

STATE OF WISCONSIN
BEFORE ARBITRATOR ANDREW ROBERTS

In the Matter of the Petition of
**LOCAL 368, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, AFL-CIO**
For Final and Binding Arbitration Involving Public Safety
Employees in the Employ of
CITY OF MANITOWOC, WISCONSIN

Case ID: 285.0015
Case Type: MIA

**POST HEARING BRIEF OF
LOCAL 368, IAFF**

December 16, 2020

Respectfully submitted,

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I. STATEMENT OF THE CASE

On June 7, 2018, Local 368, International Association of Fire Fighters, AFL-CIO (Union) and the City of Manitowoc (City) commenced bilateral negotiations intended to produce a successor collective bargaining agreement the agreement that was nominally due to expire on December 31, 2018. Unable to settle bilaterally, the parties filed a joint Petition for Mediation on September 26, 2018.

Then on February 26, 2019, the City filed a Petition for a Declaratory Ruling seeking to have a large number of contract provisions declared to be permissive or prohibited subjects of bargaining. The Union and the City resolved all but four issues. On March 5, 2020,

Commissioner Daley issued the WERC's decision declaring all four remaining issues to be mandatory subjects of bargaining. (U. Ex. F) On June 26, 2020 the Union petitioned the Wisconsin Employment Relations Commission (WERC) to initiate Municipal Interest Arbitration procedures pursuant to §111.77, Stats. The WERC assigned Attorney Peter Davis to investigate the matter.

Thereafter the parties submitted final offers. Attorney Davis certified the impasse and, from a panel sent to them by the WERC, the parties selected Arbitrator Andrew Roberts to serve. Arbitrator Roberts conducted two days of hearing on October 21 and 22, 2020.

The Union demonstrates here that the facts, the statutory criteria and the relevant interest arbitration precedent used to determine these disputes persuasively support a finding that the Union's final offer is the more reasonable of the two.

II. STATEMENT OF THE ISSUES

A. Wages (Article 9):

The Union proposes to modify the salary schedule such that all of its members who are at the same rank and performing the same work are paid the same salary. The Union proposal also increases the number of steps from entry level firefighter to maximum firefighter salary, smoothing the increases from step to step. It proposes a percentage increase for the more highly compensated Schedule A employees that is less than the comparables in order to cover the cost of implementing the new schedule.

The City, following the Union's stipulation that contradictory language in the City's final offer was scrivener's error, proposes to retain the two separate salary schedules with fixed monthly rates to increase by \$100.00 (\$1200.00 annually) for each year of the agreement.

The cost to the City of the two proposals is virtually the same.

The City proposes changing the paramedic premium from a percentage of wages to a \$5000 annual payment. The Union proposes to maintain the *status quo*.

B. Definition of Work Day (Article 4, Section 1(c)):

The City initially proposed to delete language that prohibited it from assigning certain duties outside the employees' regular work day on the ground that it was a permissive subject of bargaining. The Union responded by proposing to amend the language such that the City could assign duties that had previously been prohibited but that if it chose to do so, it would pay the employees so assigned a ½ time premium.

The City then claimed the Union's impact proposal was a permissive subject of bargaining. The WERC rejected that argument. Thereafter the City reversed its position entirely and proposed to maintain the language that it previously sought to delete. The Union stands on its impact proposal.

C. Light Duty Program Changes (Article 4)

Section 4, (a): The City proposes to eliminate language permitting employees to perform light duty on the 24-hour shift and to require performance on a standard Monday through Friday administrative 9-hour schedule. The Local proposes to maintain the current contract language.

Section 4, (c): The City proposal eliminates eligibility for light duty for employees who suffer a non-duty related injuries. The Local's position is to maintain the current contract language.

D. Physical Examinations (Article 24, Section 1)

Section 1. The City proposes to delete the entire section, replace it with no substantive verbiage, but instead proposes to "offer a voluntary firefighter fitness program, developed with Union input." The City also proposes verbiage to the effect that the "will establish fit for duty standards." The Union proposes the current contract language.

E. Promotional Procedure (Article 6)

Section 1(a): Both parties propose to eliminate existing Section 1(a) language.

Section 1(c): The City proposes to eliminate portions of the current language requiring seniority as the basis for selection of the qualified candidate. The Local proposes to substitute language that is comparable to the current contract provision.

F. Continuing Education (Article 9, Section 6):

The City proposes to delete substantial portions of the Section. The Local proposes to maintain the *status quo*.

G. Physical Examinations

Article 24, Section 1: The City desires to eliminate language and eliminate a benefit, but then “work with” the Union to develop a fitness program. The Local proposes to maintain the *status quo*.

H. Linen and Laundering (Article 26):

The City proposes to eliminate employee protective language. The Union proposes to maintain the *status quo*.

III. APPLICABLE INTEREST ARBITRATION STANDARDS

A. Statutory criteria

§111.77 (6), Wis. Stats., requires that:

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

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

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - a. In public employment in comparable communities.
 - b. In private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and

hospitalization benefits, the continuity and stability of employment, and all other benefits received.

7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Wis. Stat. § 111.77(6) (2017-18).

