the City did not further pursue the priority to move Schedule B employees to Schedule A in bargaining, indicating that it is a City priority clearly demonstrates the City understands that there is an important need to eliminate the 2-tier pay schedules.

I further find that the Union's offer on eliminating Schedule B includes methods which would not cost a substantial amount. As the Union submitted in its brief: "Cost balancing occurred in the first year of the proposed contract, with Group A employees receiving being held to 1% increase and the Group B employees netting a greater percentage increase than that, but on lesser annual wages, such that the actual cost in 2019 will be 1.81% greater than the year earlier cost. Thereafter the union offer results in a 1.46% increase in 2020 over 2019; and in a 1.51% increase in year 2021 over 2019." Those increases are less than the comparables. In addition, the "former" Schedule B employees who move to the new integrated schedule would not receive a step increase on January 1st; instead, they would receive the increase on their anniversary dates. Further, the new unified schedule would add steps, taking longer to reach the top rate.

With respect to the comparables it is significant that there are no internal comparables that have 2-tier pay schedules. With respect to the external comparables, none of them have similar 2-tier schedules, though the City points to Sheboygan and Two Rivers that have 2 wage schedules. However, Sheboygan has 2 tiers because the firefighters covered under the higher paid schedule is effective for firefighters who are paramedics because paramedic premium pay is built into that schedule. Two Rivers has 2 pay schedules because employees hired before a certain date receive retirement health insurance while firefighters hired after that date do not. In exchange, for not receiving retirement pay, those firefighters receive higher wages. Thus, those 2 comparables are clearly distinguishable from the A and B wage schedules here.

The City further argues that all of the firefighters in the City's Fire Department are paid well. However, that is not the issue; the dispute focuses on the fact that B firefighters are paid less than A firefighters for performing exactly the same jobs.

During the term of the labor agreement (2019-2021) and the 3 years thereafter, the City calculated that the Union's wage offer saves the City about \$552,000. However, for the next 4 years (2025-2028) the City projects that the Union's offer on wages would cost about \$73,000 more than the City's wage offer for 2025 and about \$169,000 more than the City's for each of the next 3 years (2026, 2027, 2028) for a total of about \$580,000 from 2025 through 2028.

The City contends that with such increased cost under the Union's offer for the years 2025-2028, it is tantamount to a large balloon payment on a mortgage. The City further points out that its goal is to operate all of the City's departments as efficiently and cost effectively as possible. The Union's offer on wages should therefore be rejected.

However, the Union emphasizes it is important to keep in mind that under the City's costing estimates, the Union's offer saves the City \$552,000 from 2019 through 2024 and then costs \$581,000 more from 2025 through 2028. Using a conservative 2% discount rate to determine present value the City comes out slightly ahead, the Union submits. The Union further responds that there are a number of errors in how the City costed the Union's offer. Among others, the Union submits that the City's costing includes an assumption that there would be 27 firefighters on the same step at the same time, which would never be the case. The Union's proposal also requires that there be more gradual step increases and that some firefighters move to the next step at the end of the year while others move for the full year; however, the City did not build those factors into its costing estimates. Moreover, the Union responds that many vacancies occur because of retirement or disability. The retiring or disabled firefighter would likely be an "A" employee. That vacancy would then be filled by a "B" employee at a lower pay rate than the "A" employee had, which was not considered in the City's costing estimates.

I find the Union's arguments with respect to costing are credible and persuasive. Based upon the foregoing findings, I conclude the Union's offer to integrate the B wage schedule into the A wage schedule and the across-the-board percentage is more appropriate. (To be clear, this also results in the \$1,200 across-the-board offer of the City to be moot.)

The City further proposes a flat \$5,000 for paramedics for each year of the contract. The City's position is that with a fixed dollar amount the lower paid employees would receive proportionately higher increases than the higher paid employees. The City's paramedic pay offer is a substantial change from the 7% with no demonstrated compelling need. Moreover, the City's paramedic \$5,000 offer would cost more than the Union's, as the Union points out. I therefore find the Union's offer on paramedic pay is more appropriate.

