STATE OF WISCONSIN
BEFORE ARBITRATOR ANDREW ROBERTS

In the Matter of the Petition of

LOCAL 368, INTERNATIONAL ASSOCIATION

OF FIRE FIGHTERS, AFL-CIO

For Final and Binding Arbitration Involving Public Safety Employees in the Employ of

CITY OF MANITOWOC, WISCONSIN

Case ID: 285.0015
Case Type: MIA

POST HEARING REPLY BRIEF OF LOCAL 368, IAFF

January 7, 2021

Respectfully submitted,

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I. REPLY TO THE CITY'S INTRODUCTION

The opening line sets the tone for the rest of the City's brief. It claims to provide "the highest level of fire and emergency medical services … while being fiscally efficient … while providing competitive wages." The level of services provided by the City is only the same level that is provided by all of the other putative comparables, not the highest, the same. Wait, there are two exceptions, Appleton and the consolidated Neenah-Menasha Fire Departments. They don't provide the same level of service; they provide a lower level of service -- EMT Basic. A useful comparison for the City in this case? No, even their firefighters enjoy better wages, benefits and overall compensation.

As Local 368 will show, the City's written argument falsely reports material facts and cherry picks data from CBA's and arbitration decisions' rationales to lead to false conclusions. The City repeats them as if by doing so, it will somehow make false statements true, or dissembled representations, reality. The rebuttal beings here.

The City's claim that its firefighter wages are "highly competitive" requires that it distract the arbitrator's attention from the total compensation paid to the immediately proximate departments compared to that it pays to its Schedule B firefighters. Its claim becomes absurd when compared to the total compensation paid to the units that the parties historically considered as secondary comparables.

While some poetic license is understandable in written argument, the City's offer doesn't "respect the interest of fiscal stability" if it has to re-train 40% of the workforce every ten years because its employees have left for greener pastures. The cost to Manitowoc's citizens resulting

from the loss of skills that can only be acquired by experience is not akin to a 30-year mortgage when the value of the house is in decline.

While the Union will elaborate on this point below -- the labor market is a particularly important criterion for determining what units should be in the comparable pool. Manitowoc's firefighters are not leaving to take probationary firefighting positions in Stevens Point or West Bend or Wausau, they have left to take positions in the Fox River Valley Fire Departments. They can drive to those jobs from their homes in the area of Manitowoc. (These are 24 hour-shifts worked once in every three days on the average.) That is one reason why the parties have traditionally treated these units as their secondary comparables.

As the Local 368 will show below -- a promotion system that is a function entirely of the Chief's discretion is an attractive nuisance for favoritism, nepotism and political patronage, not:

> "a forward-thinking professional development approach designed to provide professional opportunities for all bargaining unit members and to obliterate an archaic system that only benefits the most-senior members."

Also as explained in the principal brief and repeated below, there is no "explosive balloon payment in 2025." For the most part, Schedule A employees in the higher ranks or at the top step of the firefighter rank will be replaced by Schedule B employees who will be paid slightly less than the Schedule A employee would have been paid if that schedule had increased by the rate of comparable bargaining unit percentage increases. For budget purposes, it will be a revenue neutral personnel transaction. The Union's proposal cannot, repeat for emphasis, cannot "wreak havoc on the City's fastidiously crafted, budget." Even in 2025, it will decrease the City's budget as the replacement employee will cost the City the same, not less, than the employee being replaced.

Nor is there an "obnoxious overtime provision mandating the City pay overtime rates for all regular duties performed outside the standard duty day." The Chief admitted this under oath, so what is the City doing arguing it still? It is argument in desperation, of both fact and logic.

The Union has offered a "true quid pro quo" as it proposed a percentage increase that is significantly less than the comparables over the three-year life of this contract -- a saving that the City will realize, and Schedule A employees will suffer, for years to come. It is a mistake for the City to imply that this comes without a price to the Union -- slightly less than 60% of its members, the most senior and most highly paid, had to be willing to make this sacrifice and support the Union's final offer. In their minds, we can reasonably assume that it is a matter of economic justice, as they sacrifice financially to make it happen.

The City claims that the Union offer fails under every dispositive statutory factor. We show now why that is untrue.

II. REPLY TO THE CITY'S STATEMENT OF DISPUTED ISSUES

The City refers the arbitrator to its Exhibit 1 to identify the issues in disputed. Unfortunately, Exhibit 1 systematically understates the scope of its proposals. For example, in Exhibit 1 the City states with regard to the issue involving education reimbursement that it "desires to eliminate language and move employees to the City's Tuition Reimbursement Policy."

For convenience sake, we reprint the City's Final Offer Item 9 to illustrate exactly what it proposes simply with the words "…to eliminate language …." *See Attachment A.* The City makes a similar understatement in Exhibit 1 of the "Linen and Laundering" Issue.