B. Arbitral precedent delineating the tests to determine the reasonableness of a proposed change to the *status quo*.

Arbitrators have also established a set of criteria to test the reasonableness of a proposal that makes significant change to a collective bargaining agreement. Arbitrator Engmann's synthesis is clear:

As the County is attempting to change the *status quo*, the burden is on it to go forward and meet said burden. Arbitrators have formulated such burden in many somewhat similar ways. **Let me offer the following articulation of the mover's burden: to show that there is an actual, significant and pressing need for change of the status quo; that the proposed change addresses the need in as limited a manner as possible; that comparables are consistent with and supportive of the proposed change; and that a proper *quid pro quo* is offered to compensate, at least in part, the party resisting the change.** *Oconto County (Courthouse, Highway, Prof'ls)*, Dec. Nos. 31350-A, 31351-A, 31352-A (Engmann, 09-07-06) http://werc.wi.gov/interest_awards/int31350.pdf. (Emphasis supplied)

Similarly, Arbitrator Marshal Gratz observed:

As a general proposition, a party seeking to obtain a new contractual provision in an interest arbitration proceeding has the burden of proving: **(1), that there is a compelling need for change; (2), that its proposal will, in fact, remedy the problem addressed; and (3), that it has offered a sufficient enough quid pro quo in exchange for the new benefit.** See *Adams County*, Dec. No. 25479-A, (Reynolds, 1988); *Mineral Point School District*, Dec. No. 28879-A, (Barron, 1997). But, there are exceptions to

that general rule, which is why some arbitrators have ruled that **no quid pro quo is needed for “catch up” and to be brought into the comparable mainstream.** See *Delavan-Darien School District*, Dec. No. 27152-A, (Yaffe, 8/31/92); *Bristol School District No. 1*, Dec. No. 27580-A, (Weisberger, 1993). In addition, Arbitrator Richard Tyson in a recent case involving these parties ruled that a ***quid pro quo* generally is needed “unless its offer has clear support such as among the comparables,”** (Union Exhibit 13, p. 21).

C. Applicability of bargaining history in interest arbitration disputes

Bargaining history is an “other factor” which is “normally or traditionally taken into consideration” by interest arbitrators when they determine the outcome of a case. The authors of “How Arbitration Works” write:

In arbitrating the terms of a renewal contract, one arbitrator would consider seriously ‘what the parties have agreed upon in their past collective bargaining, as affected by intervening economic events. The past bargaining history of the parties, including the criteria that they used, has provided a helpful guide to other interest arbitrators.’ Elkouri, Frank, “*How Arbitration Works*,” Elkouri and Elkouri, 6th ed., editor-in-chief, Alan Miles Ruben, at 1440-1441. (Citations, omitted)

Arbitrator Gunderman considered bargaining history in determining the weight to be given an internal comparable in *D.C. Everest Area School District*, Decision No. 26174-A (Gunderman, 2/14/91). Arbitrator Petri made this point clearly:

In filling this role, the interest neutral will normally **closely examine and consider the parties' past practices and their negotiations history, which criteria fall well within the scope of Section 111.70(4cm)(7r)** [the former general employee analogue of 111.77(6)(bm)8.] of the Wisconsin Statutes, and which must be arbitrarily applied in conjunction with all other statutory criteria in the final offer selection process. *Waupaca County (Highway Unit)*, Decision No. 28850-A, at 11, (Petrie, 28850-A)

IV. RELEVANT FACTS

A. The parties’ wage proposals cost roughly the same

1. The Union's offer reforms the Group B wage schedule to unify it with the Group A schedule in a cost-effective manner

The Union's offer reforms and unifies the pay schedule for Group B employees by:

Setting the base:

1. Add 1% to the 2018 A scale ff E, MPO, Lieutenant, and Captain for their 2019 rate:
 - o Captain: 6397 to 6461
 - o Lieutenant: 6176 to 6238
 - o MPO: 5856 to 5915
 - o A-scale ff E: 5741 to 5798
2. Then, for 2019: freeze the B scale ff A at the 2018 rate
 - o B-scale f/f A: 3971 to 3971

Defining the new pay step formula:

3. Calculate the difference between 2019 A-scale ff E and 2019 B-scale ff A:
 - o $5798-3971=1827$
4. Divide the difference (1827) by 7
 - o $1827/7=261$
5. Add the quotient to each step to create 8 equally tiered pay scale steps:
 - o A: 3971
 - o B: 4232
 - o C: 4493
 - o D: 4754
 - o E: 5015
 - o F: 5276
 - o G: 5537
 - o H:5798

Adapting the formula to our current state to place employees:

6. Note the difference between listed pay on the above equation steps and the listed pay on the table. This was as a result of the NEW PAY SCALE STEPS BEING LESS AGGRESSIVE THAN THE CURRENT STEPS, but due to the duration of this bargaining process, the 2018 B-scale f/f B A-E pay scale steps were extended into 2019. In 2020 even with a 1.75% raise, steps B-E show a

PAY FREEZE at these steps, and further shows- again taking into account the listed 1.75% raise- a DECREASE in pay for these steps in 2021.

7. In 2020, all steps were given a flat-across the board 1.75% raise
 - The new 2020 steps B-E all were still less than the FROZEN 2018 B-scale rates, so as a result of bargaining duration, the 2018 B- scale rates were applied to the proposed table
 - In 2021, all steps were again given a flat-across the board 1.75% raise
 8. As we are not yet to 2021, the new rates could be applied to firefighters in steps A-H at the time of their anniversary (as listed in the proposal), and it is reflected in the table for the 2021 rates.
2. The cost of the parties' proposed salary increases over the term of the proposed contract is approximately equal.

Union Exhibit E-2, pages 1 and 5, show the high-water mark of the cost of its proposal. The exhibit places every Group B employee on the reformed salary schedule; freezes employees' salaries if they are greater than would be the case under the reformed schedule; aggregates the total cost and compares that with their aggregate 2018 salaries. "High-water mark" because the exhibit assumes that every member of the bargaining unit receives his or her annual step increase at the beginning of each year, rather than at the employee's anniversary date which in most cases is later in the year. The exhibit increases every Group A employee salary by 1%; aggregates their cost; and compares that to the 2018 cost of their salaries. Finally, the exhibit shows the grand total of the 2019 cost and compares that with the 2018 cost.

The exhibit shows that in 2019 the cost of the Union's offer is \$4,331 more than the City's offer; in 2020 \$ 6,137 more; and in 2021 it is \$21,159 greater. Overlooking the Union exhibit's slightly exaggerated cost of its proposed wages, it is still only .2% greater than the cost of the City's offer over the three-year life of the contract. (See, Union Ex. E-2, at 6.)