Considering Sec. 111.77 (6)(am) Wis. Stats., the pandemic has caused the economic condition of the City to be problematic. Because the Union's offer over the term of the contract apparently costs less than the City's, offer I find that the Union's offer on wages better addresses that criteria.

With respect to the criteria under Sec. 111.77(6)(bm), Wis. Stats., each of the criteria were considered regarding the wage offers; however, if the criteria were not specifically addressed above, I found that such criteria did not cause an appreciable difference in the findings.

Based on the above findings and that the wage issue predominates the other issues, I determine that the Union's final offer is more appropriate. Accordingly, In light of the foregoing, the arbitrator makes and issues the following

AWARD

The Union's offer is to be incorporated in the 2019-2021 collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agreed to remain unchanged.

Dated in Madison, Wisconsin, on February 11, 2021 by



Andrew M. Roberts

Local 368, IAFF Third Amended Final Offer

To

City of Manitowoc

June 10, 2020

Local 368 proposes the following amendments to the 2015-2018 Collective Bargaining Agreement Between it and the City of Manitowoc, Wisconsin:

1. Delete within article 9, Section 1, (a) Compensation Schedule A and Compensation Schedule B, and (b) EMS Certification Pay and replace with the following language and 8-step Monthly Wage Schedule:

(a)Base Salary. The pay of employees of the Fire Department and Rules for Administration shall be set forth in this agreement. The salaries listed are on a monthly basis to be paid bi-weekly. The rates of pay prescribed herein are based on full-time employment at normal working hours.

	<u>2018</u>		<u>1/1/2019</u>	<u>1/1/2020</u>	<u>1/1/2021</u>
			<u>1%</u>	<u>1.75%</u>	<u>1.75%</u>
Capt	6397	Capt	6461	6574	6689
Lt	6176	Lt	6238	6347	6458
MPO	5856	MPO	5915	6018	6123
A-E	5741	H	5798	5900	6003
		G	5512	5608	5707
		F	5226	5317	5411
E	5167	E	5167	5167	5115
D	4908	D	4908	4908	4819
C	4684	C	4684	4684	4523
B	4326	B	4326	4326	4227
A	3971	A	3971	4040	4111

All current A scale employees shall be considered firefighter "H," or of equal listed rank. Only "B" scale employees will be affected by the firefighter pay schedule adjustment. Those members shall be matched to the pay schedule appropriate for each members' listed years of service.

Any member that is currently paid more than the amount listed on the above pay schedule will continue to receive the higher rate subsequent to ratification or Arbitration Award. When the next wage step is reached by the affected member in 2021, the member will then receive the rate on the above pay schedule and thereafter continue on the new schedule.

Additionally, in order to maintain the *status quo* amend the following language to be consistent with the revised pay schedule and the EMS pay provisions of the current agreement.

(b) EMS Certification Pay. Effective as specified below, the monthly Paramedic and EMT pay shall be as follows:

All Wisconsin EMT-basics: 1.70% Firefighter H monthly base pay

All Wisconsin-Licensed EMT-IV Technician: 1.90% Firefighter H monthly base pay

All Wisconsin EMT-Intermediates: 3.75% Firefighter H monthly base pay

All Wisconsin-licensed Paramedics: 7.0% Firefighter H monthly base pay

2. Amend Article 4 Hours of Work, Section 1 Definition of a Workday, (c) Interpretation of Definition of Work Day with the addition of the following underlined language:

In recognition of the fact that firefighters must be physically and mentally capable of facing challenging situations throughout a 24-hour tour of duty, the parties agree to establish standard hours in which full duties will be performed, as well as standard hours during which employees are essentially on stand-by for calls.

On Monday through Saturday, the standard work day for training and other regular, routine duties shall commence at 0700 hours and

terminate at 1630 hours. The standard standby time shall begin 1630 hours.

