

BEFORE ARBITRATOR ANDREW W. ROBERTS

In the Matter of the Petition of

IAFF LOCAL 368 - MANITOWOC

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

CITY OF MANITOWOC

Case ID: 285.0015

Case Type: MIA

POST-HEARING BRIEF OF THE CITY OF MANITOWOC

This matter came before Arbitrator Andrew W. Roberts for an evidentiary hearing on October 21 and 22, 2020. Various exhibits were submitted by the City of Manitowoc (the “City”) and the IAFF Local 360 - Manitowoc (the “Union”). Both parties presented witnesses at the Hearing and a transcript was made.

The City provides the highest level of fire and emergency medical service, and does so while being fiscally efficient with innovative to manage costs while providing competitive wages and benefits. Article 9 Wage Schedule A and Schedule B have been fixtures necessary for helping the City achieve economic predictability and stability while helping the City to continuously provide highly competitive wages outpacing many external comparables and enabling City firefighters to be some of the highest paid employees within the City. Schedules A and B were the product of long-standing voluntary settlements that emanated from a time when the City was nearly broke. The City has gradually and cautiously risen from those darkest days in 2011, but remains in a fragile position requiring continued efforts at economic efficiency and favoring

predictability. Of great accomplishment, during this time the quality and type of fire and emergency medical service level offered to Manitowoc residents remained, and continues to remain, second to no one.

This case is about whether Arbitrator Roberts should select the final offer which best respects the sound, careful, and long-standing economically predictable and efficient fiscal and policy choices of the City, which enhances professional development opportunities throughout the Fire and Rescue Department, and which establishes commonality of standard benefits with other City employees, or whether Arbitrator Roberts should select the final offer which completely undermines economic efficiency, predictability and stability and the budgetary culture it is grounded in, which keeps the parties entrenched in an archaic advancement system, and which establishes a financial ticking time-bomb set to explode in 2025 that could impact quality of services and service levels if the City is forced to react over the years to the consequences of the Union's proposal.

The City's final offer best respects the interests of the public in fiscal stability and economic efficiency. To achieve this, the City's proposal sets forth wage increases that are stable over the life of the 2019-2021 contract and beyond—akin to a 30-year fixed mortgage—which is consistent with the past settlements of the parties and other internal unions. The City's offer furthers the interest of the public in offering high quality service through Chief Blaser's 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. The City's offer establishes the interests of the public in offering good benefit structures that promote workplace stability by the City's offer focusing on commonality in standard benefits between the Fire Department employees and other City employees. Moreover, the City's offer

mirrors the benefits received in many of the external comparable communities. When analyzing the offers and these important policy concepts along with the applicable statutory factors identified in Wis. Stat. § 111.77, those factors weigh heavily in favor of selection of the City's final offer. The City's offer truly reflects the offer the parties would more likely voluntarily agree to but for these proceedings.

The Union's proposal must fail for several key reasons. First, the Union wage and overtime proposal are poisonous proposals that will wreak havoc on the City's fastidiously crafted budget and financial austerity and that undermines the City's budgetary culture that embraces continued economic efficiency through all City Departments. Rather than respecting efforts to keep costs manageable, the Union offer is a five-year adjustable rate mortgage with an explosive balloon payment in 2025, coupled with an odd and obnoxious overtime provision mandating the City pay overtime rates for all regular duties performed outside the standard duty day—something enjoyed by no other internal or external comparable identified by the City. In the end, neither the internal nor external comparables show support for the Union's Final Offer, and there is no proven need for the wage schedule or overtime changes demanded by the Union. The Union has offered no true measurable quid pro quo in exchange for its proposed changes, which it claims are very important, even though it is clear there is a tremendous economic impact when they shift 20 of the City's 49 bargaining unit members—and all newly hired firefighters—to a more lucrative wage schedule. Worse, the Union's proposed Article 4, Section 1(c) duty day overtime language is not narrowly tailored to address any real or perceived problems—it is vague to the point the parties could not even comprehend the scope of the Union's proposal and the impact until the hearing—even then with still remaining ambiguity after two days of testimony. In short, the Union is not asking for a little enhancement in pay and benefits, they are asking the Arbitrator to revolutionize

the wage structure and pick the best items from the buffet and give it to them without any regard for the consequential impact on the City's budget or the cautious and efficient fiscal culture, which the City—City-wide—has strived to develop and maintain. The Union offer fails under every dispositive statutory factor, and there is no way any reasonable municipality, including the City of Manitowoc, would accept an offer that deforms this culture and compensation structure in such a radically destructive way.

I. ISSUES IN DISPUTE

City Exhibit 1 addresses the Issues Identified in Dispute and Exhibit 4 compares the Final Offers of both parties. In this case, the primary issues in dispute involve two radical union proposals: (1) the Union's effort to alter the long-standing wage schedules by merging Schedule B into Schedule A while also adding on wage adjustments each year of 1.0% in 2019, 1.75% in 2020, and 1.75% in 2021; and (2) the Union's effort to obtain overtime rates of pay in Article 4, Section 1(c) for the performance of "all regular routine duties that they are assigned to work outside the standard work day" after 4:30 p.m. or when vehicle equipment and floor maintenance is completed—even though this work is performed during the employee's scheduled 24-hour shift.

The City seeks to maintain the status quo by preserving Schedule A and Schedule B for this collective bargaining agreement and to offer a fixed amount of \$1200.00 per year allocated to each firefighter as a wage adjustment. By adding \$1200.00 per year instead of a percentage, the City's offer benefits starting and newer employees and those on Schedule B rather than a percentage adjustment that primarily benefits those who are more senior and on Schedule A. The City also proposes a higher value fixed payment of \$5000.00 for paramedic pay in lieu of a lower percentage adjustment, which the City intends to use as a recruitment tool. The City likewise seeks to maintain the status quo in Article 4, Section 1(c) by having employees earn their normal hourly

wage for all work performed during the employee's scheduled shift rather than paying overtime for work performed during the employee's normal shift.

The City also seeks to modify the promotional process in Article 6 so as 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. The City has also made other proposals to eliminate archaic language involving laundry, continuing education, and physical examinations, and to establish commonality of benefits like the City-wide continuing education benefit and light duty program so as to manage those benefits consistently as the City does for all other City employees. The Union stands in the way of these efforts.

The City addresses each of these issues in Section IV of this Brief.

II. STATUTORY CRITERIA

Wis. Stat. § 111.77(6)(am)–(bm) provides the statutory factors to be used by Arbitrator Roberts in this case. In reviewing those statutory factors, the major considerations in this case will be the § 111.77(6)(bm)(4)a internal and external comparability comparisons among internal employees and the rate the competitors pay for the same services performed by the City's firefighter/paramedics. Further, major consideration must be given to the § 111.77(6)(bm)(3) factor addressing the interests and welfare of the public and the City's ability to pay. It is the factors of comparability and the interests and welfare of the public that dominate this case.

Under Wis. Stat. § 111.77(6)(bm)(3), there is no question the City has demonstrated the “financial ability” to pay the costs represented by either Final Offer in 2019, 2020, and 2021. The City's offer during this term is slightly more expensive on wages during the term. City Budget and Financial Exhibits 9a.–k, 10a–d, and 13.b and testimony of Finance Director Steven Corbeille

demonstrate that the leaders of the City, on behalf of its taxpayers, are regularly and cautiously taking into account the welfare of the community in making financial decisions in an attempt to keep the total cost of government reasonable and paying down debt and building reserves while offering the highest quality paramedic and fire service to the community.

Over the last nine years, an efficient and creative fiscal culture has developed. In 2011, the City had a fund balance of just \$17,000, which essentially meant the City was “pretty much broke,” and which resulted in the lowering of the City’s bond rating from AA to A. (Tr. p. 283, 285). The City immediately took drastic measures to balance the budget by cutting personnel and has worked every year after to get the City’s financial house in order. (*Id.* at 282–83). Since then, the Common Council and each Department have taken steps, for example, to reduce debt, to reduce or spread out operational costs, to build a reserve, and to restore the City’s ability to borrow at lower costs. The City is also maximizing revenue streams, but is heavily reliant on State aids, including transportation aids and shared revenue which are determined solely by the State. The City is not a haven for new construction as trailing annualized data shows very modest growth while the population of Manitowoc has decreased rather than remained stable or grown. (City Ex. 9.G; 16.A.3). The City budgets from a zero-percent adjustment posture and continues to do so for 2021 based on direction from elected leaders. (Tr. p. 279–80; 429). Likewise, the City negotiates collective bargaining agreements from a zero-sum posture, where the City seeks concessions of equal intangible or financial value in response to enhancements in the collective bargaining agreement. (Tr. p. 479). This results in settlements where police, fire, and transit employees have still achieved substantial wage adjustments over the years, even during these economically challenging years from 2011 onward. (City Ex. 7.A). Achieving high paramedic service levels through measured tax adjustments and internal efficiencies has not been easy, but it is the fiscal

culture of the City and community and continued predictable budgeting and cost-control efforts must be maintained. Diversion from these efforts and undermining this fiscal culture could be catastrophic to the City's long-standing efforts at promoting efficiency.