The City incorrectly states that there are only two primary issues in dispute. Not surprisingly, it identifies only two union proposals and no City proposal as primary. The Union considers its offer to unify the pay schedule as primary. Contrary to the City's characterization, the Union's wage proposal is not "radical." Perhaps the City believes that paying employees who perform the same duties the same pay, is radical. Perhaps the City believes that paying its employees about the average rate of any firefighter within 60 miles, is radical. Or, maybe it believes an overall percentage increase in its payroll that is less than its comparables during the life of this contract is radical.

For the reasons explained in its principal brief, the Union also discounts the City's characterization of its standard work day, impact proposal as radical. (Union Br. at pp. 25-26) In a nutshell they are: the duty-day concept is commonly embodied in firefighter contracts statewide; 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 City attacked the duty-day language in the existing agreement claiming it permissive; the Union disagreed with the City, but elected to propose "impact" language over risk litigation. In fact, the City can avoid any expense by not assigning duties previously deemed by the parties' to be "regular, routine duties." In that case, it is no different position than under the City's proposal to continue status quo.

What the City fails to appreciate or simply refuses to address is the consequence of its decision to declare the current language as a permissive subject of bargaining. It is reasonable for the Union to be concerned that if the City's "status quo" proposal is adopted in this case it will have a sort of Damocles' sword hanging over future negotiations, as the City could play the

card again anytime it wanted. It proved to be an effective tactic -- delaying a new contract and the increases that it will provide and imposing significant legal expenses upon the Union members' treasury. The City might as well be arguing now that, "We didn't really mean it when we declared the current language to be a permissive subject of bargaining. Just kidding."

So, the Union's work day proposal is reasonable not radical. It is a common sensical response to the radical behavior of the City.

The City continues to interpose argument rather than accurate description of issues in dispute in this section of its written argument. It asserts that its flat dollar increase helps the least senior employees. That is a truism. And, an admission -- the newer employees need attention, just not this sort of attention as it provides too little meaningful relief for them while simultaneously compounding their financial. What financial analyst would advise a client to take a $300 increase in 2019, in exchange for a loss of $600 or more for every year the client is at the top step of the firefighter schedule or any promoted rank -- easily a period of 25 years. There is no logic to City's statements like this. The City exaggerates because it has no other choice.

It is the City's offer of a flat dollar increase that is radical. It has no comparable. Neither internal, nor external. It solves no problem. The Union's wage proposal creates a vision of financial future that will give firefighters a home in Manitowoc. It will still be less than lag with the Fox River Valley comparables, but the incentive to leave will be offset by the cost, personal and actual, to do so. The City's offer to increase the top step firefighter salary to

$63,204, lags behind the primary comparables total compensation[1] by $8,861 and behind the historic secondary comparables by $7,430.[2] (Union Ex. B.23.) The Union's wage proposal reduces the lag among the historic secondary comparables by $1,058. *Id.* These same arguments also serve as the Union's reply to the City's claim that is $5,000 fixed dollar payment for paramedic services.

For good measure the City continues to dissemble in this section denominated as "Issues in Dispute" as it next turns to the difference between the parties' positions on the standard work day. But rather than a blunt statement of the difference between the proposals, it writes that it "seeks to maintain the status quo by having employees earn their normal hourly wage for all work performed during the employee's normal shift." What?! The status quo **prohibits** the City from assigning "all work performed" during the employee's normal shift beyond specified hours. Is it possible the City doesn't even understand the contract much less the consequences of its proposal? Given the experience of all of its legal representatives that seems unlikely.

But the dissembling doesn't stop. The last paragraph of this section ostensibly attempts to set out the differences between the City's and Union's proposals related to the promotional process. The City writes that it:

> [S]eeks to create promotional opportunities for all qualified bargaining unit members rather than remain entrenched in an antiquated system that only benefits and encourages development of the most-senior employees.

[1] The union emphasizes the importance of taking total direct compensation as the most important comparative datum. This, because the City routinely cherry picked its data, suing longevity in some case when it aided its argument while ignoring it when it weakened its argument; using paramedic pay similarly.

[2] See e.g., Union Ex. B.23. demonstrating the 2019 top B scale wage under the City's proposal is $63,204 in that same year the average of the primary comparables (Two Rivers and Sheboygan) $72,065 leaving the lag as demonstrated. Even when adding in the paramedic premium pay the lag still remains $3,861 compared to the primary external comparables.

Seriously? The former contract language prescribes a process that all applicants must pursue to qualify for promotion including written and oral examination and individual evaluation by the Chief (or his designee) and it prescribes the minimum passing grade required by each employee to be promoted, then and only then, did the contract specify that seniority was the determining factor among the remaining competitors for the promotion. The language quoted above is wrong and inflammatory. It reads more like a political essay, than the brief carefully adherent to the facts and the contract or proposed contract.