A continuous lunch period of 60 minutes as near as possible to the period between 1130 and 1230 hours will be provided. Meal preparation time for lunch will not interfere with regular duties. This lunch period shall be followed by a 30-minute cleanup and/or break period unless there are calls for response. In the event of calls for response, a 60-minute lunch period will be granted as soon as possible after the call.

Employees will report promptly at 1300 hours for any scheduled duties. In the event travel is required to another location for duties, training, or assignments which begin at 1300 hours, such travel will be during the period from 1230 to 1300 hours.

Vehicle, equipment, and floor maintenance shall commence at 1630 hours each day as a standard. After this maintenance is complete, standard stand-by time will begin. Stand-by time is defined as that period during which employees are in a ready state for emergency and non-emergency calls. During this period of time, standard work assignments shall be limited to those maintenance duties which are essential for response to calls for service and station safety.

Work on Sundays and Holidays: Sundays and holidays (as designated in Article 10, Section 2,) shall consist, as a standard, of the duties necessary for efficient response to alarms, normal station housework, and vehicle equipment checks and maintenance. Standard company level training that would fall on a Sunday or a holiday would be completed on a day prior to or after the Sunday or holiday on which it might fall.

The city shall pay employees a half-time premium for all regular, routine duties that they are assigned to work outside of the standard work day.

3. The Union agrees to the City's proposal to delete *only* Section 4 Pager Recall of Article 5 Extra Hours as the Union agrees that the Pager Recall language is archaic:

~~The City may implement a pager recall system in order to summon firefighters to emergency calls in accordance with the department policy and operating procedures. The City shall consult with the~~

~~Union prior to promulgating such policies and procedures. Any participation by employees in a pager recall system shall be on a voluntary basis.~~

~~In the event the City fails to maintain a regular crew of eleven on-duty personnel, the Union shall have the right to unilaterally remove this section from the Labor Agreement by written notice to the City. In determining the "regular crew," all firefighters on-duty, including supervisory personnel, shall be included, provided, however, that clerical personnel and firefighters assigned to light-duty shall not be included.~~

1. Replace the language of Article 6 Promotions and Evaluations, Section 1 Promotions, (a) Promotional Procedure with the following language:

For promotions to all bargaining unit promoted positions, the most senior qualified existing employee will be promoted first; second most senior second; and so forth. Refusal to accept a promotion shall not disqualify an otherwise qualified candidate from future offerings.

Whenever a new bargaining unit job classification is created, the position(s) will be filled by the most senior qualified bargaining unit applicant before said position(s) are filled by a non-bargaining unit employee or applicant.

The Fire Chief shall have the discretion to determine the minimum qualifications of subordinate classifications. Minimum qualifications for each position shall not be arbitrary or capricious, shall be reasonably related to the work involved, shall be in writing, and copies of said qualifications shall be supplied to the Union within 30 days of being established or changed.

2. Amend Article 11 Parking with the addition of the following underlined language:

The City shall furnish 3 parking stalls in the block in which Station One is located and 4 parking stalls in the Tenth Street parking lot for use of on-duty Station One personnel covered by this contract.

3. Amend Article 18 Safety, Section 2 Firefighter Safety with the following underlined language to maintain the *status quo*:

In an effort to provide a minimum amount of safety to firefighters, the City shall comply with the first sentence of SPS 330.14(3)(a) and SPS 330.11(1)(a) as of January 1, 2020, and as they may be amended from time to time.

4. The Union agrees to delete only the following struck through provisions of Article 24 Health Program, Section 2 Firefighter Wellness-Fitness Initiative:

Section 2. Firefighter Wellness Fitness Initiative. The wellness fitness initiative applies for all Local 368 members' participation.

The purpose of this policy is to provide a physical wellness program for all of Local 368 members that enhances the employee's health, identifies health risk factors, coordinates an individual physical fitness program and provides advice for future development. The program also requires individualized physical fitness assessment counseling and provides access to fitness equipment while at work during certain hours identified here in and in SOG F 0027. Participation in the program is mandatory.

The program shall consist of ninety (90) minutes per day preferably between 0800 and 1000 hours for physical fitness activity, which includes a clean-up period.