Another the key question under the "interests and welfare of the public and the financial ability of the unit of government to meet those costs" is whether the employer is unfairly keeping the tax rate down on the backs of the public employees. That is clearly not the case here, and is easily demonstrated through the City's generous wage offer and benefit adjustments in this case. City Exhibits 7.A–C show the City's long-standing commitment to this Fire Union by historically agreeing with this Fire Union for good wage increases while also maintaining a good health and dental insurance program. The City's long-standing commitment to this Fire Union is also demonstrated by City Exhibit 13.a, which shows that firefighters represented by this Union are some of the highest paid employees of the City.

These budgetary choices, staffing choices, and health care choices show the City is making good, proactive and careful choices—then and now—to enhance the wages of their employees, and particularly their least-senior employees, and offer good consistent City-wide benefit programs so that the City can attract and retain good employees. As explained in Section IV of this Brief, the Union proposals disrupt these efforts and undermine the interests and welfare of the public and create a significant financial challenge by 2025.

With that said, it is readily apparent from the parties' evidence and testimony at this Hearing that the other operative dispute in this case is comparability under § 111.77(bm)(4)a. In this case the dispute is whether Arbitrator Roberts should favor with internal comparability and the strong long-standing efforts to achieve commonality of standard City-wide benefits, or whether Arbitrator Roberts should abandon that effort and instead select the Union's Offer and the new

odd overtime for work performed during one's normal shift benefit and the wage schedule modifications, neither of which has any true support from any external comparable. As described more thoroughly below, the Union Final Offer creates an unacceptable and destructive mortgage balloon explosion payment in 2025.

The ticking time-bomb of the Union's offer is real and warrants rejection of the Union's wage schedule change. In *Florence School District*, Dec. No. 31023-A (Greco, 2005), Arbitrator Greco, deciding for the employer's two-year wage freeze, rejected the financially significant impact of the Union's Final Offer and refused to task the employer with negotiating away that impact in subsequent bargains to avoid its consequences. Arbitrator Greco stated:

The true cost of the Union's offer is, of course, speculative and no one really knows what it will cost over time if it is adopted. Nevertheless, it is necessary to at least attempt to look into the future in trying to calculate the long term effects of a party's bargaining proposal, and I believe the above scenario fairly represents the natural consequences of what probably will happen if the Union's Final Offer is selected.

Seen in that light, it becomes clear that the Union's Final Offer represents a ticking time bomb that will go off at some time in the future, with the only questions being when and exactly how much fiscal carnage will be caused by the detonation.

Hence, the Hobson's choice in this case: Should the District's Final Offer be selected even though it does not provide for any wage increases and even though equity dictates that increases be granted because of the wage increases granted to the teachers, or should the Union's Final Offer be selected even though its proposals relating to health insurance for bus drivers are so costly and are so utterly lacking in merit.

If the Union's Final Offer is selected, the District might be able to bargain away the Union's bus driver proposals in subsequent contract negotiations.

That, though, is not good enough because selecting a party's Final Offer cannot rest in the hope that a losing party can get rid of another party's proposals in future negotiations. Instead, a decision must be made based on the facts at hand and on the assumption that proposals will continue to bring about the very consequences a proponent advocates, which in this case requires the District to pay for nearly all of the health care premiums for bus

drivers in the indefinite future regardless of how few hours they work for the District – a situation that has zero support among the comparables and perhaps even zero support among the rest of the state’s school districts.

Since the long-term costs of the Union’s proposals can be so exorbitant and are so unjustified, I conclude that the District’s Final Offer, flawed as it is, is less flawed and that it should be adopted.

Id. at 27–28.

Among the remaining Wis. Stat. § 111.77(6)(am)–(bm) statutory factors, some are not seriously in dispute in this case. The parties agree the greater weight factor involving local economic conditions under Wis. Stat. § 111.77(6)(am) favors neither party. Second, under Wis. Stat. § 111.77(6)(bm)(1), neither party asserted any question as to whether the City has the lawful authority to satisfy either Final Offer. Third, under Wis. Stat. § 111.77(6)(bm)(5), both parties’ final offers exceed or are well within the average consumer price index and general cost of living, thus favoring neither party’s final offer but leaning slightly in favor of the City’s offer as the employees under the City’s offer receive higher wages during the term of the Agreement and thus are better positioned if there is an upward adjustment in the CPI during the remaining term of the Agreement. Fourth, under Wis. Stat. § 111.77(7)(bm)(7), the parties have not necessarily identified changes in the foregoing circumstances during the pendency of the proceedings. Final offers were submitted by both parties following the issuance of the March 2020 Declaratory Ruling and the inception of the COVID-19 Global Pandemic. Fifth, the parties did reach agreement on certain issues, though none are dispositive of the outcome of these proceedings. As such, the factor involving stipulations of the parties under Wis. Stat. § 111.77(6)(bm)(2) does not weigh in either side’s favor. Sixth, such other factors “normally or traditionally taken into consideration” between the parties under Wis. Stat. § 111.77(b)(bm)(8) is not in overt dispute, although testimony related to approaches to negotiations is worth addressing related to Schedule A and B below in Section IV.

The factor of “overall compensation” also does not control the outcome of this case. The overall compensation presently received by the employees under Wis. Stat. § 111.77(6)(bm)(6) is not readily in dispute. Internally, the City’s firefighters lead the compensation pool among all City employees. Externally, these firefighters maintain their standing among external comparables while receiving a competitive wage and benefit package. City Exhibits 7, 8, 18 and 19 address benefits encompassing total compensation compared to the internal police union and the external comparables that confirms the City’s firefighters do not lag behind the comparables and show the City offers a package well within the realm of reasonableness. In fact, benefits not found in the collective bargaining agreement but made available to firefighters, including access to tuition reimbursement which the City seeks to make part of this agreement, shows the City treats all employees fairly and adequately competes with the comparables in areas important to firefighters and public-sector employees. If there was a significant area of benefits where the City lags, then the City would have heard about it during negotiations or as part of the Union’s Final Offer. Instead, the Union only tries to target getting the unique and unparalleled benefit of being paid overtime for work during the employee’s normal shift and a wage structure change that explodes the Fire Department budget within five years.

This case is fundamentally about internal equity, comparability, and preservation of the long-standing respect for the careful and cautious policy choices of the City to operate with tremendous efficiency and at the highest service level for the good of the community. In the end, the Arbitrator can confidently conclude these factors reasonably support selection of the City’s Final Offer as it is more reasonable as to both internal and external comparability and as to the interests and welfare of the community and preserving the City’s ability to meet these costs by avoiding the financial detonation from the Union’s wage schedule change.

III. SELECTING THE EXTERNAL COMPARABLES

Comparables serve an important role in this case, both internally and externally. “Who” should serve as the external comparables of the parties is an important issue. Labor, like any other commodity, has a market price. Because police and fire employees function in a unique and limited marketplace, the Legislature developed a system designed to help arbitrators determine the “market rate” for those public employee services. The statutory factors were designed to analyze how an employer, in good faith, would determine how to fairly compensate people for those services. A typical employer, even in the private sector, would consider its lawful authority, any mutually agreeable stipulations between it and the union, its financial ability to pay compared to that of other similar businesses, increases in cost of living, a comparison of the total compensation package provided to its employees compared to similar businesses providing those same services, and a variety of other factors which might affect setting the “price” for the labor it is purchasing.

As noted during the hearing, the parties agree that Sheboygan and Two Rivers, both of which were established as primary comparable communities in *City of Manitowoc*, Dec. No. 28785-A (Michelstetter, 1997), remain primary external comparable communities as of present day. (Tr. at p. 28). While the City recognizes the Arbitrator could proceed using only the primary comparable communities of Sheboygan and Two Rivers and decide this case in favor of the City’s Final Offer, the City believes the parties may benefit from having secondary external comparables.

To identify appropriate secondary external comparable communities, the City first looked to communities that have a similar geographic positioning as Manitowoc—that is, standalone, self-sustaining communities near major expressways, such as I-43, I-41, I-39, and I-90. After identifying a broad swath of communities generally falling into these criteria, the City then considered each of these communities with respect to the type and level of fire and emergency

medical services provided, 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.

Through this thoughtful analysis, the City identified the following communities standing out as appropriate secondary external comparable communities who are like Manitowoc: Kaukauna, Fond du Lac, West Bend, Stevens Point, Wausau, and Wisconsin Rapids. (City Exs. 16.A.1 – 16.A.7). The City’s analysis also resulted in the rejection of the communities that are simply not like Manitowoc and Manitowoc’s Fire and Rescue Department: Sturgeon Bay, Janesville, Beloit, Marshfield, Beaver Dam, Marinette, De Pere, Neenah-Menasha, Appleton, Oshkosh, and Green Bay. (City Exs. 16.B.1 – 16.B.7).