Most peculiarly, the City's exhibits exchanged prior to hearing, incorrectly claimed to

show increased costs attributed to “Union Proposed OT Language Wages Only” in the amount of \$90,752.42 in each year of the contract. (See, City Ex. 21A) But, then at the time of the hearing, the City substituted an exhibit that showed those costs to be only \$1,111.73 per year. While it is a piece of wisdom that the truth shouldn’t be disregarded just because it comes late, the bottom line is to examine the City’s corrected estimate comparing the cost of the two proposals; then examine the Union’s cost estimate of the two proposals; then see if they are in balance. But as we were about to show, that could not be done with the City’s cost exhibits because they do not accurately reflect the Union’s offer.

Having corrected one error, the City failed to correct another serious costing error -- the Union proposal contained an across-the-board (ATB) percentage increase for Group A employees only, but created a new pay schedule for Group B employees, the accurate cost of which required correct placement of an employee on the new schedule. Instead, the City’s finance director calculated the cost by assuming all employees received an ATB percentage pay raise in each year of the contract.

On cross examination, Mr. Corbeille explained how he forecast and compared the cost of the two proposals. Specifically, he informed us that he did not place the Group B employees on the new salary schedule, but rather applies the across the Board increase the Union to Group A employees to the complement of the whole bargaining unit. When asked whether his cost analysis reflected the fact that under the Union’s wage proposal some employees took a wage freeze, he answered “No.” (Tr. II, at 352-354) He volunteered that were some employees that received an increase that was greater than the 1% ATB in 2019.

In fact, the City’s own exhibits, following its correction of the overtime cost error, show the Union’s offer costing significantly less than the City’s offer. City Ex. 21A reports an

“economic cost per year” of the City’s proposal in the amount of \$71,187 in 2019; \$148,373 in 2020 and \$222,560 in 2021. Its substitute, Ex. 21.B.1, reports that the Union offer’s “economic cost per year” is \$42,269 in 2019; \$93,424 in 2020 and \$188,190 in 2021. Which, if true, would mean that the Union’s proposal saves the City \$118,237 over the life of the contract.

	2019	2020	2021	Total
City Ex. 21A City Cost	\$ 71,187	\$ 148,373	\$ 222,560	
City Ex. 21.B.1 U Cost	\$ 42,269	\$ 93,424	\$ 188,190	
Savings of U Offer	\$ 28,918	\$ 54,949	\$ 34,370	\$ 118,237

It is not true and reflects no effort by the City’s finance director/treasurer to understand the Union’s proposal and then to carefully cost it out. Unfortunately, the opportunity to test by confirmation or disputation the accuracy of the Union’s cost forecast is lost.

The Union’s estimate of the cost of the parties’ proposal stands unrebutted in this record.

3. Future costs are balanced as better-than-average Group B firefighter salary schedule step increases are offset by lower-than-average increases in the higher pay ranges and by extending the time for Group B firefighters to reach the top step of the firefighter pay range.

The Union’s proposed ATB increases for Group A employees, the more highly compensated group, is well below the average percentage increase of the comparables, and would have been at least that average but for the decision to unify the pay schedule. Specifically, the 1% - 1.75% - 1.75% increase proposed by the Union for Group A employees compares to the comparable average of 2.25% - 2.25% - 2.51% increases among the comparable units. (Union Ex. B 23) The lift over the life of contract under the Union’s proposal is a full 2.51% less than the comparables -- a diminution that will persist for lengthy, albeit unknown, period of time. The Union’s proposed schedule unification will extend the period of time to reach top-step firefighter rank. Its offer’s diminished percentage increases as compared to

similarly situated units will continue to produce a lower cost per firefighter for the City of Manitowoc than the rates paid by similarly situated municipalities.

B. There is a factually measurable retention and morale problem created by paying two categories of employees differently despite the performance of identical duties.

Twenty-one employees have left the Manitowoc Fire Department to take jobs at the same or lower rank in comparable units in the ten years since the two-tier pay system was adopted; only three left for such positions in the prior ten years. That is roughly 40% of the bargaining unit in Manitowoc. The unrebutted testimony of witnesses who left to take a position elsewhere was that a major reason for their departure was the loss of morale attributable to being paid less than co-employees at the same rank, doing the same work.

C. The City offers no evidence to support the need in some cases of its proposed amendments to the collective bargaining agreement, support of comparables in other cases nor a *quid pro quo* as a matter of fact for its proposed amendments to the future collective bargaining agreement.

No more can be said here. Further relevant facts will be developed below.

V. ARGUMENT

The Union's final offer resolves problems for its members and the City at a reasonable cost. It is the more reasonable of the two offers.

A. The "greater weight" criterion favors neither party.

The "greater weight" criterion of Wis. Stat. § 111.77(6)(am) focuses on the economic situation of the City. The Union proposal's cost is in close parity the cost of the City's proposal particularly when we consider the slight additional reduction in cost that would follow recalculation of the later step movement dates on employee's anniversaries, rather than January

1. For the period covered by the proposed contract and the future, the criterion favors neither parties' proposal.

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

B. The Union's offer to unify the salary schedule meets each of the tests specified by Arbitrators Engmann and Gratz.

1. The Union's evidence and testimony demonstrates an “actual, significant and pressing” need for reform.

a) *The need - retention*

Union Exhibit B-22 reveals that Manitowoc's Fire Department has a serious retention problem. The Union's negotiating team surveyed local leaders from comparables units to prepare the exhibit. Taking into consideration only the firefighters who left their original department for the identical rank in another department, during the ten years prior to the implementation of the two-tier system, only 3 Manitowoc firefighters left for greener pastures; in the subsequent ten years 21 firefighters left! Compare that with the retention numbers among the comparables

Manitowoc	21
Appleton	1
DePere	0
Green Bay	5
Kaukauna	8
Neenah/Menasha	0
Oshkosh	3
Sheboygan	2
Two Rivers	1