The City shall support and maintain the program to the extent fiscally possible, including the cost of health risk assessment (HRA), medical examinations, physical fitness assessments, fitness equipment, fitness equipment upgrades and fitness equipment maintenance. The City shall review its ability to maintain the program on an annual basis.

~~—All medical examinations, from a provider of the employer's choice, and assessments will be done while on duty.~~ This program will entail stretching, weight lifting, and cardiovascular workout as coordinated to each individuals needs as determined by a peer fitness trainer.

~~All medical exams shall include at a minimum:~~

- ~~1. Physical exams~~
- ~~2. Medical history and or HRA~~
- ~~3. Blood test (SMAC 20)~~
- ~~4. Urinalysis~~
- ~~5. Cholesterol screening~~
- ~~6. EKG~~
- ~~7. Spirometry~~
- ~~8. Body composition exam~~
- ~~9. Hearing evaluation~~

- ~~10. Cancer screening~~
 - ~~a. Skin exam~~
 - ~~b. PSA~~
 - ~~c. Breast, Rectal and Testicular exam (option)~~
- ~~11. Vision screening~~
- ~~12. Referral recommendations as appropriate.~~

Physicals shall be done every other year and a City paid HRA done annually. Peer fitness trainers will evaluate each member annually and set up a specific individual workout plan . This evaluation will include a fitness evaluation and body composition exam. Each year members will participate in the City HRA. After receiving results of the City HRA the employee will set up a physical exam with agency City has contracted the physical exam with on the year of their physical. The employee is responsible to coordinate the setting up of this exam with their shift commander and have the exam listed on the department calendar. Physical exams will be scheduled with in 5 months of blood test received by City HRA.

~~A "Bruce Stress Test" (Treadmill or Bike) will be completed on the following basis:~~

- ~~Age 20 - 39 Every 5 years~~
- ~~Age 40 - 49 Every 3 years~~
- ~~Age 50 - 56 Every 2 years~~
- ~~➤ 56 Every year~~

Local 368 members shall be entitled to complete confidentiality with respect to any and all medical examinations and physical assessments conducted pursuant to this agreement. The City will not require Local 368 members to waive patient/physician confidentiality with respect to the results of any portion of the medical examination, their medical records or physical fitness assessment, except if evaluations are needed to determine fitness for duty and workers compensation purposes.

~~Blood drawn for analysis will not be used for drug screening.~~

There will be a Wellness Program Committee established. The Committee shall be comprised of one peer fitness trainer, 2 members of Local 368 and one member from management. This Committee will meet annually during the month of May. Neither the Committee nor its members have the authority to make decisions binding Local 368 or the City.

Unless and until the Employer and Local 368 agree upon uniform exercise attire, employees shall wear appropriate and respectable exercise attire while exercising.

Employees shall be permitted to wear their uniforms or turnout gear over exercise attire if they are responding to a call. Approved (by the Chief) workout attire may be purchased through the employee's clothing allowance.

5. The Union agrees to the City's proposed amendments listed as Item 1, Article 2, Section 3, Payroll deductions; Item 8, Article 9, Section 3, Clothing Allowance and Item 10, Article 10, Section 1(a), vacation leave.



VIA EMAIL to Peter G. Davis, WERC Staff Attorney, PeterG.Davis@wisconsin.gov

June 10, 2020

RE: City of Manitowoc and IAFF Local 368 Negotiations

Dear Mr. Davis,

The City makes the following offer as our revised final offer in these negotiations, having reviewed the Union's revised final offer and initial final offer with the Personnel Committee in preparation for submission. This offer is identical to our offer on May 25, 2020. The City proposes to continue all terms of the current collective bargaining agreement except as outlined below:

1. **Article 2, Section 3, Payroll Deductions.** Revise to read as follows, consistent with the City's first proposal:

~~When authorized in writing by the employee, the City shall deduct payments to the Riverwood Maritime Credit Union as indicated in said authorization form which authorization form shall comply with the provisions of Section 241.09, Wis. Stats., and applicable Wisconsin law for dues from the employee's pay.~~