The Union, without conducting any economic or service-level analysis, asserts the following communities represent appropriate secondary external comparable communities: Appleton, De Pere, Fond du Lac, Green Bay Metro, Kaukauna, Neenah-Menasha, and Oshkosh. (Union Ex. I.1). Notably, the City’s comprehensive analysis included nearly 20 communities including each of the communities proposed by the Union. (City Exs. 16.A.1 – 16.B.7). The City agrees with the Union that Fond du Lac and Kaukauna are appropriate secondary external comparables due to the socioeconomic backgrounds of the communities and fire department types and service levels of those communities. However, the City’s data clearly establishes that Appleton, De Pere, Green Bay Metro, Neenah-Menasha, and Oshkosh are absolutely nothing like Manitowoc and thus cannot be considered as external comparables.

i. The City’s Economic, Socioeconomic, and Service-Level Data Points of Parties’ Secondary External Comparables

The type of service level provided by the firefighters distinguishes whether one community and their firefighters are like the other. One of the most important functions of a firefighter relates

to the level of emergency medical services provided for the community. The higher the level of emergency medical service, the greater the difference in workload, education, certifications, training, and life-saving responsibility. Manitowoc's firefighters offer critical care paramedic level services which are the highest achievable level of emergency medical services for Wisconsin municipalities. (Tr. at pp. 424–28). Every single community identified by the City as a secondary external comparable offers fire services, emergency medical services, and paramedic services—just like Manitowoc. (City Ex. 16.A.1). On the other hand, wholly unlike Manitowoc, the Union's offered comparables of Neenah-Menasha and Appleton only offer basic emergency medical responder services and do not offer paramedic or transport services through their Fire Department for their communities. (City Ex. 16.B.2). Green Bay Metro also does not conduct inter-facility medical transports, which, as Chief Todd Blaser testified to, is a service offering of great benefit to the City of Manitowoc's citizens. (Tr. at pp. 154; 427–28). These difference in service offerings are substantial, as Manitowoc provides the highest-level paramedic service available in the State short of acquiring a helicopter, whereas neither Neenah-Menasha nor Appleton even provide any paramedic service and Green Bay Metro only offers a lower tier paramedic service. (Tr. at pp. 425–26). 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. (Tr. at p. 154). The lower-level service offerings of Green Bay Metro, Neenah-Menasha and Appleton not only identify a difference in the services enjoyed by these respective communities and what the services are that these municipalities choose to pay for and provide, but also a difference in the job duties engaged in by the employees of these departments and Manitowoc's Fire and Rescue Department.

None of these discrepancies exist between the City's proposed secondary external comparable communities and the City of Manitowoc.

The City's proposed secondary external comparables also have fire departments with operational budgets more akin to Manitowoc's fire operational budget than the operational budgets of the Union's proposed secondary comparables. Each community identified by the City is within \$4,000,000 of the City of Manitowoc's 2020 \$6,378,967 operational Department budget. (City Ex. 16.A.2). Five of the City's eight comparables are within \$2,500,000 or less of Manitowoc's budget (Sheboygan, Stevens Point, West Bend, Wausau, and Wisconsin Rapids). (*Id.*). On the contrary, many of the Union's comparables have operational fire department budgets two to four times larger than Manitowoc's budget. (City Ex. 16.B.2). For example, compared to Manitowoc's 2020 operational Fire Department budget of \$6,378,967, Green Bay Metro had a 2020 budget of \$24,516,014, and Appleton and Oshkosh had 2020 budgets more than twice as large at \$12,856,509 and \$13,525,200 respectively. (*Id.*). Frankly, Green Bay Metro's budget is nearly the entire size of the entire City of Manitowoc operating budget and more than the City's \$16.5 million tax levy in 2019. (City Ex. 9.A). Compared to the largest budgetary discrepancy of \$4,000,000 within the City's comparable communities, the Union's largest budgetary discrepancy is \$18,000,000, and its next two largest discrepancies are more than twice the size of Manitowoc's budget. (City Exs. 16.A.2; 16.B.2). 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. As of July 1, 2019, the City of Manitowoc had a population of 32,579. (City Ex. 16.A.3). Nearly all of the City's

comparables are within 16,000 people of Manitowoc's population with a mean of 29,415 (Manitowoc is 32,579) and with the City ranking in the middle at fourth out of nine. On the other hand, three of the Union's comparables—Green Bay (104,578), Appleton (74,098), and Oshkosh (67,004)—are 70,000, 41,000, and 34,000 larger than Manitowoc, respectively. (City Ex. 16.B.3). Each of these communities is anywhere from twice to three times the entire population size of Manitowoc. Again, based on this data point alone, it is inconceivable to compare Manitowoc to these major metropolitan communities, which, it should be noted, comprise a third of the Union's entire comparable pool.

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 their ability to raise revenues. Without growth, revenues risk remaining stagnant and thus require comparison of Manitowoc to similar communities facing similar growth challenges. During this past decade, Manitowoc experienced -3.4% growth, yet only two of the Union's nine comparable communities show a downward trend in population. (City Ex. 16.A.3). Two of the Union's comparables, De Pere and Neenah, have grown their population more than 3.1% (with DePere growing rapidly at the highest rate of 4.7%). On the other hand, five of the City's eight other comparables had a shrinking population over the past decade with a mean of -2.0% and with the City ranking in the middle at sixth out of nine. (City Ex. 16.B.3).

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. Between 2014–2018, De Pere had a median household income of \$70,500, which was about \$25,000 higher than the median income in Manitowoc. (City Ex. 16.B.4). De Pere, like Neenah

and Appleton, is an affluent community 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. (City Exs. 16.A.4; 16.B.4). 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 and with the City ranking 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 largest discrepancy in equalized value between the City's selected external comparables and Manitowoc is approximately \$1,500,000,000 (Manitowoc - \$2,032,000,000 vs. Two Rivers - \$525,000) with the mean at \$2,100,000 and the City ranking in the middle at sixth out of nine of the City's proposed pool. (City Ex. 16.A.5). The Union's pool shows gaping discrepancies in equalized value between the Union's selected external comparables and Manitowoc, and the largest gap is nearly \$5,000,000,000 (Manitowoc - \$2,032,000,000 vs. Green Bay - \$6,967,000,000). (City Ex. 16.B.5). The total range of equalized values within the City's comparables is approximately \$2,500,000,000 (Wausau - \$3,076,000,000 vs. Two Rivers - \$525,000,000), whereas the total range within the Union's comparables is approximately \$6,500,000,000 (Green Bay - \$6,967,000,000 vs. Two Rivers - \$525,000,000). (City Exs. 16.A.5; 16.B.5). It is not just Green Bay that creates this discrepancy for the Union, as Appleton had 2019 equalized property values of \$5,855,000,000 and Oshkosh had 2019 equalized property values of \$4,212,000,000, placing Appleton and Oshkosh each more than twice as high (2,850,000,000 and 2,200,000,000) than Manitowoc's 2019 equalized property value, respectively. (City Ex. 16.B.5).

Once again, another data point establishes that Green Bay, Appleton, and Oshkosh are sprawling metropolitan areas completely unlike Manitowoc.

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 (4% difference between the City's residential share of property taxes and the mean of its selected comparables vs. a 5% difference between the City's residential share of property taxes and the mean of the Union's selected comparables). (City Ex. 16.A.6; City Ex. 16.B.6). While innocuous on its face, this data point is critical in assessing comparability, as residential share of property taxes identifies what percentage of a municipality's tax base is comprised of individual households. The higher the residential share, the greater the tax burden placed on individual households and families instead of businesses. In communities with shrinking populations and lacking business growth, such as Manitowoc and many of the City's proposed external comparables, the result of having a resident-heavy tax base is two-fold: (1) the tax base is shrinking; and (2) any tax increases imposed automatically impact households harder than in communities with a lesser residential share of the tax base. 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. (City Exs. 16.A.7; 16.B.7). 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. This is repeatedly borne out by the City's data points shown in City Exhibits 16.A.1–16.A.7.

ii. Summary Analysis of the City's Economic, Socioeconomic, Geographic, and Service-Level Data Points

When one compares the geographic factors and types of communities (a wealthy Green Bay suburb like DePere or a standalone community like Stevens Point), it is evident that, like Manitowoc, each of the City's selected comparables of West Bend, Stevens Point, Wausau, and Wisconsin Rapids are a stand-alone community located off major expressways or highways in between metropolitan areas. For example, Stevens Point, Wisconsin Rapids, and Wausau are all located off I-39 or Highway 51 on the way to and from both Madison and Eau Claire/Minneapolis. (City Ex. 16.A.7). West Bend is located off the I-41 corridor on the way to and from Green Bay and Milwaukee. (*Id.*). The remaining communities are stand-alone communities located off I-41 or I-43 and are on the way from Milwaukee to the Fox Valley or to Green Bay. (*Id.*). DePere is a wealthy bedroom community of Green Bay. Neenah is a wealthy bedroom community sandwiched in between major metro cities of Appleton and Oshkosh. Neither DePere nor Neenah are like Manitowoc which stands alone and supports itself.