More ironically, the Union did not propose a change to the CBA's promotional language. The City's desperate effort to avoid the Union's impact language alternative to the City's demand for a declaratory ruling on a matter (which as far as we can tell has no support of need in the record, or in reality as the most senior applicant for promotion is not automatically granted the promotion) is what it complains about here. Also, ironically, the Union's proposal provides the City with greater discretion than the current contract language. The Union's proposal allows the Chief to set qualifications, within reason, that would depart from the past contract language.

But the obligation to reply the City's argument in this section is not complete. The City drops in a sentence in the conclusion of this section intended to identify the issues between the parties that it:

> "…has also made other proposals to eliminate archaic language involving laundry, continuing education, and physical examinations, and to establish a commonality of benefits consistently …"

Right. The other so-called "archaic" benefits the City proposes to eliminate include

- 24-hour light duty assignment for duty injuries
- 40-hour light duty assignment of non-duty injuries
- detailed physical exam and physical fitness provisions
- detailed continuing education support benefits

- significant, detailed provisions on sanitary practices involving potentially infectious linens.

These are all City proposals to eliminate benefits. On their face they are not minor. It is reasonable to assume that their inclusion in the CBA had a price. To claim that they are archaic benefits is so ludicrous that it put into question the City's good faith. The notion that they don't deserve careful elucidation in the City's explanation of the issues in dispute raises the same question. They are not to be ignored. The City is not entitled to win them without defending its demands.

III. REPLY TO THE CITY'S ANALYSIS OF THE APPLICABLE STATUTORY CRITERIA

A. The determinative criterion in this case will be that of § 111.77(6)(bm)(4), "comparison to others."

The Union submits that the wage, hour and employment conditions comparability criterion is determinative in this case. The City acknowledges that it deserves "major consideration." (City Br., at 5.) The Union disputes the City's assertion that "major consideration must be given to the § 111.77(6)(bm)(3) factor addressing the interests and welfare of the public…." (*Id*.) A wholistic view of the City's argument boils down its argument to two major points: (1) The Union's offer to convert a former contract provision that prohibited assignment of regular, routine duties outside a standard work day, with a provision that permitted such assignments subject to payment of a modest premium - imposed an unacceptable cost to the City. The Union proved, through the Chief's own testimony, that this argument is false. (Tr. at pp. 459-466). (2) Though admitting that the City "demonstrated the 'financial ability' ability to

pay" during term of the disputed contract[3], and after repeating its self-adulatory praise for financial prudence (subsequent to its fiscal malfeasance), the City makes its keystone argument:

> [T]he Union proposals disrupt these [fiscally efficient] efforts and undermine the interests and welfare of the public and create a significant financial challenge by 2025.

Gilding the lily, the City goes on to characterize the Union's offer as "an unacceptable and destructive mortgage balloon explosion in 2025;" a "ticking time-bomb;" and a "financial detonation." (City Br., at 5 and 10) It then directs readers to a subsequent section of its Brief. The Union defers its reply to these gross exaggerations to its response below to that section of the City's brief.

IV. REPLY TO THE CITY'S PROPOSED POOL OF COMPARABLES

A. The parties agreed to an external comparable pool in advance of the hearing.

The parties reached an agreement as to which communities would serve as external comparables at a meeting on August 28, 2018. (Tr. at p. 100). 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. (Union Ex. G. 2.). Those communities are Sheboygan, Neenah-Menasha, Green Bay, Two Rivers, Appleton, Fond du Lac, Oshkosh, Kaukauna, and De Pere. *Id*. 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. (Tr. At p. 100 (referring to Union Ex. G.4.)).

[3] The City writes that its proposal is more expensive than the Union's during the proposed contract (City Br., at 5); whereas the Union offered an Exhibit to the contrary (U Ex. E 2, last two pages). They agree, however, that the differences are de minims. In most cases that would take the wage issue out of play.

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-years 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)[4] appear time and again. *See City of Manitowoc*, Dec. No. 12572-A (Hales, 1974); City of Manitowoc, Dec. No. 14793-A (Haferbecker, 1977); *City of Manitowoc*, Dec. No. 16301-A (Bellman, 1979); *City of Manitowoc*, Dec. No. 17626-A (Kerkman, 1980); *City of Manitowoc*, Dec. No. 17643-A (Stern, 1981); *City of Manitowoc*, Dec. No. 26003-A (Kessler, 1989); *City of Manitowoc*, Dec. No. 28799-A (Roberts, 1997); *City of Manitowoc*, Dec. No. 28785-A (Michelstetter, 1997).

B. A historically consistent pool of comparable communities exists – it does not include communities that are over 120 miles from Manitowoc.