2. **Article 4, Section 4(a), Light Duty.** Revise to read as follows, consistent with the City's first proposal:

~~Light duty assignments shall include duties consistent with those normally performed by firefighters. Attendance at training sessions shall thus not be preempted by other assigned duties. Up to four employees [duty related and non duty related] will be assigned to light duty on a 24 hour work day, with one on each shift and one filling the off days of the other light duty firefighters on various shifts. When more than four employees are on light duty, they will be assigned to an 8 hour day, 40 hour work week. 40 hour light duty firefighters will be allowed to be off during their scheduled vacation and holiday periods and for previously-scheduled trades. Light duty shall occur Monday- Friday as a 40 hour work week at the Chief's discretion with no change to salary.~~

3. **Article 4, Section 4(c), Light Duty – Non-Duty Related.** Delete entire section from contract, consistent with the City's first proposal.

4. **Article 6, Section 1(a), Promotional Procedure.** Revise to read as follows, consistent with the City's first proposal:

~~The promotional procedure shall include the following components and values:~~

~~Written test based on MFD procedures and training 35%~~

~~Oral interview and exercises 30%~~

~~Chief's evaluation of ability and past performance 35%~~

~~A passing score shall be 80% overall, with a minimum of 70% on each section.~~

The promotional procedure shall be developed by management, with seniority as one of the scoring factors. Management will clearly communicate the subject matter of exams and the scoring process so employees are aware of how they will be evaluated.

5. **Article 6, Section 1(c), Seniority for Promotions.** Revise to read as follows, consistent with the City's first proposal:

~~The senior qualified candidate shall be promoted.~~ For the purpose of promotions, seniority shall be based upon the date of hire with the department. ~~For candidates hired on the same date, the candidate with the highest score shall be promoted.~~

6. **Article 9, Section 1(a), Compensation Schedule – Base Salary:** Revise to read as follows, consistent with the City's first proposal and reflecting a \$1,000/year salary increase for all employees:

Compensation Schedule A

The following monthly pay scale is for employees hired before August 1, 2009:

Rank	Current Pay	Effective 1/1/2019	Effective 1/1/2020	Effective 1/1/2021
Captain	\$6,397	\$6,497	\$6,597	\$6,697
Lieutenant	\$6,176	\$6,276	\$6,376	\$6,476
Motor Pump Operator	\$5,856	\$5,956	\$6,056	\$6,156
Firefighter E	\$5,741	\$5,841	\$5,941	\$6,041
Firefighter D	\$5,618	\$5,718	\$5,818	\$5,918
Firefighter C	\$5,499	\$5,599	\$5,699	\$5,799
Firefighter B	\$5,367	\$5,467	\$5,567	\$5,667
Firefighter A	\$4,547	\$4,647	\$4,747	\$4,847

Compensation Schedule B

The following monthly pay scale is for employees hired on or after August 1, 2009:

Rank	Current Pay	Effective 1/1/2019	Effective 1/1/2020	Effective 1/1/2021
Captain	\$5,880	\$5,980	\$6,080	\$6,180
Lieutenant	\$5,558	\$5,658	\$5,758	\$5,858
Motor Pump Operator	\$5,272	\$5,372	\$5,472	\$5,572
Firefighter E	\$5,167	\$5,267	\$5,367	\$5,467
Firefighter D	\$4,908	\$5,008	\$5,108	\$5,208
Firefighter C	\$4,684	\$4,784	\$4,884	\$4,984
Firefighter B	\$4,326	\$4,426	\$4,526	\$4,626
Firefighter A	\$3,971	\$4,071	\$4,171	\$4,271

7. **Article 9, Section 1(b), Compensation Schedule – EMS Certification Pay.** Consistent with the prior proposal, the City proposes offering \$5,000 annually as a lump sum payment during the contract for those firefighters who hold a paramedic license, rather than a percentage of wages.

8. **Article 9, Section 3, Clothing Allowance.** Consistent with the prior proposal, the City proposes amending the last sentence to read as follows:

The City shall furnish all firefighting protective gear required by ~~Comm 30~~ Administrative Code ~~as may be amended~~.