The Union claims the parties agreed to a pool of secondary external comparables at an August 21, 2018 bargaining session, pointing to Union Ex. G.3 as proof of this agreement. The testimony presented about the creation of that document and the actions of the City following that August 21 meeting show uncontested evidence that such an agreement as to comparables was never reached. (Tr. at pp. 99; 106–08; 399; 484). According to Human Resources Director Jessica Lillibridge, the list in Union Ex. G.3 was created by her pursuant to an alderperson’s request, as the alderperson believed many of the communities identified by the Union were not similar to Manitowoc. (Tr. at p. 399). Director Lillibridge and Attorney McDaniel likewise provided unequivocal testimony that the parties never agreed on any secondary comparable communities. (Tr. at pp. 399; 484). Quite telling is that Director Lillibridge testified that she did not take any further action to research the alleged agreed upon secondary external comparables following the August 21, 2018 meeting. (Tr. at pp. 398-401). Director Lillibridge testified that, had the City perceived the communities listed in Union Ex. G.3 as constituting potential agreed upon comparable communities, the City would have promptly researched relevant economic data for those communities, gathered applicable collective bargaining agreements for those communities, and obtained other relevant information regarding the wages, hours, and terms and conditions of employment within those communities. (*Id.*). 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. or after the August 21, 2018 meeting during which the alleged agreement occurred. (*Id.*). Likewise, Director Lillibridge testified that, if the City had reached an agreement on secondary external comparables, the agreed upon communities would have appeared throughout the City’s bargaining notes, but the City’s bargaining notes contain no such information. (*Id.*). Even Lieutenant Johnsrud testified he never witnessed the parties actually agree

to external comparables. (Tr. at pp. 106–08). The list in Union G.3 itself also shows no meaningful agreement. The list only addressed one narrow facet of comparability comparison regarding the cost of housing. No consideration of the various other issues commonly relied upon by labor and management were addressed within that document. Simply put, the City’s actions are those of a party that clearly did not perceive there to be an agreement on secondary external comparable communities, because there never was such an agreement. 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. (Union Ex. I.1). 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. *See e.g., Village of West Milwaukee*, Dec. No. 30280-B, at p. 22 (Roberts, 2002)(noting that economic indicators, population, geographic proximity, the labor market recruited from, the type of community (*i.e.*, suburban vs. rural) are all criteria to be considered when analyzing which municipalities should be included as appropriate comparables); *City of Eau Claire*, Dec. No. 34986-A, at pp. 12–13 (Mawhinney, 2015)(holding that geographic proximity is not determinative in selecting external comparables, especially when it is clear the employer’s labor market stretches outside a single geographic location, at which point other factors, such as service level offerings and socioeconomic data is to be factored in); *City of Beaver Dam*, Dec. No. 16807-A, at p. 7 (Mueller, 1979)(noting that [i]t has been generally recognized and accepted by most arbitrators that the factors which go into determining comparability involve such matters as size and population, area proximity, comparable makeup and tax base, and such other characteristics as

yield themselves to comparable similarities”); *Sheboygan County*, Dec. No. 32720-A (Hempe, 2009), at p. 18 (stating that “[b]y itself, the geographic overlay of the City [of Sheboygan] on a Sheboygan County map is an insufficient basis for using the City as a secondary comparable”).

Unlike the large Fox Valley communities identified by the Union, the City’s labor market is broader than the Fox Valley. The City 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. (Tr. at p. 474). 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. (Tr. at pp. 473-74). 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.

It is abundantly clear that Green Bay, Appleton, Oshkosh, Neenah-Menasha, and De Pere—over half the Union’s comparable pool—are nothing like Manitowoc. Green Bay, Oshkosh, and Appleton have populations two to three times the size of Manitowoc, have fire budgets two to four times the size of Manitowoc, and have equalized property values two to three larger than Manitowoc. Likewise, unlike Manitowoc, Green Bay doesn’t provide interfacility transports, and Appleton and Neenah-Menasha do not provide any emergency medical services other than basic EMR service (which is most simplistic and furthest in complexity from critical care paramedic services offered by Manitowoc firefighters). Finally, De Pere has a median household income \$25,000 higher than Manitowoc, placing it in an entirely different class with respect to its socioeconomic makeup. As compared to Manitowoc, these communities either draw from a substantially larger tax base, draw from a significantly larger department budget, provide a significantly lower level of services, provide services to a much wealthier community with an

increasing rather than decreasing population, or all of the above. Consequently, the experience firefighters have in a Green Bay, Appleton, Neenah-Menasha, Oshkosh, or De Pere Fire Department is nothing like the experience of a Manitowoc firefighter providing critical care paramedic level service.

On the contrary, all of the external comparable communities selected by the City provide the same paramedic level of fire services, operate under more comparable department budgets (a range of about \$7 million compared to the Union's range of approximately \$21.5 million), have more comparable population sizes (a range of 36,000 people compared to the Union's range of approximately 90,000 people), have more comparable median household incomes (about \$19,000 compared to the Union's range of approximately \$27,000), have a more comparable downward trend of population growth (6 communities with negative population growth compared to the Union's 3 communities with negative growth), and have more comparable equalized values (a range of about \$2,500,000,000 compared to the Union's range of approximately \$6,400,000,000). 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.

iii. Arbitration Decisions Support the City's Summary Analysis and Selected External Secondary Comparables

This conclusion favoring the City's proposed comparables is supported by a line of interest arbitration decisions. Service level absolutely matters and Arbitrators have placed significant weight on the types of services provided by fire departments when selecting external comparable pools. Employees who perform similar services are expected to perform similar job duties, whereas employees within departments with different service levels may perform substantially

different job duties. *See e.g., Town of Beloit*, Dec. No. 29789-A, at p. 4 (Ver Ploeg, 2001)(holding that communities providing EMT-P (paramedic) services were not compatible with the Town of Beloit, which only provided EMT-1 (intermediate) services); *City of Eau Claire*, Dec. No. 349860A, at p. 13 (Mawhinney, 2015)(determining it was appropriate to include two communities as comparables to Eau Claire due to the similarity in work performed between the respective fire departments and Eau Claire’s fire department due to the level of services provided by each department as a result of being within a larger municipality).

Likewise, when selecting external comparables, this Arbitrator and other arbitrators have removed communities from external comparable pools due to significant population and equalized population disparities. *See e.g., Village of Rothschild*, Dec. No. 33073-A, at p. 22 (Roberts, 2011) (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 Rothchild’s, preventing them from having “reasonably similar characteristics so as to be considered appropriate external comparables”); *Village of West Milwaukee*, Dec. No 30280-B, at p. 23 (Roberts, 2002) (refusing to include West Allis in West Milwaukee’s external comparable pool, because West Allis had a population of 63,769 and West Milwaukee had a population of 4,195, and “such a large population disparity prohibits the inclusion of West Allis as one of the comparables”); *Town of Mount Pleasant*, Dec. No. 30460-A (2003, Baron), at p. 7 (refusing to include St. Francis as a comparable to the Town, because, while St. Francis was “geographically proximate, it [fell] so far below the other communities in population, equalized value, and size of the fire department, that it cannot be considered comparable”).

Finally, significant weight has been placed on selecting external comparables that share similar population growth trends. *See e.g., City of Rice Lake*, Dec. No. 31750-A (Baron, 2007), at pp. 7–8 (selecting the City’s proposed comparables over the Union’s, in part, because the City’s proposed comparables were more similar to Rice Lake’s 4.5% population growth over ten years as opposed to the Union’s comparables, which had population growths of 78.2%, 51.3%, and 24.9%).

The aforementioned data coupled with the aforementioned interest arbitration decisions make it abundantly clear that the City’s proposed pool of external comparables to include Kaukauna, Fond du Lac, West Bend, Stevens Point, Wausau, and Wisconsin Rapids with Sheboygan and Two Rivers is much more akin to Manitowoc than the Union’s proposed pool of external. For all of these reasons, the City’s pool of external comparables must be selected.

IV. ANALYSIS OF THE OFFERS

The City addresses each area of dispute in the Final Offers.

a. Wages: Preservation of the Status Quo of Schedule A and B and The Fixed Paramedic Premium

The parties’ wage proposals starkly contrast one another. The City’s proposal maintains the parties’ A and B wage schedules, which have been in existence since 2009, provides an across-the-board increase of \$1,200 to all members of the bargaining unit, and converts paramedic premium pay from seven-percent of Firefighter Step-E monthly base pay to a flat \$5,000 per year. (City Ex. 2.A.). The Union’s proposal changes the parties’ paramedic premium pay from seven-percent of Firefighter Step-E monthly base pay to seven-percent of Firefighter Step-H monthly base pay, and it completely eliminates the parties’ historical A and B Wage Schedules and replaces them with a new, single-tiered wage schedule that has three additional steps added to the top of the wage scale. (City Ex. 2.B.). The Union’s proposal indicates that, under its new wage schedule,

all current Schedule A employees will be placed at Step H of the new wage schedule, and all current Schedule B employees will be placed at the wage step reflective of their respective years of service. (*Id.*).