In absolute terms, more than 40% of the Manitowoc bargaining unit left for jobs at the same rank but in other departments in the current decade. No other unit, other than Kaukauna saw comparable staff deprecations. No other unit had a system where people at the same rank, doing the same work were paid differently.

b) The need - morale

The witnesses explain why this impasse occurred -- the two-tier pay system and the damage to morale caused by it. Tim Dykestra testified that he is from the Manitowoc area and still lives there; that he considers its Fire Department to be his hometown department and that he intended to spend his entire career working for the it. Instead, after more than seven years working for the Manitowoc Fire Department, he quit to take a position at the same rank in the Green Bay Fire Department. When asked why, he answered:

Because of the B scale.... I don't feel that it's fair or appropriate for -- two people in the department to be doing the same job while being compensated substantially different. (Tr. I, at 145-147, *emphasis supplied*)

Patrick Peterson who, like Tim Dykestra, lives in the Manitowoc area, worked as an intern in the Manitowoc Fire Department and then as a firefighter for five years with a good performance track record, testified that he voluntarily left for a position in the Green Bay Fire Department because:

I just came to realize that I can't continue to do this job in the City of Manitowoc for less than the guy next to me for doing the exact same job.

(Tr. I, at 162, *emphasis supplied*)

Brent MacDonald, a current employee of the Manitowoc Fire Department as a firefighter/paramedic with more than 7 years of experience, testified that:

The two-pay scale and also echoing the testimonies from previous witnesses today, is an area of high contention amongst the members. It is talked about frequently. It never goes away. I think it's important to also talk about how a fire department job isn't like other work. We work 24-hour shifts. We live together. We work together. We eat together. We sleep in the same room together. It's sort of a constant reminder is always there. And I know we talked a little bit about turnover rate as well, and I know it's kind of subjective; but just speaking emotionally and personally, it is very difficult getting to know new people, establishing a repertoire with these people, camaraderie with our brothers and sisters only to see them leave time and time again.

(Tr. I, at 206-207, *emphasis supplied*)

He added this:

I would say the pay discrepancy has never been addressed. It's slowly worsened over time, and I guess just a general practice. I know equal pay for equal work was mentioned, but whenever you -- how do I say? You go to work for several reasons, one of which is to provide for your family, to bring resources home. The monetary value your employer is willing to put on you essentially and objectively describes your work. Your employer is essentially then saying I think you're worth less than your comparables as well as other people at the fire department you work at that hold equal rank and equal pay with steps within that rank. That in and of itself in my opinion is the number one morale killer at our department.

(Tr. 1, at 206)

In its most extreme form, a Group B firefighter promoted to a leadership position, say as a lieutenant, will be paid less than a Group A Motor Pump Operation subject to his supervision.

(See, Union Ex. B.24.) **\$3,576 per year less.** It is an aberration that should not be allowed to stand.

2. The Union's proposal is narrowly tailored to address only the need to unify all employees' salaries

a) Total package cost is held constant despite implementation costs

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

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

b) Implementation is distributed over time

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

the actual financial consequence of that personnel transaction is a net zero.

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

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

The second important piece of the analysis focuses on the externally comparable top step firefighter and officer wage rates. Below we show by benchmark analysis that the City seeks to perpetuate a salary schedule that is not supported by the external comparables.

3. All collectively bargained internal and external comparables support the Union's proposed single tier salary schedule; none support the City's proposed continuation of the two-tier schedule

There is no two-tier salary schedule among any of the comparables, internal or external. The City's desperate mischaracterization (Tr., at 397) of just two units out of the entire set of external (and internal for that matter) comparables to claim support for a two-tier compensation, is Trumpian in its distortion of reality. Sheboygan has a schedule that pays its employs who

have paramedic licensure and responsibilities concomitant thereto more than it pays its employees who have only the significantly lesser EMS licensure and responsibilities. The rates differ because the parties rolled the paramedic and EMS premiums into the base. Sheboygan does not pay employees who have the same job duties and responsibilities different base rates. (Testimony of Jacob Johnsrud, whose brother is a lieutenant and negotiating team member in the Sheboygan FD, Tr. II, at 513-514)

Similarly, the:

Two Rivers contract is again a two table, it is not a two tier. What it pertains to is employees hired before a certain date were granted into same post-employment or retirement health insurance. So they were put in a certain table. Employees hired after that date did not receive that benefit, but in exchange for not receiving that benefit received more money than the people prior to that date. So those people received a 4 percent pay bump because they did not receive post-employment retirement insurance. (Johnsrud, J., Tr. II, at 514-515)

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

4. The Union's offer includes a *quid-pro-quo* as it offers a lower total package increase than the comparables would otherwise justify and it lowers the percentage increase for the more highly compensated bargaining unit members.

The Union's negotiating team summarized this point at Exhibit 1, the Union's Executive Summary of its case:

Providing a *quid pro quo* for this change, L368 has offered percentage raises of 1% in 2019 [for Group A employees], 1.75% in 2020, and 1.75% in 2021 in comparison to the comparable averages of 2.31% in 2019, 2.50% in 2020, and 2.50% in 2021. This provides a difference in the L368 wage proposal and comparable raise averages of 2.81% over the 3-year contract, showing L368's wage package raise to be - on average - 0.94% less than the comparable average raise per year. With the entire bargaining unit "step up" calculations of the single tier pay change, the raise calculations by year of 1.81% in 2019, 1.76% in 2020 and 1.75% in 2021 still show a contrast of 1.99% less than the average comparable raise packages over the life of the contract. (Italicized phrase inserted by authors)

Union Exhibit E-1, page 3, item 4, enumerates the ways in which the Union *provides a quid pro quo*:

"The system provides a quid pro quo through:

- a. Pay **freezes** in steps A-E for 2019
 - b. Pay **freezes** in step B-E for 2020
 - c. Pay step **decreases** in steps B-E for 2021
 - d. A **leveled pay progression** versus the aggressive 2018 progression
 - e. A proposed raise package **2.81% less than comparable averages** over the life of the contract
 - i. 1%-1.75%-1.75% L368 proposal
 - ii. 2.31%-2.5%-2.5% average comparable raise package.
5. The requirement of a *quid pro quo* is relaxed or eliminated when there is overwhelming comparable support for a proposal.