9. **Article 9, Section 6, Continuing Education.** Revise to read as follows, consistent with the City's first proposal:

The City of Manitowoc shall reimburse all employees covered by this Agreement for educational credits earned ~~in the following manner;~~

~~Beginning January 1, 1975, for every credit or its equivalent completed with a passing grade in a job related course (not including any EMT or Paramedic courses, except courses which have been completed and approved before August 1, 1990), offered at the Lakeshore Technical College, a University of Wisconsin Center, or Silver Lake College, or any other school or course} approved by the Fire Chief, the City of Manitowoc agrees to add at the rate of \$1.00 per month for the successful completion of any credit to the salary of the person earning the credit up to a maximum of \$6.00 in any twelve month period and up to a total maximum of \$64.00 per month.~~

All credits and courses must be approved by the Fire Chief. An employee must attend at least seventy five (75%) of the classes in order to obtain this payment or, in the case of a distance learning course, meet the requirements of the instructor. This is in addition to any other salary or benefits, for which the employee is entitled to receive.

A class shall be defined as being at least 50 minutes of classroom time. A two hour session would be computed as two classes, a three hour session would be three classes, etc.

~~Credits earned in 1974 may be compensated for. Payment for credits earned in 1975 and thereafter shall commence with the month of completion, provided, however, that no educational credit payments shall be paid retroactive for more than three months prior to the time they are reported to the Fire Chief. Credits carried beyond the six (6) per year may be submitted at a later date as long as it does not exceed six (6) per year. The Chief will allow credits for classes taken prior to employment at the Manitowoc Fire Department, provided he/she approves the classes.~~

(b) Tuition and Books. ~~The City shall prepay all tuition, books and fees for any required courses. The City shall also prepay all tuition, books and fees for courses costing \$100 or more. Those courses costing less than \$100 will be paid by the employee and be reimbursed upon satisfactory completion of the course. In the event prepayment is made and the employee does not satisfactorily complete the course, the employee shall be required to reimburse the City. The City may deduct any such required prepayment from the employee's paychecks in increments of up to \$50 per paycheck. As used herein, the term "satisfactory completion" shall mean a grade of C or better for courses where letter grades are given. Other courses shall be regarded as satisfactorily completed if the employee passes the course. Employees governed by this contract are eligible for Tuition Reimbursement under the City's Tuition Reimbursement Policy.~~

10. Article 10, Section 1(a), vacation leave. The City proposes striking the outdated language consistent with our first proposal:

Employees of the Fire Department shall be granted an annual paid vacation leave, which must be taken each calendar year, as follows:

After the first year of service:	5 work days
After two years of service:	8 work days
After six years of service:	9 work days
After ten years of service:	11 work days
After fifteen years of service:	12 work days

~~After twenty years of service: 13 work days~~
~~After twenty five years of service: 14 work days~~

~~Starting on 1/1/18 the Vacation Leave will be as follows:~~

~~After the first year of service: 6 work days~~
~~After two years of service: 9 work days~~
~~After six years of service: 10 work days~~
~~After ten years of service: 12 work days~~
~~After fifteen years of service: 13 work days~~
~~After twenty years of service: 14 work days~~
~~After twenty-five years of service: 15 work days~~

- 11. Article 11, Parking.** The City is in agreement with the Union proposal to add the language clarifying that these spaces are for on-duty Station One personnel.
- 12. Article 20, Section 2(b), Holiday Sell-back.** The City proposes striking the language that was removed with the prior CBA and adding a provision to note that change, consistent with the first proposal and as follows:

~~All employees have the option of returning to the City any or all of the holidays specified above up to the approved dollar amount of \$105,000 in 2016, \$105,000 in 2017, and \$0 in 2018. No funds will be provided in 2018 or any year thereafter.~~

