

BEFORE THE ARBITRATOR

In the Matter of the Petition of

CALEDONIA FIREFIGHTERS PROTECTIVE  
ASSOCIATION, LOCAL 2740

To Initiate Arbitration Between  
Said Petitioner and

VILLAGE OF CALEDONIA

**ID: 401.006**  
**Case Type: MIA**  
**Decision No. 37996-B**

Appearances:

Hawks Quindel, S.C., Attorneys at Law, by Mr. Timothy E. Hawks, 222 East Erie Street, Suite 210, Milwaukee, Wisconsin 53201-0442, on behalf of the Union.

von Briesen & Roper, S.C., Attorneys at Law, by Mr. Kyle J. Gulya, 10 East Doty Street, Suite 900, Madison, Wisconsin 53703, on behalf of the Employer.

ARBITRATION AWARD

Caledonia Firefighters Protective Association, Local 2740, hereinafter referred to as the Association or the Union, and Village of Caledonia, hereinafter referred to as the Village or Employer, met on several occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 2017. Said agreement covered all non-supervisory fire fighter personnel employed by the Village of Caledonia and represented by Caledonia Firefighters Protective Association, Local 2740. Failing to reach such an accord, a petition was filed with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate final and binding arbitration, pursuant to Section 111.77(3) of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties on September 25, 2019, issued an Order, dated October 4, 2019,

wherein it determined that the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of five arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on October 18, 2019, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conduct a hearing in the matter on March 5, 2020, at Caledonia, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was transcribed. Initial and reply briefs were filed and exchanged, and received by May 5, 2020. The record was closed as of the latter date.

THE FINAL OFFERS AND STIPULATIONS OF THE PARTIES:

The Village and Association final offers and Tentative Agreements are attached and identified as Attachment “A,” “B” and “C,” respectively.

FACTS:

The Village of Caledonia (Village or Employer) is a community in southeast Wisconsin with a population of approximately 24,000. Among the employees employed by the Village are police and firefighter personnel. Both are represented by Unions; the Firefighters by Caledonia Firefighters Protective Association, Local 2740 (Union or Association) and the Police by

Caledonia Professional Policemen's Association, Local 403. There are approximately 40 firefighters represented by the Union. The Village has three fire stations. Until recently there were three firefighters at each station per 24-hour shift, (Stations 10, 11 and 12). Now there are five at Station 12.

The Village and the Police Association successfully bargained a collective bargaining agreement (CBA) effective 2018-2020. The Village and Firefighters attempts at a successor 2018-2020 CBA were unsuccessful, and they were deemed to be at impasse by the WERC. The parties exchanged Final Offers (Attachments A and B) and proceeded to Interest Arbitration pursuant to the provisions of Section 111.77, Wis. Stats.

The Association presented two witnesses, Lieutenant Walter Leininger, President of Local 2740, and Peter Diehn, Vice-President, Local 2740.

The Village presented witnesses Tom Christensen, Village Administrator; Toni Muise, Human Resources Director and Assistant Administrator and Cemetery Director; Patrick Glyn, Carlson Dettmann Consulting; and Kathy Kasper, Finance Director.

All of the witnesses provided important information regarding the issues and how they perceive the impact of the proposals made.

#### POSITIONS OF THE PARTIES:

The parties filed exhaustive and well-reasoned briefs and reply briefs. What follows is an overview of the parties' main arguments in support of their final offers and is not intended to be an in-depth presentation of same. The parties should be assured, however, that the Arbitrator has read, and re-read, their briefs in their entirety in reaching his decision.

##### Union's Position

The heart of this dispute is the ability of new firefighters to retire at the standard age of ordinary retirement, 53, with the financial ability to cover the cost of their health care until the

age of Medicare eligibility – a bridge for financial security. Employer support of that cost is necessary to make it affordable for most firefighters. That support can come in different forms. The Union presented and summarized its position and arguments best and is as follows.

1. The impact of 2011 Wisconsin Act 32 and 2013 Wisconsin Act 20 and their prohibition of collective bargaining related to the subjects of health care plan design and about the impact of changes in health care plan design upon firefighters' wages, hours and conditions of employment.