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 to the top of external comparables and providing the Fire Union 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.

i. The Interests and Welfare of the Public

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. (City Ex. 9.K; Tr. at pp. 314–316). Standards and Poors' noted that the City's newfound AA bond rating could be lost

“if management does not maintain balanced operations, resulting in substantially deteriorated budgetary flexibility.” (City Ex. 9.K. at p. 3). 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. (Tr. at pp. 314–16). 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. (City Ex. 9.B; Tr. at pp. 290–91; 296–97).

As testified to by Finance Director Steve Corbeille, 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. (Tr. at pp. 301–02). 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 liability¹, which went from \$2,917,061 in 2012 to \$319,377. (City Exs. 9.D and 9.J; Tr. at pp. 299-302). 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, as Director Corbeille testified, 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. (City Ex. 9.B.; Tr. at pp. 295-297). To address these diminishing state aids, the City

¹ OPEB liability, otherwise known as “Other Post-Employment Benefit” liability, is liability that an employer incurs upon providing post-employment benefits to retired employees, and it is generated when employers provide these benefits to retirees without simultaneously ensuring adequate funds exist to pay for such liability as it arises.

has had to be continuously creative in locating additional sources of revenue. (Tr. at pp. 290–91; 296–97). For example, the City increased its room tax from six-percent to eight-percent in December 2013—which is the statutory maximum permitted—to increase room tax revenues. (City Ex. 9.F; Tr. at pp. 304–06). The City has also sought to invest portions of its fund balance to increase revenues, it has created TIF districts to encourage businesses to build in the City, and it has participated in the State’s Expenditure Restraint Program. (City Exs. 9.B, 9.C, and 9.E; Tr. at pp. 292; 304–07). While each of these strategies 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. (Tr. at pp. 316-317). 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. (City Ex. 9.C; Tr. at pp. 295–96). 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. (*Id.*). 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.

It is imperative the City maintains financial stability to protect the interests and welfare of the public, and the sole way in which this can be achieved is through continued stable and predictable budget practices. The only wage proposal which allows for continued and stable budgetary practices and, thus, which allows for the protection of the interests and welfare of the public, is the City’s proposal that preserves both Schedule A and Schedule B. This is unequivocally established by the data.

While the City’s proposal would cost approximately \$104,108.05 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. (City Ex. 21.C; Tr. at pp. 359–61). 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). 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. (Tr. at p. 365). When one looks at the long-term impacts of each parties' offer, the City's wage proposal is akin to a 30-year fixed mortgage that provides for stable and predictable costs, whereas the Union's proposal is akin to a 5-year adjustable rate mortgage that explodes with a massive, perpetuating balloon payment as of 2025 when the true impact of the merging wage schedules is felt. (Tr. at pp. 487–90).

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. (Tr. at pp. 369–375). First, the number is under represented. Second, it would be nonsensical to ignore an explosion of costs that permanently perpetuates—and 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. Were the City to have revenue shortfalls in 2022–2024, the City would be in significant need of those savings. 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—all on a \$6,000,000 fire department budget. 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. (Tr. at pp. 296; 314–17). 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. The Union’s proposal provides the City with a ticking time-bomb set to explode in 2025 and decimate the City’s budget for years thereafter. This time-bomb results from the substantial step increases set forth in the Union’s newly proposed wage schedule, which provide employees presently on the bottom of the B Schedule with exorbitant total wage increases that would cripple the City over the long-term (*i.e.*, the Union’s proposal provides a total wage increase of 27.20% for employees presently on the bottom of the B Schedule between 2022-2028, compared to the 8.75% increase provided by the City’s proposal to the same employees). 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. As Finance Director

Corbeille testified, he along with finance directors around Wisconsin are anticipating 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. (Tr. at pp. 297–98). 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. (City Exs. 9.F and 9.H). With COVID-19 continuing to escalate, these downswings are expected to continue into 2021. (Tr. at pp. 305–09).

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. (City Ex. 10.A; Tr. at pp. 297–298). These freezes are to remain in place through 2020 and may be subject to extension by the Common Council. (*Id.*). 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. (*Id.*).

While the City has taken significant efforts to prepare for the impact COVID-19 will have on its 2021 and 2022 budgets, it is unknown how far into the future the negative impacts of COVID-19 will reach. (Tr. at pp. 297–99; 305–09). It is unknown whether the City's cost saving efforts will be enough to offset the predicted downturn in State and local revenue sources and, if they are not, what the City will be required to do to make up for the additional revenue losses. (*Id.*). The Union wage schedule change places the interests and welfare of the public and City finances in a more destabilized position and cannot prevail under this factor.

ii. Comparability

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. City Exhibit 7.A 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 existed.

Here, the City 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 impact of the respective parties' offers can be seen in the tables below, which compares the impact of the City's and Union's respective wage proposals on employees presently on the bottom of Schedule B and presently on Schedule A.

Bottom of B Schedule	2019	2020	2021	2022-2028
City Proposal - (Base Wage Increase)	2.29%	4.46%	6.07%	0%
Union Proposal - (Base Wage Increase)	1.00%	1.75%	1.75%	0%
City Proposal - (Step Increase) ²	-	-	-	8.65%
Union Proposal - (Step Increase)	-	-	-	27.20%

A Schedule	2019	2020	2021	2022-2028
City Proposal - (Base Wage Increase)	.93%	1.64%	1.63%	0%
Union Proposal - (Base Wage Increase)	1.00%	1.75%	1.75%	0%
City Proposal - (Step Increase)	-	-	-	0%
Union Proposal - (Step Increase)	-	-	-	0%

The data in these tables undercuts 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 which 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

² Because the Union’s proposal implements freezes to only certain steps of its wage schedule in different years, it was impossible to calculate accurate and consistent step increases during the years in which those freezes were implemented. The Union’s proposal does not identify step freezes after 2021, allowing for calculation of the impact of step increases.

Union's proposal, the step increases provided 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 Fire Union, particularly absent a significant quid pro quo for the City. The reasoning is simple: the City-wide wage table in City Exhibit 13.A makes clear that the City's Fire Department employees are already among the highest paid employees within the entire City. (City Ex. 13.A). 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). (*Id.*). Put another way, 45.7% of the City's 70 highest paid employees are Fire Department employees, whereas only 32.9% of the City's 70 highest paid employees are Police Department employees. This discrepancy will not change drastically one way or the other under the City's wage proposal. However, the impact of the Union's offer, particularly by 2025, makes it unclear as to the impact on this disparity and whether more firefighters will be pushed closer to the top of the highest paid employees of the City. City Exhibit 13.A is important for another reason: it shows the firefighters are not underpaid as compared to internal comparables and other City employees—it shows 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 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.³ (City Ex. 18.B.1–B.4). Below is a table that compares the impact of the parties' respective wage proposals on the City's top firefighter paramedic wages against the 2019, 2020, and 2021 top firefighter paramedic wages among the City's proposed external comparables.

³ It must be noted that Union Ex. B.23 uses the City of Manitowoc's firefighter only wage numbers while utilizing firefighter paramedic wages for certain of the external communities, such as Two Rivers and Sheboygan. Thus, the Union is comparing two entirely different wage scales against one another. This is not representative of an accurate or reliable comparison.

Further, the wage numbers for Sheboygan within Union Ex. B.23 include longevity and, therefore, are inflated and further incomparable to the other communities included in that Exhibit, including the City of Manitowoc.

Top FF Paramedic Wage Step

Municipality	1/1/2019	1/1/2020	1/1/2021
CITY 2019 – 2021 OFFER			
Manitowoc - Schedule A - hired before 8/1/09 ⁴	75,092	76,292	77,492
Manitowoc - Schedule B - hired on or after 8/1/09	68,204	69,404	70,604
UNION 2019 – 2021 OFFER			
Manitowoc	74,446	75,756	77,079
COMPARABLES			
Fond du Lac	73,232	75,062	75,062
Kaukauna	66,591	68,256	69,621
Sheboygan (Sched. H)	69,914	71,312	71,312
Stevens Point	65,339	66,973	68,647
Two Rivers - hired on or before 1/1/11	62,504	64,373	66,336
Two Rivers - hired after 1/1/11	64,996	66,959	68,985
Wausau (FN)	69,238	70,969	72,389
West Bend (FN)	69,412	71,494	73,639
Wisconsin Rapids	66,735	68,403	70,113

Manitowoc's Rank under City Offer			
Manitowoc - Schedule A - hired before 8/1/09	1 of 10	1 of 10	1 of 10
Manitowoc - Schedule B - hired on or after 8/1/09	5 of 10	5 of 10	5 of 10
Manitowoc's Rank under Union Offer			
	1 of 10	1 of 10	1 of 10

(City Ex. 18.B.5–B.8).

As the table notes, the City’s wage proposal keeps Manitowoc’s Schedule A wages ranked first out of ten among external comparable communities⁵ for each year of the 2019–2021 contract,

⁴ Any repeated numbers in the wages tables throughout this Brief are representative of years a particular municipality has not yet settled.