~~Employees will be given this option allocated by seniority. The first four days will be allocated by seniority amongst the membership, with the most senior member receiving additional days to sell back as funds remain. As an example, if each member has been given the opportunity to sell back days, and funds remain, the most senior member could then choose how many additional whole days (24 hours) he/she wishes to sell. If the most senior member declines additional days, the choice would move to the next most senior member and so on until all remaining funds are exhausted, no overages will be allowed and any unused funds will be returned to the City. The union leadership must notify the Chief how many days each member will be selling, up to the allocated fund amount, in writing prior to November 1 of the previous year. The employee shall be compensated in the following manner:~~

~~1. Pay equal to the employee's hourly rate times 24 for each holiday returned. This amount will be added to the second pay check in January.~~

~~2. For purposes of this sell back, holidays shall be prorated beginning on the date that the new employee begins working a 56-hour work week schedule. Payment for~~

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APPENDIX B
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~~days sold back shall be added to the second pay check after the new employee begins a 56 hour work week. This provision was removed in the 2015-2018 CBA.~~

- 13. Article 24, Section 1, Physical Examinations:** Consistent with the initial proposal, the City proposes striking this section in entirety and replacing with the following section header:

The City will offer a voluntary firefighter fitness program, developed with union input, for all members of the department, designed to help members maintain fit-for-duty standards and promote general health and wellness.

The Chief will establish fit-for-duty standards in consultation with the City's occupational health provider as part of department operating procedures.

- 14. Article 24, Section 2, Firefighter Wellness Initiative:** The City is in agreement with the Union proposal and looks forward to working with them to implement a more effective program.

- 15. Article 26, Linen and Laundering:** Consistent with the initial proposal, the City proposes amending this section to read as follows:

The City will provide employees with two sets of sheets and two bath towels for use while on duty, and provide washers and dryers in good working order at each station. Local 368 will launder linens as needed while off duty.

~~Manitowoc Fire Department agrees to supply two fitted bed sheets, two flat sheets, two pillow cases, and two bath towels to each member of Local 368 for use while on duty.~~

~~Local 368 agrees that its members shall wash and dry the above mentioned bed linen and towels as needed while off duty.~~

~~Manitowoc Fire Department agrees to replace above mentioned bed linen and towels when they have become worn out.~~

~~Local 368 agrees that its members shall replace any above mentioned items lost or damaged by any of its members, ordinary wear and tear excepted. Manitowoc Fire Department agrees that Local 368 members may use available individual clothing allowance funds to replace lost or damaged items, with the limit being four sheets (fitted or flat,) two towels, and two pillow cases per calendar year.~~

~~Local 368 members agree to wash and dry one load of kitchen towels and wash cloths per week if the Department chooses to install a washer and dryer.~~

~~Manitowoc Fire Department agrees that on-duty Local 368 members shall not be required to wash and dry bed linen or towels other than kitchen towels, kitchen wash cloths, and assorted drying rags used in the course of drying vehicles. Specifically, no ambulance linen shall be washed by Local 368 members.~~

~~If a Local 368 member wishes to wash the bed linen and towels issued to him/her at the fire station which he/she is assigned to, and a washer and dryer is present at that station, he/she shall be allowed to do so. Likewise, if clothing of on-duty personnel becomes wet due to weather or other factors, it shall be permissible for such clothing to be washed and/or dried to make it suitable for use. However, such washing and drying of bed linen, towels, and other clothing of on-duty personnel shall not interfere with other duties at any time. Use of the washer and dryer is only for these specified purposes.~~

16. Article 27, Duration and Negotiation Time Table. The City proposes that this contract run for three years, from 2019-2021.

The City of Manitowoc reserves the right to amend all aspects of this proposal and remains open to discussing the contract with the union. The City would additionally note for the benefit of the WERC that the City has enacted a spending freeze due to the COVID-19 pandemic.

Respectfully submitted,

CITY OF MANITOWOC

Kathleen M. McDaniel, City Attorney

KMM:kmm

Copies emailed to: Jessie Lillibridge, Human Resources Director
Todd Blaser, Fire Chief
Alderperson Scott McMeans
Attorney Timothy Hawks
Attorney Jason Perkiser