2. The cloud over title and the need to substitute a retirement fund that is not limited to pay health care costs into which tax deferred employer contributions can be made.

3. An answer – a defined employer contribution, tax deferred, to a fund available to the firefighter to use for any purpose, but having the added value of allowing up to \$3,000 to be withdrawn to cover medical expenses without tax consequences subsequent to retirement.

4. The burden of proof for a party proposing to eliminate an old benefit or for a party to create a new benefit amount to two sides of the same coin. The issue focuses on the bases sufficient to justify a change to the status quo.

5. The Village fails to establish a basis for eliminating an old benefit.

a. The Village did not show an actual, significant and pressing need for eliminating its contribution to the premium for new employee retiree health care premium support.

b. The Village cannot show that elimination of the post-retirement health insurance benefit for new employees is narrowly tailored to address an actual, significant and pressing need because it did not identify such a need much less quantify it.

- c. The Village's offer did not provide a fair quid pro quo to justify its elimination of its past contribution to premiums.
  - d. The Village's final offer is not supported by a single external comparable. To the contrary, implementation of its offer will create the only bargaining unit among the comparables if the employer provides no support for post-retirement health care benefits for some of its firefighters.
6. The Union's offer of a 457 plan meets the criteria to create a new benefit. Post-Retirement Health Insurance support is a prerequisite for a firefighter's ability to retirement at age 53.
- a. There is an immediate and pressing need for a substitute for the elimination of the Village's post-retirement premium contribution for new employees.
    - i. Historically firefighters, like law enforcement officers, were subject to mandatory retirement in their mid-50's.
    - ii. The rate of duty injury and the incidence before and after retirement of occupationally related diseases, particularly cancer, increase dramatically as a firefighter ages beyond 50.
  - b. The Union's proposal is narrowly tailored to address the actual, significant and pressing need.
  - c. The Union offers a quid pro quo.
  - d. The Union's offer enjoys the support of the comparables.
7. The Village blithely overlooks the real-life practical realities of a labor organization's collective behavior.

Hours of Work

1. There is an actual significant and pressing need to change the status quo.
2. Narrow tailoring.
3. Quid Pro Quo.
4. Comparable support

Worker's compensation supplemental income period reduction proposed by the Village and responsive compromise proposed by the Union.

Amended "Consolidation Article" proposed by the Village.

Dental Insurance – Union proposal for mid-term bargaining in event of benefit termination.

Evaluating the parties' positions requires an examination of both the final offers and the tentative agreements.

#### Summary of Union's Argument

The members of the Union are among the lowest paid of comparably situated fire fighters in Southeast Wisconsin while the fringe benefits, prior to bargaining for a 2018-2020 CBA were roughly comparable to those of their peers. Netted out – the total compensation of this unit had fallen behind its comparables. Notably, the benefit package included a valuable, commonly provided post-retirement health insurance benefit in which the Employer continued to pick up fifty percent of the retirees' health insurance.

At the outset, the Village demanded that the post-retirement health insurance benefit be terminated for new employees. It did not then, or ever, provide the Union with an estimate of the amount it might save as a result of its proposal. Initially, it could not point to a single comparable unit in support of its demand. It still cannot point to a single external comparable to support its proposal. It did not then, or ever, explain why the Village needed the Union to make

this concession. The police unit settled amidst negotiations between the Union and the Village. Since then, the Village offered nothing more to support its proposal other than the mantra “the police agreed.” That is not sufficient.

The Village also threatened to file a petition for a declaratory ruling – one that could test the question of whether the very existence of a post-retirement health insurance plan violated Section 111.70(4)(mc)6, Stats., as a prohibited subject of bargaining putting into jeopardy even the benefit for long-term employees. Few firefighters can work into their 50’s without risking disabling injury, so they retire. They cannot retire if they do not have health insurance. They cannot afford health insurance without financial support for the premium or sufficient reserves saved over the course of a career. The Village’s proposal to eliminate its premium support requires an alternative plan to secure the ability of firefighters to retire at the normal age established by the Wisconsin Retirement System for them – 53.