Arbitrator Bellman first answered the question of which external comparables where appropriate for the Firefighters' Union in 1979. See Dec. No. 16301-A at p. 3.

> 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.

Id. The same reasoning Arbitrator Bellman applied then holds true today—along with geographic proximity, the City of Manitowoc remains in the middle of the pack now[5] with Green

[4] In fact, that is the very labor market that the City identifies with in its Handbook—explained in further detail below. (Union Ex. B.19).

[5] Of note, the City's population at the last Census was 33,741. The City relied on a 2019 estimate, which the Census Bureau notes may have sampling errors, to demonstrate a population of 32,579. (City Ex. 16.A.3; and see

Bay being the most populous and Two Rivers being the smallest. (City Ex. 16.A.3.; City Ex. 16.B. 3.).

In 1997, Arbitrator Michelstetter provided "that Two Rivers and Sheboygan constitute the primary comparable group for the Manitowoc fire unit." See Dec. No. 28785-A at p. 12. 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. *Id*. at p. 5. 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[6]—thus, leaving intact the units selected by Arbitrator Bellman.

C. A clear pattern emerges when examining the arbitral history between the City and the represented units of its employees, and that pattern does not include the cherry-picked communities that the City now tries to put forth.

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. (City Br. at p. 11). But this seems to be a thinly vailed 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.

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https://www.census.gov/quickfacts/fact/map/manitowoccitywisconsin,US/PST045219). Even taking the City's estimate as accurate, we see that the population of Manitowoc has been stable and not "shrinking" to the point of economic uncertainty as the City would like us to believe.

[6] *Id*. at p. 13.

First, with regard to interest arbitrations involving the City of Manitowoc there exists a history of consistently selecting other public-sector employers within the County (for example, Two Rivers, Manitowoc Sheriff's Dept., etc.) as the primary comparables. *See City of Manitowoc*, Dec. No. 12572-A (Hales, 1974); *City of Manitowoc*, Dec. No. 14793-A (Haferbecker, 1977); *City of Manitowoc*, Dec. No. 16301-A (Bellman, 1979); *City of Manitowoc*, Dec. No. 17626-A (Kerkman, 1980); *City of Manitowoc*, Dec. No. 17643-A (Stern, 1981); *City of Manitowoc*, Dec. No. 26003-A (Kessler, 1989); *City of Manitowoc*, Dec. No. 28799-A (Roberts, 1997); *City of Manitowoc*, Dec. No. 28785-A (Michelstetter, 1997). Along this vein, as the County does not provide fire protection, Sheboygan emerged as the fire unit's other primary comparable community; and Sheboygan along with Fond du Lac are consistently included as comparables for the law enforcement unit as well. See e.g., Dec. No. 26003-A at pp. 7-9; and see Dec. No. 28799-A at p. 14.

Second, never have communities located well over one hundred miles from Manitowoc been included as part of an appropriate pool of external comparable communities.[7] Not Stevens Point, not 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.[8] Instead, arbitrators have consistently selected Fox River Valley communities and those communities in closer

[7] The City proposed Wausau as a "secondary comparable even though it is somewhat distant from Manitowoc" but Arbitrator Michelstetter did not look to that community to reach the decision. *See City of Manitowoc*, Dec. No. 28785-A at p. 6 and p. 13. The City admits it had to look to Wausau (137 miles), Wisconsin Rapids (122 miles), and Stevens Point (110 miles) to try to justify its offer. (City Br. at p. 17)

[8] A study of the history of interest awards involving the City of Manitowoc revealed eight decisions; all of which are strikingly similar with regard to the external communities used as comparable support. *See City of Manitowoc*, Dec. No. 12572-A (Hales, 1974); City of Manitowoc, Dec. No. 14793-A (Haferbecker, 1977); *City of Manitowoc*, Dec. No. 16301-A (Bellman, 1979); *City of Manitowoc*, Dec. No. 17626-A (Kerkman, 1980); *City of Manitowoc*, Dec. No. 17643-A (Stern, 1981); *City of Manitowoc*, Dec. No. 26003-A (Kessler, 1989); *City of Manitowoc*, Dec. No. 28799-A (Roberts, 1997); *City of Manitowoc*, Dec. No. 28785-A (Michelstetter, 1997).

geographic proximity to Manitowoc such as Appleton, Fond du Lac, Neenah/Menasha, and Oshkosh. *See e.g., City of Manitowoc,* Dec. No. 17643-A (Stern, 1981) at p. 2.

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 Dec. No. 28799-A at p. 14. 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. See Dec. No. 16301-A at p. 3. 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." Dec. No. 28799-A at p. 14.

D. Just as the City cherry-picked comparable communities without rationale it cites precedent but fails to apply the reasoning in support of its desire to change the external comparables.