In a sentence there is overwhelming comparable support for the Union's unified wage offer. There are no comparables that support the City's continuing two-tier wage proposal.

6. The City's proposal of flat dollar increases and two-tier base pay salary enjoys no comparable support either internal or external.

In a sentence there is no comparable wage schedule that contains a flat dollar increase for bargaining unit members in 2019, 2020 or 2021. This includes the important internal comparable of the public safety unit.

7. The City's proposal to pay a flat dollar amount of \$5,000 for paramedic services is not supported by a demonstration of need, is not narrowly tailored, has no comparable support and is not accompanied by a reasonable *quid pro quo*.

The current collective bargaining agreement (by virtue of an evergreen clause) provides at Article 9, Section 1., (b) EMS Certification Pay, Effective 12/31/05, "All Wisconsin-licensed Paramedics 7% of Firefighter-E monthly base pay." The City proposes to substitute for that clause language (that it does not provide) to the effect that it is "offering \$5,000 annually as a lump sum payment during the contract for those firefighters who hold a paramedic license, rather than a percentage of wage." The City does not show a need, other than to implicitly provide Group B employees a few hundred dollars more than the current contract, a need that is created by the very existence of the two-tier pay schedule and better met by the Union's offer to unify the pay schedule.

Concretely, the current contract would pay Group B employees 7% of a monthly salary of \$5,167. Annualize that amounts to $.07 * 5,167 * 12$, or \$4,340.28. The Union's offer proposes to increase the Firefighter H pay rate to \$5,798 monthly. Maintaining the current contract language and applying it to the Union's final offer, would pay the former Group B paramedics $.07 * \$5,798 * 12$, or \$4,870.32 annually. So, the City's proposal would pay \$129.68 annually more to the Group B paramedics than the Union would pay them.

Meanwhile the current Group A Firefighter E monthly salary is \$5,741. The paramedic premium paid to them is $.07 * 5,741 * 12$, or \$4,822.44. For their service in 2019 the City would pay them \$5,000. The union would pay them the same as the former Group B employees per the unified salary schedule, or \$4,870.32. But what is important is not the \$177.56 dollar difference in favor of the employer's proposal in 2019, it is the \$42.52 more that the Union's proposal would pay the paramedics annually in 2021.

Typically, there is a *quid pro quo* exchanged by Unions to support a proposal to index a premium payment to a value that is regularly increased as part of the negotiations over the annual ATB increase. Once done, it never has to be done again. And, a fixed dollar premium for a specialized service provided by only certain employees in the bargaining unit is not deflated over time by the unwillingness of the employer to negotiate a CPI increase for all of the contract's fixed dollar premiums. Here that is lost in time and detail, but it would be a mistake to believe that it did not occur.

Most importantly, it is not the Union's burden to defend the *status quo* of the current contract language but rather the City's burden to show a need for the change, comparables that support it and that it provides a *quid pro quo* to the Union in exchange. It has done none of these things.

8. The burden does not lie on the party proposing a change to the *status quo* when the opposing party demands a withdrawal of the *quid pro quo* that supported it.

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

C. Among the remaining statutory criteria only §111.77(6)(bm) 4 and 8 bear upon the parties' wage dispute. They favor the Union's offer.

1. A comparison of the wages of employees performing similar services requires close attention here -- §111.77(6)(bm)4.

There is an extraordinary gap of \$7,304 between the City’s Group B proposal and the average of the comparables. That problem is only made worse with the City’s “flat dollar” increase, as it expands the shortfall to \$8,083 dollars during the life of the contract.

Top Step FF % Increases 2019 to 2021							
Fire Department	2018	2019	2020	2021	2019	2020	2021
Appleton	\$ 71,323	\$ 72,758	\$ 74,402	\$ 76,066	2%	2%	2%
DePere	\$ 70,396	\$ 71,980	\$ 73,600	\$ 73,600	2%	2%	
Fond Du Lac	\$ 67,052	\$ 68,560	\$ 70,274	\$ 72,207	2%	3%	3%
Green Bay	\$ 66,666	\$ 68,000	\$ 69,779	\$ 71,175	2%	3%	2%
Kaukauna	\$ 64,507	\$ 66,774	\$ 68,444	\$ 70,162	4%	2%	3%
Neenah/Menash	\$ 70,370	\$ 71,953	\$ 73,578	\$ 75,429	2%	2%	3%
Oshkosh	\$ 70,497	\$ 71,555	\$ 73,701	\$ 73,701	1%	3%	
Sheboygan	\$ 72,409	\$ 74,038	\$ 75,519	\$ 75,519	2%	2%	
Two Rivers		\$ 68,973	\$ 69,597	\$ 71,723		1%	3%
Average		\$ 70,510	\$ 72,099	\$ 73,287	2.25%	2.25%	2.51%
Local 368		\$ 69,576	\$ 70,800	\$ 72,036		1.76%	1.75%
Manitowoc City Sched. A		\$ 70,092	\$ 71,292	\$ 72,292			
Manitowoc City Sched. B		\$ 63,204	\$ 64,204	\$ 65,204			
Local 368 Lag		\$ 934	\$ 1,299	\$ 1,251			
Manitowoc City Sched. A Lag		\$ 418	\$ 807	\$ 995			
Manitowoc City Sched. B Lag		\$ 7,306	\$ 7,895	\$ 8,083			

Similarly, even the Union’s offer does not bring its firefighters to the average of the comparables

¹ The yellow highlighted entries assume unsettled units will not do worse in 2021 than a wage freeze and are used to complete the calculation of the average.

-- increasing the lag \$934 to \$1,251 over the life of the contract. Despite that and despite the need to address two-tier pay crisis, the City's proposal offers Group A's firefighters a greater increase than does the Union's offer.