⁵ The tables herein rank the parties’ respective offers against 10 total sets of community wages due to inclusion of Two Rivers’ split wage schedules as their own individual wage (as opposed to only counting Two Rivers once and

and it likewise keeps the Manitowoc Schedule B wages ranked fifth out 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. (City Ex. 5.C.). 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.

This chart also shows another important consideration—Manitowoc firefighters are paid well. They are by no means underpaid or near the bottom. 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 Fire 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 Fire Union to help the City afford that impact.

These trends can also largely be seen within tables below comparing the parties' respective wage proposals on the City's starting firefighter paramedic wages and the top lieutenant paramedic

failing to account for one of their wage schedules); however, there are only 8 external comparable communities to compare against Manitowoc (*i.e.*, there are 9 total external wages to compare, plus inclusion of Manitowoc makes a total of 10 separate wages).

wages against the 2019, 2020, and 2021 starting firefighter paramedic and top lieutenant wages among the City's selected external comparables.

Starting FF Paramedic Wage Step			
Municipality	1/1/2019	1/1/2020	1/1/2021
CITY 2019 – 2021 OFFER			
Manitowoc - Schedule A - hired before 8/1/09	60,764	61,964	63,164
Manitowoc - Schedule B - hired on or after 8/1/09	53,852	55,052	56,252
UNION 2019 – 2021 OFFER			
Manitowoc	52,522	53,436	54,375
COMPARABLES			
Fond du Lac	50,879	51,151	53,585
Kaukauna	53,654	54,995	56,095
Sheboygan (Sched. H)	46,141	47,064	47,064
Stevens Point	55,988	57,387	58,822
Two Rivers - hired on or before 1/1/11	53,260	54,862	56,493
Two Rivers - hired after 1/1/11	55,386	57,046	58,764
Wausau (FN)	54,101	55,453	56,563
West Bend (FN)	54,985	56,634	58,333
Wisconsin Rapids	52,939	54,263	55,619

Manitowoc's Rank under City Offer			
Manitowoc - Schedule A - hired before 8/1/09	1 of 10	1 of 10	1 of 10
Manitowoc - Schedule B - hired on or after 8/1/09	5 of 10	5 of 10	6 of 10
Manitowoc's Rank under Union Offer	8 of 10	8 of 10	8 of 10

(City Exs. 18.B.1 - 18.B.4).

This table indicates the City's wage proposal keeps Manitowoc's Schedule A wages stable with a ranking of first among the external comparable communities, and it keeps the Manitowoc Schedule B wages stable with a 2019 and 2020 ranking of fifth among the external comparable

communities and a 2021 ranking of sixth among the comparable communities. On the other hand, the Union’s wage proposal would once again represent a significant shift among the external comparables, because it causes the entire bargaining unit to immediately move to first among the external comparable communities and keeps the entire bargaining unit within the top two communities for the duration of the 2019-2021 contract. This chart also reaffirms that Manitowoc firefighters are paid well. They are by no means underpaid or near the bottom.

Top Lieutenant Paramedic Wage Step

Municipality	1/1/2019	1/1/2020	1/1/2021
CITY 2019 – 2021 OFFER			
Manitowoc - Schedule A - hired before 8/1/09	80,312	81,512	82,712
Manitowoc - Schedule B - hired on or after 8/1/09	72,896	74,096	75,296
UNION 2019 – 2021 OFFER			
Manitowoc	79,726	81,120	82,539
COMPARABLES			
Fond du Lac	74,536	76,400	78,501
Kaukauna	73,210	75,040	76,541
Sheboygan (Sched. H)	74,122	75,604	75,604
Stevens Point	73,093	74,920	76,793
Two Rivers - hired on or before 1/1/11	N/A	N/A	N/A
Two Rivers - hired after 1/1/11	N/A	N/A	N/A
Wausau (FN)	74,980	76,854	79,160
West Bend (FN)	78,017	80,358	82,768
Wisconsin Rapids	71,310	73,092	74,920

Manitowoc's Rank under City Offer			
Manitowoc - Schedule A - hired before 8/1/09	1 of 10	1 of 10	2 of 10
Manitowoc - Schedule B - hired on or after 8/1/09	9 of 10	9 of 10	9 of 10
Manitowoc's Rank under Union Offer			
	1 of 10	1 of 10	2 of 10

(City Exs. 18.B.21 - 18.B.24).

The Top Lieutenant Wage Step Table further shows the stability of the City's proposal and the volatility of the Union's proposal. Specifically, it establishes 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 Top Lieutenant Wage Step Table also confirms 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 a 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. (City Ex. 4). 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 (*e.g.*, Wisconsin Rapids provides three-percent paramedic premium, West Bend provides five-percent paramedic premium, Sheboygan provides four-percent paramedic premium, and Kaukauna and Stevens Point only hire paramedic-licensed applicants and do not identify a specific paramedic premium as it is rolled into their base pay). (City Ex. 18.C.).

On the contrary, 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 ($\$55,764 * 1.07 = \$59,667$), and a \$5,000 increase on that same starting firefighter wage would be \$60,764. (City Exs. 18.B.3; 18.B.7). 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 its proposal to move to a single wage schedule is most consistent with the external comparables because only Two Rivers utilizes a two-tier wage scale. It cannot be lost on this Arbitrator that Manitowoc's A and B wage schedules are the product of repeated and long-standing good faith bargaining between the parties which resulted in several mutual and binding agreements that promoted economic stability and budgeting predictability for the City. (Tr. at pp. 196; 512–15). While the Union may have come to regret this mutual agreement and feel they did not achieve the staffing levels they wanted over the last ten years, arbitrators are extremely reluctant to utilize interest arbitration as a mechanism to litigate and overturn old voluntarily settled bargains simply because one party now regrets a prior agreement. *Mayville School District*, Dec. No. 27105-A, at pp. 18–19 (Petrie, 1992). Arbitrator Petrie found Arbitrators refusing to consider bargaining sessions from old voluntary bargains that occurred prior to the parties' most recent negotiations despite the Union's argument that the bargaining unit's wages had slipped over the past many years in comparison to the cost of living, noting this approach presumes "the most recent negotiations disposed of all the factors of wage determination" and it avoids the "grave hazards" of such practice. *Id.* (citing *The Arbitration of Wages*, University of California, Irving Bernstein, 1954, at p. 75.). The Arbitrator here should also remember the Union's wage proposal represents a needless monumental swing in the City's overall positioning within the external comparables, and because the A and B wage schedules are the product of a mutual and binding agreement between the parties, the City's wage proposal is clearly more in line with the external comparables, as it maintains the status quo in almost every respect.

We also 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 Fire 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 (Tr. at pp. 141–53). 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 (and, thus, voluntarily accepted employment under the two-tier wage scale). Two issues also stand out.

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. The comparison of Manitowoc being a competitor and comparable of Green Bay is as erroneous as Beaver Dam being a competitor and comparable of Madison. The operational, economic, and socioeconomic inequalities between these two communities and their respective fire departments become readily apparent by looking to the disparate economic and socioeconomic data points between the City and Green Bay and the Union's own testimony. (City Exs. 16.B.1-16.B.7). For example, the Union's witnesses testified that Green Bay has approximately 180 employees (compared to approximately 60 total Fire Department positions of which 51 are sworn union positions in Manitowoc), Green Bay is a metro fire department serving multiple communities (compared to Manitowoc serving only Manitowoc), and Green Bay does not conduct inter-facility transports (compared to Manitowoc, which does). (Tr. at pp. 154–55). While Green Bay may provide higher wages than Manitowoc (and many other municipalities), the operational, economic, and socioeconomic differences between Green Bay and Manitowoc render the Union's testimony akin to arguing a mid-size local employer should compete with the compensation package of a Fortune-500 employer. It is a preposterous argument and cannot be given any real consideration by this Arbitrator.

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. (Tr. at p. 480–83). 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. (Tr. at p. 483). The City

needed to focus on a wage structure that was predictable and stable and hence prepared its final offer accordingly. There is always another time and the parties will no doubt be engaged negotiations in 2021 for the next agreement when they can discuss this issue in light of the economic circumstances that exist.

b. Overtime Pay for Work During the Normal Scheduled Shift

Public outreach, education, training, and risk prevention are essential for the safety and success of a safe community. (Tr. at p. 435–37). 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. (City Ex. 12.C).

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.

What is more shocking is the Union taking this proposal to final binding Arbitration at a time when the City is implementing a hiring freeze, when the City has cut one Deputy Chief position from the Fire Department, and when the Fire Department has been working steadily along with other City Departments since 2011 to reduce or eliminate overtime. (City Ex. 10.A–D). Director Lillibridge testified about the direction from the Council and Mayor to “eliminate or

decrease [the] amount of overtime and to avoid it in situations where we're able.” (Tr. at p. 393–94). City Exhibit 10.D shows some of the significant creative efforts taken in the Police, DPW and Parks Departments to reduce overtime—which, along with the Fire Department reflect the largest generators of overtime City-wide. The Union proposal cuts against the very grain of the City’s culture and objective of not enhancing overtime and where the City has aggressively managed Fire Department overtime where a downward trend in overtime exists from 2010 to 2019. City Exhibit 10.C shows significant reductions in Fire Department overtime from \$243,708 in 2010 down to \$56,223 in 2019, with numbers similar to 2019 numbers from 2014 onward. (City Ex. 10.C). These 2014 to 2019 overtime amounts show the fruits of efforts to reign in overtime.