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" – at present the City failed to meet its burden. *See City of Rice Lake,* Dec. No. 31750-A (Baron, 2007) at p. 10.

In support of its position, the City's numerous parenthetical explanations fail to provide vital information and reasoning. For example, the City cites to *City of Eau Claire,* Dec. No. 34986-A (Mawhinney, 2015) to minimize the importance of geographic proximity, but the City failed to provide the critically important fact that there did not exist local precedent in that case. *Id*. at p. 11. Additionally, and just as important to the reasoning in *Eau Claire,* the parties agreed to fifteen comparable communities during bargaining some of which were more geographically distant to communities that the union sought to include thereby neutering the employer's

objection based on proximity. *Id*. at pp. 11- 13. At best, the City erroneously reads the decision too broadly, but it does so at its peril:

> The factor of the labor market in terms of proximity is not determinative **here** because the parties themselves have disregarded it by their own list of comparables, ranging from Superior in the north to Beloit in the south, and Manitowoc and Sheboygan in the east. The City acknowledges that it has no recruitment or retention problems, and the parties have agreed in the past to look at a state-wide pool of comparables.

Id. at p. 12 (emphasis added). Arbitrator Mawhinney's use of the word "here" is telling. Geographic proximity was not determinative under **those** facts where the parties themselves had disregarded it—the same does not hold true in the present matter because the same facts do not exist.

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 *Sheboygan County*, Dec. No. 32720-A (Hempe, 2009). However, the City did not disclose in its Brief the fact that in *Sheboygan* there lacked close comparable units and adding the City of Sheboygan Police Department filled "the **need** for a 'close-to-home' comparable whose employees perform services similar to those of the Sheboygan County deputies." Dec. No. 32720-A at p. 19 (emphasis supplied). 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 doesn't exist.

In still another example of the City failing to include important facts, it cites to *Village of Rothschild*, Dec. No. 33073-A (Roberts, 2011).[9] Once more, and critically important, that was

[9] Interestingly, the City cited to the Union's position section of the decision to provide "(refusing to include Marshfield and Stevens Point from Rothchild's external comparable pool, because Marshfield and Stevens Point had populations more than three times larger than Rothschild, respectively, and had equalized values 'much greater' than

the first time the parties had gone to interest arbitration—the City skipped that in its parenthetical recounting. See Dec. No. 33073-A at p. 34. Moreover, in *Rothchild,* the parties concurred "on the inclusion of: Wausau, Weston, Schofield, Kronenwetter, Mosinee, and Merrill as external comparables." *Id*. All of these communities were well within the same metro region while varying in size and composition to the Village of Rothschild. *Id*. Arbitrator Roberts declined to include communities that were both geographically distant and lacked reasonably similar characteristics but included dissimilar communities within the region such as Marathon County with its much greater population and equalized value than those of Rothschild. *Id* at pp. 34-35.

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." (City Br. at p. 43). 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 needs to 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." (Union Ex. B.19 at p. 33). That City chosen labor market is none other than the "Wisconsin Fox Valley-Northeast Region." *Id*. When

Rothchild's, preventing them from having "reasonably similar characteristics so as to be considered appropriate external comparables.)" (City Br. at p. 23).

adjusting wages or setting pay rates for its employees the City doesn't 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.[10] Indeed, the handbook provides that:

> [] the Market Rate of the compensation plan will be adjusted accordingly based on the actual increase of the previous year for Exempt and Non-exempt employees in the Wisconsin Fox Valley-Northeast Region. These amounts will be reported to the Personnel Committee annually.

Id. Of course, the Fox Valley provides the appropriate pool because it is geographically close to Manitowoc and generally recruits from the same labor market. *See Village of West Milwaukee*, Dec. No. 30280-B (Roberts, 2002) at p. 23.

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.[11] (City Br. at p. 19). 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.

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[10] For reiteration, 21 Firefighters left the department to work for other fire departments (most within the Wisconsin Northeast Region). (Union Ex. B.21.). Likely influencing the City's initial top bargaining priority of moving all employees to Schedule A to remove disparity between Schedule A and Schedule B

[11] The City admits "Neither Director Lillibridge nor any other member of the City's bargaining team took any of these steps **after creating the list of communities** contained in Union Ex. G.3." City Brief at p. 19 (emphasis provided). **Read that sentence again; the City created the list, and what names are at the top? "Appleton, De Pere, Fond du Lac, Green Bay . . .." The very communities it suddenly wishes not to be compared to**.

V. REPLY TO THE CITY'S ANALYSIS OF THE OFFERS

A. Wages

The City first reiterates[12] its summary of the parties' wage proposals. The union replies here only to arguments that the City hasn't previously made.