2. Criterion 8, "other factors" normally taken into consideration, includes the inequitable reward claimed by the City after failing in its on its 2012 staffing promise and the bargaining history in this case.

a) The Union's exhibits lay out the quid pro quo: a two-tier salary schedule in exchange for three additional positions.

The critical exhibit is Union Ex. B 6 -- excerpts from the 2010-2012 CBA. For the first time the contract contains a two-tier wage schedule at page 12 of the CBA with the new, lower pay scale applicable to employees hired after August 1, 2009. (Compare with Union Ex. B 5, the immediately preceding CBA.) Also, for the first time it contains the following promise by the City: "For the contract period January 1, 2010 through December 31, 2012, the City of Manitowoc agrees to hire three additional firefighters, with no less than (sic) one firefighter hired per year of the contract." It continues to provide that the agreement applies to duration of this contract, but that it shall not serve "as a precedent requiring or suggesting that the City is bound to hire **additional** firefighters in any future labor agreements." (Emphasis supplied.) The problem for the City is that it not did not hire the 3rd additional firefighter before that agreement expired.

Instead on February 6, 2012, the City and Union entered into a successor 2013-2014 CBA and a separate Memorandum of Understanding (Union Ex. 10, last two pages). The MOU expressly voided Article 29 of the then current 2010-2012 CBA; the future contract did not

include it, or any staffing substitute for it. On the face of both the MOU and the 2013-14 CBA there is no obvious exchange of some other benefit to the members of the bargaining unit comparables to staffing promise.

The Union put the obvious question to Jeremy Wagner who it called to testify about the negotiations and staffing history of the parties. Lieutenant Wagner has 17 years of service with the Manitowoc Fire Department, he is a union officer and he served on every bargaining team from 2010 to the present. He described the MOU's effects:

Okay. So what this memorandum of agreement does, it also talks about the January '12 to December 31st dropping the people to 14, and it's also talking about how the Local agreed to pay 12 and a half percent of their medical insurance premiums, and at the time for 2012, 2 percent of the employees share for the employee contribution.

Then he added that, "It voids out Article 29." A few questions later he was asked, "Why did the union agree to this?" He responded: "That was Act 10 and 32 stuff again. When we were trying to help the city out. It saved the city a significant amount of money, so that was our way of helping."

This was the period of time that the City's reserves fell to \$16,000 -- near bankruptcy. The union subsequently negotiated limited minimum staffing impact provisions and then in February of 2014 grieved the City's violation of those. (See, Union Exhibits 11 & 12) but elected to pursue what it thought would be a more responsible means of redress -- collective bargaining. On September 22, 2014 its negotiating team submitted the Union's proposals for a 2015 - 16 CBA. First among its proposals reform Schedule B; move all employees off it after 9 years of service and pay all employee on it with 7 or more years of service an additional \$250/month. The City would not, and did not agree to either proposal, nor offer any other modification to Schedule B. The same experience followed in the 2017-18 round of bargaining.

That brings us to the bargain leading to the current impasse. Again, the Union proposed to reform the two-tier schedule. Its first priority was:

To maintain competitive pay for all Local 368 membership while creating equal pay for each categorized and leveled positions essentially creating a singular compensation schedule.

(Union Exhibit B.2.)

At the very beginning it appeared that the logjam was breaking up. The very first of the City's June 7, 2018 "Top Priorities" was to:

Move all employees to Schedule A to remove disparity between Schedule A and Schedule B, with the understanding that any EMS premium pay and other premiums (education, longevity, etc. would be frozen at 2018 dollar levels for employees already on Schedule A and not offered to employees hired after 7/1/2009 to alleviate impact of change.

(Union Exhibit B.2.)

Oddly, with no explanation to the Union's negotiating team for the regression, only one week later, on June 14, 2014, the City dramatically cut its first proposal. In a Memorandum to the Union, the City's negotiating team wrote:

Move Schedule B employees to Schedule A upon promotion to MPO to maintain a competitive wage schedule. Freeze EMT pay at current Firefighter E levels for current employees and eliminate for new employees.

What?!

This is the context. Some firefighter/paramedics work their entire career in that rank. Not unusually he or she will start their career in the mid to late '20's and finish in the mid-50's. That is roughly a 30-year career. As of July 1, 2018, there was a \$5,000 between the B and A Schedule top-step firefighter base salary. So, the Union's B firefighters who remain at the rank for a career suffer a **\$150,000 loss of income** over their careers as a result of the two-tier system.

The City's opening proposal cut that loss from 30 years to 9 -- potentially improving the future earnings of a B firefighter by \$105,000. One week later, the City pulled the sweet aroma

of progress entirely off the table. Only employees that promoted would be able to move off Schedule B.

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

Rather than make incremental progress forward from its opening proposal, the City lurched backwards.

D. The Union's proposal to convert the duty day article to impact language is preferred in light the City's decision to challenge the bargainability of the language it now peculiarly proposes to continue unchanged.

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

The Union disagreed with the City, but concluded that there was a risk in litigation that

the WERC's Commissioner might distinguish precedent favorable to the Union's position and rule that it is permissive. Because the "duty day" concept commonly embodied in firefighter contracts, standard operating procedures or past practices throughout the State any adverse decision would affect many other firefighter unions. So, the Union elected to pursue a less risky compromise, well-worn in Wisconsin's public sector labor law, it proposed to substitute "impact" language for "decision" language.

In short, where the prior contract language prohibited outright the performance of "training and other regular duties" outside of the duty day. The union proposed to amend the contract in management's favor, expressly permitting management to assign employees such duties outside the "duty day," provided only that the City would compensate employees with a half-time premium when it elected to do so. Important to this case, and a refutation of the City's ill-conceived argument that the Union had engaged in ambiguity that its members could drive a \$90,000 truck through, the Union's proposal does not change a word of the current definition of "training and other regular duties." As important, there is a long-standing, continuous past practice known to both parties as to what duties were, and were not, prohibited outside the regular duty day. An \$1,100 tricycle is more like it.