In consideration of the economic explosion to occur from the Union’s offer, the City should have expected a proposal that helped the Fire Department further reduce overtime—not one that is an automatic generator of overtime. Setting aside the lack of any meaningful quid pro quo, this proposal is unconscionable to the City and would never be voluntarily agreed to by the City. It is another lethal poison pill were the Arbitrator to consider which settlement the parties would more likely have voluntarily agreed to.

i. The Interests and Welfare of the Public

The City’s status quo approach to managing overtime best serves the interests and welfare of the public. For years, firefighters have performed various services like work at parades, football games, fairs, community education, and other civic training and events that benefit the community during the firefighter’s normal shift at a straight time rate. Those services well-satisfy the interests and welfare of the public when firefighters perform these valuable community services at straight time rates. Employees receiving an overtime rate to perform these community services does not further the interests and welfare of the public. To the contrary, the Union’s overtime proposal may

have the opposite effect. The City is reimbursed for some of these costs by other government and private entities. If the City were not reimbursed for these full costs, then the City may elect not to provide this service level or to reduce the service level. (Tr. at p. 446–47). This could detrimentally impact the interests of various organizations who rely upon our firefighters for on-site staffing for community events, CPR training, mutual aid training, and other training efforts. Further, the City may elect to short-staff these events in order to save costs as this proposal has a significant economic consequence. Regardless, explaining to community members and organizations that the City must pay overtime to employees who work these events on their normally scheduled shift is professionally embarrassing to the Fire Chief. (Tr. at p. 446). The consequential impact of the Union’s proposal is unknown, particularly as the ambiguity of the Union’s proposal was not clarified by them until after the hearing commenced. Yet this ambiguity was known to the Union in March 2020, when the WERC Chairman James Daley in the declaratory ruling identified the Union’s overtime proposal had “ambiguity as to its meaning.” *City of Manitowoc*, Dec. 38313 p. 5.

Due to this ambiguity, the City calculated the initial financial impact of the Union’s overtime as \$90,752 per each year of the contract, or \$272,256 over the life of the 2019-2021 contract. (City Ex. 21.B.1). After listening to the Union’s testify its overtime proposal was much narrower than the City’s interpretation and only included public education and training events, the City recalculated the financial impact to be \$1,111 per year, or \$3,333 over the life of the 2019-2021 contract. (*Id.*). Setting aside the fact that these calculations are conservative as they do not consider year-over-year wage increases, the Union’s proposal, if implemented, would demoralize the City’s workforce. Other employees would observe the City’s firefighters being paid additional overtime beyond that which they already receive (which is already substantial in nature and ranks

among the highest in all City departments), and it would be known this overtime is being paid to firefighters for simply performing their job duties during their normal shift. City employees outside the Fire Department would view this practice as hypocritical and inconsistent with the City's long-standing position that overtime costs must only be incurred when absolutely necessary, and, in turn, the practice would serve to demoralize the City's entire workforce.

The City's approach to overtime is an important philosophical choice. The evidence shows the long-standing City-wide effort to reduce and control overtime as a means of rising from the 2011 fiscal crisis. These efforts highly weigh in favor of the interests and welfare of the public. *Milwaukee Metropolitan Sewerage District (AFSCME)*, Dec. No. 29453-A (Michelstetter, 1999) at page 10 ("Improved efficiency is very much in the public interest and the public interest is entitled to great weight."). The Fire Union offer slaps the faces of the elected and department leaders who creatively effectuate these overtime reduction and control efforts, and the employees working hard to achieve these efforts, which in the end looks like nothing short of an obnoxious cash grab. To say the Union offer may impact morale for others in the City is an understatement. The consequential economic impact is real and it pushes the City in the opposite direction of its efforts to reduce overtime. There is a significant cost implication of the Union's offer that would increase overtime in 2019 and 2020 as identified in City Exhibits 12.D and 21.B.1 which shows a conservative estimate of these cost impacts. Whether the City can recoup any of these costs already incurred or pass on these costs to other entities is unlikely as these activities already occurred in 2019 and 2020. Going forward, whether those entities will balk at the higher cost of service or raise concern as to why firefighters are even being paid overtime for work performed during their normal shift is also unknown, but it is a very realistic concern. Clearly, the Union proposal disfavors the interests and welfare of the public.

ii. Comparability

There is no internal or external support for the Union's overtime proposal. Simply put, as City Exhibit 8.A shows, 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 impact to internal labor relations with the fire and transit union could also be unsettling. 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 collective bargaining agreements 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 in Article XIX, Section H.1. for employees performing specific duties associated with public education or public relations events outside the standard work day. (City Ex. 19.A). This scope of duties in Sheboygan subject to premium pay is much narrower than the ambiguous language proposed by this Fire 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 Fire 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. (City Ex. 12.D). As such, the City’s proposal to preserve the status quo best reflects the statutory factor involving internal and external comparability.

c. Promotions

The City’s Offer 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. (City Exs. 2.A; 8.B; 15; Tr. at pp. 451–53). While seniority is a factor considered under the Chief’s proposed record of service review, the guideposts to the Chief’s decision of who should be appointed for consideration by the Police and Fire Commission is a candidate’s adherence and commitment to the Department’s Mission, Vision, and Core Values. (*Id.*). 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. (City Exs. 2.B; 8.B).

i. The Interests and Welfare of the Public

The public should reasonably expect the City of Manitowoc Fire and Rescue Department to operate at the highest level of efficiency and effectiveness as possible, and it is critical through sound leadership through the Department's command staff to achieve this expectation. The interests and welfare of the public are best served if the City employs and promotes command staff members who are highly qualified with respect to their technical skills, certifications, education and their commitment to providing high-quality service by adhering to the Department's Mission, Vision, and Core Values. (City Exs. 12.A; 15). Merely possessing minimum qualifications and the most experience at the City does not make one a respected and effective station leader. While each leader must lead with honor, respect and compassion, the ability of that leader to impress the importance of teamwork, maintain the highest professional standards, and commit to the value system of the Department's Mission, Vision, and Core Values is necessary for that command staff member to be an effective leader. (City Ex. 12.A; Tr. at p. 451).

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 (Tr. at pp. 428–30). 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. (*Id.*). If the Lieutenant is incapable of effectively leading a station, that Lieutenant will not succeed and neither will those at the station. Within the fire service, failure can be the difference between life or death and, therefore, failure is not an option.

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 City's contemporary promotional process proposal seeks to remove the restrictions placed on the Chief by implementing flexibility and judgment within the Department's promotional process so that the Chief can select the best leader for a station. 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. It is also important for that firefighter to feel they have a legitimate shot at obtaining a promotion and that the insurmountable barrier of seniority should not stand in the firefighter's way of advancing his or her career.

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. (City Ex. 15; Tr. at pp. 451-453). 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. (*Id.*). The Chief's inclusion of the Mission, Vision, and Core Values as the promotional process' focal point is to ensure that he is selecting the best and most capable leader for the Department, as opposed to picking the most senior, technically skilled individual who may or may not have any leadership skills or be devoted to the Department's value system. (*Id.*).

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." (Tr. at pp. 453–55; City Ex. 2.B). This is a ploy. 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 such as leadership, attitude, work ethic and other values-based traits indicative of maintenance of the esprit de corp. (City Ex. 2.B). In effect, the Union 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.

In essence, the Union's proposal may force the Chief to limit his analysis to a candidate's tangible qualities and service duration, while the City's proposal looks to both the tangibles and intangibles of all candidates so as to ensure the best and most capable leader is selected and not just the most-senior candidate who meets minimum qualifications on paper. Failure to create a system that encourages all interested firefighters to participate and failure to create a system that considers both the tangible and intangible qualities of a candidate will continue to thwart the effectiveness of the promotional process, which prevents the Chief from enhancing the overall quality of services the Fire Department provides the public. Decreased morale and turnover may also continue as less-senior firefighters may seek a position with another municipal fire department

instead of waiting years for a promotional opening under the Union's offer until they are the most senior applicant. (Tr. at pp. 451–52). For all of these reasons, it is evident the City's promotional process proposal is far more consistent with the interests and welfare of the public than the Union's proposal.

ii. Comparability

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. (City Exs. 6.A and 8.B). 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. This limitation constrains the Fire Chief's pool of candidates to select from, undermines the ability to professionally develop the workforce within the Fire Department, and creates inequities of opportunity for promotion between those who serve within the Police and Fire Department. 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. *See e.g., City of Waukesha*, Dec. No. 21299, at p. 20 (Fleischli, 1984) (stating that a failure to strive for consistency and equity in treatment of employees “can be disruptive in terms of [its] negative impact upon employee morale and the municipality’s collective bargaining relationship and credibility with other labor organizations); *City of Chippewa Falls*, Dec. No. 28334, at pp. 3–4 (Johnson, 1995). The City’s proposal seeks to improve equity among all employees by bringing the Fire Department in line with its internal comparables and ensuring all City departments with bargaining units are promoting the best, most qualified candidates rather than just the most senior. The Union’s proposal rejects this contemporary line of thinking and holds the Fire Department and the City back from achieving either of those critical goals of equity and promoting the best candidate. Thus, it is evident the City’s proposal is substantially more consistent with both the external and internal comparables.