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[13], or the going rate for the traditional comparables -- 2.25%.[14]

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. Local 368, like many other unions negotiated for the indexing of the premium light of employer resistance 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 bottom-line -- the Union's proposal

[12] This is largely redundant. See, City Brief at 24-25. The union replies here only to assertions previously made.
[13] City Ex. 6 A, Law Enforcement CBA 2018-2020, Appendix A Pay Rate, p. 24.
[14] U Ex. B 23 - 2019 data.

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 next writes that its offer:

- Maintains the City's positioning within external comparables, and
- Provides firefighters with a wage increase that is more akin to the internal comparable wage increases since 2009.

Whereas it claims that the Union's offer:

- Although lesser in initial base wage increases, provides the bargaining unit with substantial wage increases via step increases,
- Sharply moves the City's entire bargaining to the top of external comparables and
- Provides firefighters 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.

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.

The City's repeated reliance on City Ex. 7 (A) is emblematic of this error. 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.

Local 386 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 B top-stepper. 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 Union lays this analysis out in Table 4, below.

1. Interests and Welfare of the Public

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[15], it

[15] The mismanagement was the City's responsibility. Recovery from it was attributable at least in part to concessions made by the Union between 2009 and 2012. There is a very human frustration on the Union's part that no good deed should go unpunished.

finally gets down to its most-important argument when it asserts that the Union's proposal "misses the true financial impact:" The City writes that:

> 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 (City Ex. 21.D; Tr. at pp. 362-368). (City Br., at 28)

Peculiar, in the first place 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 Exhibit is most peculiar. It shows (last page) 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 -- we see that the City comes out ahead:

Table 1
Analysis of City Ex. 21 D (City Ex. 21 D, p. 4)
Difference Between Union and City proposals
Showing that City has a Net Gain thru 2028

	Unadjusted	PV at 2% Discount
2019	$ 50,246	$ 50,246
2020	$ 76,260	$ 76,260
2021	$ 153,819	$ 153,819
2022	$ 130,491	$ 127,881
2023	$ 118,503	$ 113,763
2024	$ 22,599	$ 21,243
	$ 551,918	$ 543,212
2025	$ (73,305)	$ (67,441)
2026	$ (169,209)	$ (152,288)
2027	$ (169,209)	$ (148,904)
2028	$ (169,209)	$ (145,520)
	$ (580,932)	$ (514,152)
Net	**$ (29,014)**	**$ 29,060**

Without adjusting to 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. His calculations to that point matches those of Table 2 below.

Then, perversely, he multiplies those amounts by 27. THERE WILL NEVER BE 27 FIREFIGHTERS ON THE SAME STEP OF THE FIREFIGHTER SALARY SCHEDULE! What was he thinking? In 2020 there were 9 employees who had 8 or more years of experience and four of them were Schedule A employees[16]. 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, City Ex. 21 D exaggerates both the losses by a third.

Still, the Exhibit hides the savings the City will realize as firefighters move through the steps. The following table sets out the year-by-year step amount in 2021 under each Parties' proposal:

[16] Data derived from City Ex. 5 B.

Table 2

Final Offers Compared
2021 Firefighter Wage Schedule

	City	Union	Difference
H	$ 65,604	$ 72,036	-6432
G	$ 65,604	$ 68,484	-2880
F	$ 65,604	$ 64,932	672
E	$ 65,604	$ 61,380	4224
D	$ 62,496	$ 57,828	4668
C	$ 59,808	$ 54,276	5532
B	$ 55,512	$ 50,724	4788
A	$ 51,252	$ 49,332	1920
Total	**$ 491,484**	**$ 478,992**	**12492**

By using only the years in which there were losses, the City's Brief cherry-picked Mr. 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. (U Ex. E 2; City Ex. 5. B.) Importantly, the data shows that movement to the top step of the Union's proposal is gradual. In 2021 two employees (MacDonald and Haucke) would move into the Union's new top firefighter step. In 2022 and 2023 none move there. In 2024 six employees move there. (Burton, Stodola, Reichwald, Feider, Sieracki and Riley) In 2025 one more moves up to the 8th year of service. (Pernice.) An even deeper look into the data reveals that some 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. (Halle, Valleskey, Theel and Wilke). 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. (See, Table 2, above) Radical indeed!

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[17]. 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.