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

E. The City's proposed change to the promotional process, must meet all four criteria to support the reform of a language provision such as this. It meets none of them.

Like the issue related to the duty day, the Union would have proposed the continuation of the current promotional procedure, but the City challenged the bargainability of the current language. In response to the City's claim that it is merely proposing a procedure in which seniority may be a consideration, the Union retorts that it may not be too. Specifically, the City proposes to delete the sentence in the contract that reads: "The senior qualified candidate shall be promoted." (Article 6, Section 1(c))

Like the Union's response to the duty day issue, it relied on the Wisconsin Supreme Court's decision in *Glendale Prof'l Policemen's Asso. v. Glendale*, 83 Wis. 2d 90, 264 N.W.2d 594 (1978) to craft language that was secure from a DR challenge. It is in the image of the current language -- "most senior qualified" -- where the Chief determines the qualifications, within reason. Again, the Union preserves the essence of the current contract provision. It does not materially alter the *status quo*.

The City proclaims that it is the party bringing dramatic, progressive change to the contract. To paraphrase counsel's opening statement, young employees will no longer have to wait until they are the most senior to be promoted (they don't now). Only under the City's proposed language would firefighters be promoted based on skills and interviews. (The City attacked as permissive the current contract language requiring written tests, oral interviews and the Chief's assessment of "ability and past performance.") (*See*, City Final Offer, proposed deletions to Article 6, Section 1(a). Union Ex. A.4.) In apparent disgust, the City argued that the Union's insistence on preserving the status quo is "archaic." (Tr., at 24-25)

OK. The union preserves the *status quo* and the City is the party proposing a new policy.

So, now let's check out the arbitral criteria to test a new approach to long-standing contract language. Where is its proof of need? It does not offer any proof, other than the unproven and likely unprovable argument that only the most senior employees can be promoted. Where is the narrow tailoring to accomplish only the remedy to that unproven need? It has not shown a comparable to support its progressive step into the future. There is nothing anywhere in its final offer that is close to a *quid pro quo* for this change, or any other.

In order to resolve the dispute, the Union adopted a proposal that aligned with the past provision and was clearly a mandatory subject of bargaining. The City's proposal is a radical departure from the past, essentially providing the Chief with unlimited discretion to promote. (Tr. II, at 455-456, Chief Blaser admits that under the City's proposal there is no contract language that would allow an unsuccessful candidate to grieve the Chief's exercise of discretion.) The City has not identified a problem with the use of seniority as the deciding factor among employees who meet the Chief's qualifications to perform the duties of the vacant position.

F. The City proposes to diminish the continuing education benefit, Article 24, Section 1, provided by the CBA, but fails to meet any of the criteria necessary to support a proposal to eliminate a benefit.

In this case, we see another rising abuse of the collective bargaining process. The City unilaterally adopts a policy or work rules applicable to its non-union employees and then comes to the collective bargaining table and informs the Union that it must agree to that policy lock, stock and barrel. Period. Firefighters did not elect the general employees of the City to be their collective bargaining agent.

One of the purposes of the decisional criteria is to preserve meaningful collective bargaining over such matters as the educational benefits to be provided by the employer. So, the

City must show a need to support its proposed **deletion** of nearly five detailed paragraphs of benefits to employees. If it does so, it must show how its proposed change meets that need, and only that need. It must show that its proposed revision enjoys comparable support and that it offers the Union a quid pro quo for the change.

The Union isn't arguing that the City cannot meet all of these criteria relative to this specific issue, but the record is devoid of evidence that it has tried to meet each of them, making collective bargaining on this issue impossible.

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

[The proposal is] a complete demolition of what was written there. If you look at what the original wording was, that it was all dropped off by the city, and look at the issues that it addressed throughout that entire proportion of it and then look at what the city offered as a substitute, all the substitute does is it creates ambiguity within the contract.

G. The City proposes to eliminate significant aspects of the "Light Duty" and "Light Duty - Non-duty related" provisions, the "Physical Examination" provisions and the "Linen and Laundering" provisions of the CBA , but fails to meet any of the criteria necessary to support their elimination.

The union repeats every one of its arguments relative to the "educational benefit" issue in response to the City's proposal to gut the contract's "Light Duty" and "Light Duty - Non-duty related" provisions of the CBA (Article 4, Sections 4(a) and (c)); the "Physical Examination" provisions, (Article 24, Section 1) and the "Linen and Laundering" provisions (Article 26).

VI. THE CITY'S PROPOSAL TO ADD UNITS TO THE COMPARABLE POOL SHOULD BE REJECTED DUE TO THEIR REMOTENESS AND THE PARTIES' AGREEMENT; ALTERNATIVELY, THEIR INCLUSION DOES NOT AFFECT THE OUTCOME OF ANY OF THE ISSUES.

A. Geographical remoteness militates against inclusion of the City's proposed additions

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

B. While disputed, the Union's Chief Negotiator's testimony as an agreement about the comparables is the more credible testimony of record.

Union Exhibits G.1. through G.4. lay out the basis for the Union's assertion that the City agreed in negotiations to the those identified by Lieutenant Johnsrud. Additionally, Lt. Johnsrud testified specifically that then counsel for the City, Attorney Mark Olson reviewed the list of comparables during a joint bargaining session on August 21 and that he checked off the list of the units that Attorney Olson agreed were comparable. Subsequent to that negotiating session, Johnsrud, relying on the agreement reached at the meeting, notified the IAFF Research unit of the contracts that would need to be analyzed for the hearing, this occurred in 2018 and again in 2020 as the analysis had to be updated due to the long delay.