With respect to the external comparables identified by the City, those communities do not support keeping the archaic inflexible seniority-based outcome demanded by the Union’s offer. The external comparables favor the City. Five out of the eight communities have chosen to have convoluted promotional processes that include numerous steps, tests, and criteria. (City Ex. 19.B.). However, with regard to the issue of binding the Fire Chief to selecting the most-senior qualified candidate, the external comparables strongly support the City’s promotional process proposal over the Union’s. Six out of the eight proposed comparable communities do not require their Fire Chief to select the most-senior qualified candidate for each and every promotion made (Two Rivers, Wisconsin Rapids, West Bend, Wausau, Stevens Point, Fond du Lac). (*Id.*). Instead, each of these communities either do not factor in seniority at all or, like the City’s proposal, they

consider seniority within the overall process, but the candidate selected need not be the most-senior qualified candidate. In light of this, the City's proposal is much more consistent with how comparable external fire departments operate, whereas the Union's proposal represents an outlier. Thus, the City's proposal seeks to make the City's promotional process more competitive with the external marketplace and, in doing so, allow the City to better compete with those external departments when looking to maximize its ability to select and retain high-quality performers who show leadership desire and capability.

d. Education and Tuition Reimbursement

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. (Tr. at pp. 401–05; City Ex. 4; City Ex. 8.D). As Director Lillibridge testified, 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. (Tr. at p. 402). 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.

i. The Interests and Welfare of the Public

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, & Tuition Reimbursement Policy. (City Ex. 8.D). 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 it is 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. (Tr. at pp. 401-405; City Ex. 3).

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. Director Lillibridge and only one other Human Resources Department employee administer benefit programs for approximately 350–500 full-time and seasonal City employees. (Tr. at p. 389–91). According to Director Lillibridge, she must “streamline processes,” and thus she strives to maintain consistency across all City departments and the benefit plans she administers. (*Id.* at 391). 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 not only require staff time to track down records and to talk with current and former employees about historical practices, but they also create the possibility that the City may inadvertently misapply the collective bargaining agreement to the detriment of the employee, the City, or both. Thus, 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.

Commonality of standard benefits shared by employee groups across the City also helps promote labor peace. Memorializing in the collective bargaining agreement the education benefits already utilized by the parties that are consistent City-wide helps promote stability and predictability for the benefit program rather than discord. Moreover, it shows a consistent pattern of fair and equitable treatment of City employees as to common benefits. *City of Milwaukee*, Dec. No. 25223-B (Rice 9/98) ("If the employer is to maintain labor peace with the many bargaining units with which it negotiates, changes in wages and benefits must have a consistent pattern."). Therefore, to the extent the interests and welfare of the public is a factor to be considered for this proposal, the City's proposal is the only proposal consistent with that factor.

ii. Comparability

Neither parties' proposal is conclusively supported by the external comparables given 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). (City Ex. 19.D). 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. (Tr. at pp. 401–06). The City's proposal seeks to memorialize this City-wide practice within the collective bargaining agreement and continue it moving forward. While the Union's proposal does not seek to change the status quo of the underlying practice, it fails to clarify the collective bargaining agreement and creates unnecessary confusion for both parties in their administration of the collective bargaining agreement. Although this may seem like a distinction without a difference, 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, whereas the Union's proposal seeks to maintain outdated language within the collective bargaining agreement that is disharmonious with both the parties' actual practice and the internal comparables' actual practice.

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. This is borne out by the utter lack of evidence put forth by the Union on this argument. As Director Lillibrige testified, the City's proposal is merely seeking to remove archaic language and memorialize the parties' current practice, which includes the City paying for paramedic training costs. (Tr. at pp. 401-06). Therefore, the Union's argument is misplaced. 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.

e. Light Duty

The City proposal seeks to modify the 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.

i. The Interests and Welfare of the Public

As noted throughout this Brief, 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 for. 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. (City Ex. 4). 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). (Tr. at pp. 405–08). 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. (*Id.*). 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.

On the contrary, the City, through its proposal, seeks to increase the effectiveness and efficiency of its fire services and ensuring productive work is performed by employees who can't fight fires, perform emergency medical treatment, or initiate rescues by limiting light duty

assignments to on-duty injuries only and to a 40-hour, Monday through Friday workweek schedule—just like all other City employees who must modify their work schedule to perform light duty. (Tr. p. 406–07; City Ex. 4). 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. (Tr. at pp. 409-413; City Ex. 14.A). Specifically, as of October 6, 2020, bargaining unit members had 98,624.58 hours of available leave in the aggregate, comprised of sick, holiday, vacation, and funeral leave. (City Ex. 14.A). On average, this leaves each bargaining unit member with 2,012 hours of accrued, unused leave, which is enough to cover almost an entire year with paid medical leave, including if necessary to provide childcare during such leave (*i.e.*, 49 bargaining unit members divided by 98,624.58 = 2,012 hours per bargaining unit member). Director Lillibridge also testified that she would address with the Union having employees using paid leave on a 40-hour light duty workweek by only using a proportionate share of leave time (11.2 hours) for a missed work day rather than a full 24-hour shift. (Tr. p. 409). 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. (City Ex. 14.B).

Also quite telling is the City's look-back Exhibit showing each situation where an employee used light duty since 2018. (City Ex. 14.C). This 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 Department's 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.

ii. Comparability

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) (City Ex. 19.C). 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. (City Ex. 8.C; Tr. at 406-07). 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. (Tr. at 406-07; City Exs. 6.A & 6.B.). 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.

f. Medical Exams

The City is proposing to strike specific sections of Article 24 Section 1 and 2 of the Collective Bargaining Agreement regarding annual physical examinations and to develop a new program grounded in today's fitness and medical practices and techniques. The City's proposal focuses on the City's efforts to work with the Union to establish a voluntary firefighter fitness program developed with the Union's input. The City is also focused on establishing fitness for duty standards developed by the Fire Chief in consultation with the City's occupational health providers who have also assisted the City of Two Rivers with their program. (Tr. at p. 454). The Union proposal also substantially modifies Article 24, Section 2 which strikes medical examination components. The City and Union agree as to this change to Section 2.

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 Collective 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 and fit for duty standards developed in consultation with the City's occupational health providers.

i. The Interests and Welfare of the Public

Certainly, having physically fit firefighters who are capable of performing the physically rigorous and laborious responsibilities is important. The establishment of a new program agreed upon by both sides is likewise of importance to the public. The City's proposal seeks to achieve that objective. The Union proposal, on the other hand, only half addresses this problem. The Union proposal ignores the concept of establishing a new voluntary firefighter fitness program and standards developed in consultation with the Chief and the City's occupational health providers.

Seemingly ignoring this important development, the Union chooses instead to leave in archaic language that is presently not even followed by the parties and thus disfavoring the interests and welfare of the public.

ii. Comparability

As City Exhibit 8.F points out, internal comparable units do not contain language regarding fitness programs and thus provide no leverage for the Union's position. Likewise, most of the external comparable agreements as identified in City Exhibit 19.F do not address this issue or give decisive direction. One community, Fond du Lac, addresses this issue where they have developed their own unique system. In the end, the City is seeking to develop a new comprehensive program that will take time and through negotiations with the Fire Union. This language establishes the City's commitment and furtherance of that objective thus causing the statutory factors to weigh in favor of the City's proposal.

g. Laundry

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 does reflect the reality of the organization. The City continues to provide linens and washers and dryers for employees to wash their bed linens. As Lieutenant Johnsrud testified at the hearing, ambulance linens are not washed by Local 368 members and it has been at least 12 years since they have done so. (Tr. p. 521–22).

i. The Interests and Welfare of the Public

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 Local 368 members, the removal of this language from the contract also does not truly affect the interests and welfare of the community.

ii. Comparability

Other collective bargaining agreements within the City of Manitowoc are devoid of language involving the laundering of items. (City Ex. 8.E). 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. (City Ex. 19.E). As such, because the City's approach reflects the reality of the status quo, the City's offer is more favorable.

V. 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/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 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 Fire 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.

For all of these reasons, the City of Manitowoc requests Arbitrator Roberts to select the Final Offer of the City of Manitowoc.

Respectfully submitted this 16th day of December, 2020.

By: _____



Kyle J. Gulya, State Bar No. 1040505
Ryan P. Heiden, State Bar No. 1100141
von Briesen & Roper, s.c.
10 East Doty Street, Suite 900
(608) 316-3177
kgulya@vonbriesen.com
Attorneys for the City of Manitowoc

35376707_8