2. *Comparability*

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 is engaged placing new employees on a different and lower pay schedule. In time, the two-tier

[17] Manitowoc is outside the norm however, in terms of retention. If the two-tier schedule is not changed there will be higher turnover in the firefighter rank in which case both sides of the personnel transaction involve Schedule B employees -- a net 0 in terms of the budget.

system will have all employees on Schedule B, but the City's Exhibit 7 A does not account for this critical change in the unit demographics.[18]

We do know that the current rates of Schedule B are on average, 13% lower than Schedule A. Specifically:

Table 3

Schedule A and B 2018 Monthly Rates compared

Rank/Step	Schedule A	Schedule B		
Cap'n	$ 6,397	$ 5,580	$ (817)	-13%
Lt	$ 6,176	$ 5,558	$ (618)	-10%
MPO	$ 5,856	$ 5,272	$ (584)	-10%
FF E	$ 5,741	$ 5,167	$ (574)	-10%
FF D	$ 5,618	$ 4,908	$ (710)	-13%
FF C	$ 5,499	$ 4,684	$ (815)	-15%
FF B	$ 5,367	$ 4,326	$ (1,041)	-19%
FF A	$ 4,547	$ 3,971	$ (576)	-13%
Average				-13%

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 FF two-tier plan design alone. It is tedious but helpful to do the homework.

[18] Although FF Wilke, the least senior Schedule A employee with 11 years of experience in 2020 (City Ex. 5 B) will not likely retire from service for another 14 years.

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. Multiply the *per capita* percentage savings from the

Table 4

Assumptions	bargaining unit size = 50
	2 Schedule A employees replaced in each year replaced by 2 Schedule B employees
	Assume all at the personnel transactions are at the first step of the firefighter rank
	Establish the 2019 Average Member Salary using City Ex. 27A
	Calculate the Schedule A First Step Salary as a percentage of total wage
	Calculate the Schedule B First Step Salary as a percentage of total wage
	Subtract B from A
	Mulitply % savings in each year by number of new entrants to Schedule B and subtract from the ATB % increase to determine actual percentage increase

Year	Eff. Date	FIRE NOMINAL	FIRE W/ REPLACEMENT	
2009		3.00%	2.992%	2
2010		3.00%	2.984%	4
2011		3.00%	2.976%	6
2012		3.00%	2.968%	8
2013		2.00 %	1.960%	10
2014		2.00 %	1.952%	12

2015	1/1			
	7/1	1.00%	0.944%	14
2016	1/1	1.00%		
	7/1	1.75%	1.686%	16
2017	7/1	1.00%		
	7/1	2.00%	1.928%	18
2018	1/1	1.00%		
	7/1	2.25%	2.170%	20
2019				
2020				
2021				
2022				
2023				
Overall Increase		**26.00%**	22.56%	
Average Annual Increase		**2.36%**		

Calculate the 2019 Average Member Salary	3,376,000	
Calculate the Schedule A First Step Salary as a percentage of total wage	55764	1.652%
Calculate the Schedule B First Step Salary as a percentage of total wage	48852	1.447%
Per capita difference as a percentage of total budget		0.205%

There are two important lessons here. First, the City misleads us when it claims that it has treated Local 368's firefighter 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 wrong, simply wrong.

B. Over-Time Pay for the Performance of Certain Duties Previously Prohibited by the CBA

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 writing that the Union proposal is "odd," "most significant," "shocking," "cuts the grain of the City's culture" and a "lethal poison pill."

All this for a proposal that the City admitted would cost only $1,111.77 annually[19]. (See, City Ex. 12-D; City Ex. 21-(B)(1): "revised - Union Proposed OT Language Wages; Tr., at 327-328)

[19] ...Okay.· So we've got -- I've now got the
16· ·new D -- 12-D in front of me.
17· · · · · · ·…
20· · · · · ·MR. HEIDEN:· Mr. Arbitrator, the basis for
21· ·why Mr. Corbeille is going to speak to this is
22· ·simply provide some foundation as to the updated
23· ·costing that is going to be within 21-B(1).· So this
24· ·document was merely updated after the union's
25· ·testimony yesterday as to what duties they said would
……constitute overtime under their overtime

1. Interests and Welfare of the Public

The City argues that the Union's members have performed work that the CBA 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. Local 368 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

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·2· · · proposal, and so that's the basis for Mr. Corbeille
·3· · · speaking to this document briefly.
·4· · · · · · · · · ARBITRATOR ROBERTS:· Okay.
·5· ·BY MR. HEIDEN:
·6· ·Q· · Mr. Corbeille, did you prepare this document?
·7· ·A· · No, I did not.
·8· ·Q· · Who did?
·9· ·A· · I believe the fire chief, Todd Blaser did.
10· ·Q· · And what does this document generally show you?
11· ·A· · It would show me his best effort to try to figure out
12· · · · what was being referred to as items that would be
13· · · · being proposed to be at overtime rates that the union
14· · · · is proposing.
15· ·Q· · Were you able to total up any of these years as far
16· · · · as the hours that the chief has identified on this
17· · · · document?
18· ·A· · I did take a look specifically at his 2019 event and
19· · · · came up with 91.5 hours.
20· ·Q· · And so is that your understanding that the 91.5 hours
21· · · · would be representative of overtime under the union's
22· · · · proposal?
23· ·A· · Yes.