The transcript of the Lt. Johnsrud's recollection including his identification and of a record he

maintained of the agreed upon comparables (Union Exhibit G. 2.) is found at pages 98 to 101 of

Tr. I. They are the best record of Lt. Johnsrud's memory:

22 BY MR. HAWKS:

23 Q So Jacob, who prepared the Exhibit G-1?

24 A I did.

25 Q And without referring to it for a second, just in

1 your own words describe what your recollection is as

2 to the meetings that occurred on July 24th and

3 August 21st of 2018 as to whether or not the city and

4 the union reached an agreement of what the

5 comparables were?

6 A Okay. So I was under the impression we reached an

7 agreement, but it spanned back. The city initially

8 provided Local 368 with a sheet of paper with I

9 believe it was median household income. This will

10 be -- we'll be getting up to. And we had just looked

11 at it, didn't think anything of it and moved on.

12 As we moved towards involving other

13 counsel, including Tim Hawks and Mark Olson, which

14 happened on August 21st. So upon having that

15 meeting, Mark Olson and Tim, I specifically remember,

16 started talking about distinguishing comparables

17 because I was thinking to myself, oh, I can't believe

18 I didn't think of that, that would help keep the

19 waters from getting too mucky as we worked our way

20 along.

21 So within -- within their conversation,

22 they were -- they were doing a lot of talking very

23 quickly back and forth; and as they were doing that,

24 in order to try and record and write things in a

25 fashion that was legible or able to be interpreted,

1 was initially kind of rough. So what this workaround

2 that we did was we used the sheet from -- that we'll

3 be getting to in part two, and we used the sheet that

4 the city gave us.

5 Q Okay. Let me stop you right there.

6 A Okay.

7 Q So I'd ask that the parties turn to Exhibit G-2. And

8 Jacob, I'd ask you to continue now with that document

9 in front of all of us.

10 A Okay. So this was a presentation that the city gave

11 the Local from a bargaining meeting on July 24th of

12 2018. Upon Hawks and Olson attending the meeting,

13 they were organizing comparables to prevent muddiness

14 of the water as we progressed forward with the
15 mediation and eventually declarative ruling
16 processes.

17 Upon doing that, they -- they had talked
18 about internal comparables of which the city denied
19 the police department as an internal comparable
20 because of their 3-3-3, and shortly after that
21 Attorney Hawks and Olson started rattling off cities
22 within the -- within the comparable list that the
23 city provided; and we started trying to write them
24 down, realized they were all up on top of the list,
25 and the only one that wasn't there from the city --
1 the cities that were provided was Kaukauna. So we
2 had written Kaukauna down and then just put
3 checkmarks in front of all of the agreed upon
4 municipalities that would have reached between Mark
5 Olson and Tim Hawks.

6 Q And do -- does the International Association of
7 Firefighters provide a service to the -- its local
8 affiliates that assembles in a regular format across
9 the country the analysis of comparison of like
10 bargaining units?

11 A It does.

12 Q And how -- how do you go about getting that?

13 A So you have to kind of contact the IFF office.

14 Q And what do you have to provide the IFF office with
15 in order to get their work done?

16 A Yeah. So what we need to do is we need to provide
17 them with all of the contracts of comparables.

18 Q All right. And so the work that -- and whom
19 actually -- how do you go about getting all the
20 contracts?

21 A Yeah. I've got to go through -- or the bargaining
22 unit has to go through a bunch of work to go through
23 other locals to make sure we have contracts,
24 up-to-date contracts, and also making sure that the
25 interpretation of those contracts is correct
1 throughout the process. So it's a lot of work, and I
2 was really glad that we had done that prior because
3 immediately after establishing comparables between
4 Mark Olson and Tim Hawks, it was at that point I was
5 advised by Tim, well, now that we have a set of
6 comparables, reach out to the IFF and request their
7 comparison study.

8 Q All right. And then moving -- can you identify
9 exhibit -- okay. This is G. I'm going to skip one

10 and have you go ahead to G-4.
11 A G-3 is the bargaining committee meeting minutes that
12 I referred to.
13 Q G-4. Move ahead, sir.
14 A Okay.
15 Q And what is this?
16 A This is the most recent or the updated copy of the
17 comparison study done by the International
18 Association of Firefighters for Local 368.
(Tr. I, at 98-102.)

C. The City's proposed additions do not affect the outcome of any issue. A decision on the issue should await the time that they count.

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

Disparities in Emergency Medical Services (EMS) pay premiums makes an apples-to-apples comparison difficult when analyzing the City's chosen four communities. Both West Bend and Wausau receive a paramedic premium calculated on percentage of base pay. In West Bend, paramedics receive an additional five percent of their base pay as compensation. In Wausau, paramedics receive an additional six percent of their base pay as compensation; paramedics who have been licensed greater than five years receive an additional seven percent of their base pay; and, any paramedic who maintains a Critical Care Paramedic License receives an additional one percent on top of paramedic compensation.

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

Top-Step Firefighter Wages			
	2019	2020	2021
West Bend	\$ 66,106.82	\$ 68,089.84	\$ 70,132.66
Stevens Point	\$ 65,339.28	\$ 66,972.72	\$ 68,647.08
Wausau	\$ 64,708.80	\$ 66,326.52	
Wis. Rapids	\$66,734.95	\$68,403.32	\$70,113.40
Local 368	\$69,576.00	\$ 70,800.00	\$ 72,036.00
City Schedule A	\$ 70,092.00	\$ 71,292.00	\$ 72,292.00
City Schedule B	\$ 63,204.00	\$ 64,204.00	\$ 65,204.00

VII. CONCLUSION

Based on the evidence admitted into this record, the testimony of the witnesses at the hearing and the argument of its attorney in this Brief, Local 368, I.A.F.F, AFL-CIO respectfully requests that Arbitrator Andrew Roberts find upon application of §111.77 (6), Wis. Stats., the final offer of the Union is the more appropriate of the two, and order its terms to be incorporated into the 2019-2021 collective bargaining agreement between the Union and the City of Manitowoc, Wisconsin.

Dated at Milwaukee, WI, this 16th day of December, 2020.

HAWKS QUINDEL, S.C.

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