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 doesn't 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 FD operations that result from the resolution of this issue.

2. Comparability

The Union encourages Arbitrator Roberts 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. First, Sheboygan's CBA provides:

Article XIX

Special Salary Provisions

H. Premium pay for work outside normal station work routine hours.

1. Public relations/education. On duty employees required to represent the fire department for the purpose of public relations or public education outside the normal station work routine hours (8am-5pm weekdays, 8-11 Sat./Sun./holidays) will receive premium pay of an additional fifty (50%) percent of the employee's regular hourly rate (biweekly rate without holiday pay divided by one hundred twelve (112) times five (.5) tenths) for time assigned.

Second, Appleton Fire Fighters' CBA provides:

E. The duty day for the purpose of training procedures and other regular, routine duties shall commence at 0700 and terminate at 1130, recommences at 1300 and terminate at 1630. Maintenance and servicing of vehicles, equipment, and other fire department property after 1630 shall be limited to items necessary for efficient response to alarms. The balance of the tour of duty shall be to provide service in matters of responding to emergency and non-emergency calls.

1. The employer shall at its option adopt one of the two following alternatives: The routine duty schedule for Saturday shall be from 0700 until 1200. Sunday and holidays, as designated in Article 10, shall be limited to the past customary practice of those duties necessary for efficient responses to alarms, housework, and vehicle checks.

2. Upon mutual agreement between the Chief or his/her designee and the Union, the Chief or his/her designee may assign routine duties outside the above stated duty schedule, or on Saturdays, Sundays, or Holidays with no additional compensation to be paid by the City. In the event that a mutual agreement cannot be reached between the Chief or his/her designee and the Union the following apply:

   WEEKDAYS: Routine duties may be assigned between 1630 and 2200 hours. All routine duties assigned outside of the schedule established by Section G, above, shall be compensated at an additional ½ time of the employees base rate for hours worked. A lunch period of continuous one and one half-hours shall be scheduled between 1030 and 1430 hours. A

> meal break of continuous one and one half-hours shall be scheduled between 1600 hours and 2000 hours.
>
> SATURDAYS: Routine duties may be assigned from 0700 – 1200 hours. In the event the employer chooses to assign routine duties between 1200 and 1630 hours, employees shall be compensated at an additional half time of the employees base rate for hours worked. A lunch break of continuous one and one half-hours shall be scheduled between 1100 hours and 1400 hours. Routine duties shall not be assigned beyond 1630.
>
> SUNDAYS AND HOLIDAYS: Employees assigned routine duties on Sundays and Holidays shall be compensated at an additional straight time rate for hours worked. A lunch break of a continuous one and one half-hours shall be scheduled between 1100 hours and 1400 hours. Routine duties shall not be assigned beyond 1630.

The City argues that there is internal comparability. The statement is a truism. 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.

C. Promotions

The City's opening narrative contains arguments that the Union addressed in its initial Brief.

1. Interests and Welfare of the Public

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." (City Br., at 50.) 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 which is found at page 53 of its Brief. It writes that the Union's proposal that requires the Chief to establish qualifications that are not "arbitrary or capricious" is a "ploy." Really? 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.

2. Comparability

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 page 54 of its brief that "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 just to the contrary.

D. Education and Tuition Reimbursement

The gravamen of the dispute here is captured by these lines from the City's Brief:

> At the hearing, the Union attempted 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.** (Tr. at pp. 504-06). 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.

(City Br., at 58-59)

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 have 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 CBA. Really? 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 City-wide 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.

E. Light Duty

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. Child care 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 City-wide 40-hour light duty policy doesn't work for firefighters.

Nor for the reasons stated above does the idea of incorporating a City-wide light duty policy into the Local 368 CBA by reference.

F. Medical Exam

The City writes:

> Currently due to COVID-19, the City has not been conducting physical examinations (Tr. at p. 452-53). As COVID runs rampant, for the residual of the term of the Collection Bargaining Agreement, it may be unlikely that physical examinations will even be conducted thus leaving to the parties the ability to fulfill the City's proposal of working together to establish a voluntary firefighter fitness program….

(City Br., at 62)

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 Local 386 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 in 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.

G. Laundry

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.

VI. CONCLUSION

Based upon the evidence and sworn testimony of record and the arguments of the Union during the hearing and in these post-hearing Briefs, the City of Manitowoc Firefighters, International Association of Firefighters, Local 368, respectfully requests that Arbitrator Andrew Roberts find the final offer of the Union to be more reasonable of the two before him. The Union further requests that the Arbitrator order the Union's final offer be incorporated into the 2019-2021 Collective Bargaining Agreement between it and the City of Manitowoc.

Dated at Milwaukee, WI, this 7th day of January, 2021.

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