The interest arbitration process is not well-suited for radical departures from the status quo. Conventionally, a radical gain or departure from the past must be the product of voluntary agreement, not an arbitration award. In this case, the extraordinary value of the benefit that the Village proposes to terminate, without fair consideration for those who lose it, is radical. The present value of the future benefit is worth \$80,000 per new firefighter, (Exhibit 404, Cheiron Actuarial Report, at 3). Verging on bad faith bargaining, the Village never bothered to provide the Union with the amount it would save, or the new employees would lose, as a consequence of its proposal. Instead, the Union was forced to spend tens of thousands of dollars of its resources to obtain a credible determination of the value of the Village’s radical proposal.

This is mainly what this case is about. There is more to be sure: Can the Police Union effectively become the bargaining agent for firefighters? No. Can an unfair and onerous

practice of reassigning an employee's schedule of work with little or no notice be ended? Yes. Can the Village avoid offering a fair quid pro quo for multiple changes to the status quo? No. The Union shows why these answers are correct with this brief too, but it does so to show that a firefighter CBA must provide a means to secure its members' ability to retire at the age of normal retirement.

### Village's Position

It is the Village's position that this case is fundamentally about comparability, primarily preservation of the internal comparability between the fire union and the police union.

The internal comparability heavily favors the Village. The Village cites numerous cases (cites omitted) for the proposition that internal comparables should be given significant, if not controlling, weight in determining the most reasonable offer. Internal comparability promotes stability, positively impacts morale, avoids inequity considerations from one party receiving more favorable treatment, and is essential for maintaining labor peace when the employer must work with different bargaining units.

In this case, the Village and the Police and Fire Unions have established a consistent pattern of agreeing to identical common financial and benefit terms during the 2010-2011, 2012-2015 and 2016-2017 settlements and that consistency even extended to in many areas applicable to the 2018-2020 settlement as found in the Tentative Agreements. When a pattern exists, the party seeking to undermine and destroy that pattern must demonstrate a "compelling reason" for deviating from the pattern. Here, the Union's Final Offer gives no good reason to deviate from the longstanding internal pattern. Further, when comparing the Village's Final Offer to the external comparables, adherence to this longstanding internal pattern by selecting the



Village's Final Offer will not cause any unreasonable disadvantage to the Fire Union, especially since the Village's offer raises the wage rates to be more in line with the external comparables than the Fire Union's Final Offer.

Here, the internal settlement pattern must be given respect and compelling weight. The Village and the Police and Fire Unions have generally maintained similar common financial terms and benefits such as similar amounts of vacation and sick leave in consideration of their work schedules, the same WRS contributions, similar retirement benefits, and the same health insurance premium contributions. Over at least the past three collective bargaining agreements, the Police and Fire Unions have reached identical settlements related to the annual percentage wage adjustment, increase in WRS contributions, health insurance premium contributions, and the end of the sick leave incentive program.

For the 2018-2020 CBA, the wage settlement and the common fringe benefit changes agreed to by the Police Union are essentially the same as the Village's Final Offer to the Fire Union. It is the Fire Union that drastically deviates from the common wage changes and common benefits shared by these Unions and thus undermines this longstanding internal pattern.

With respect to the issue of wages, firefighters stand to lose with their final offer as all employees stand to earn more wages under the Village's offer than under their offer. New firefighters will receive more than \$1,000 each year; experienced firefighters more than \$1,400 when final rates are compared; and Lieutenants more than \$1,800 when final rates are compared.

These differences in annual wage rates for all three groups of employees are by no means miniscule – the differences are substantial, meaningful and compelling, and the Village's offer places these employees in a stronger wage position entering 2021. Now is the opportune time

for these wage adjustments because it is budgeted for and affordable now, but the future is uncertain. The Fire Union made no commitment that they would forego pursuing these higher percentage wage rates in the future.

The Village's Offer also places the Village in a much better competitive position with the external comparables. The Village's lift in wages is approximately 12.6% compared to 5.9% to 8.5% for the comparables. Further, the Village's Offer has a position effect on its ranking within the external comparables. By the second half of 2020 the Village will move from second to last to the middle of the pack and in fifth place out of eight comparables. Top level firefighters and Lieutenants see similar movement in ranking. The Union's Offer keeps Caledonia closer to the rear of the pack.

Also, the Village's Offer far exceeds the Union's in total cost of the compensation package. The three-year cost increase is 9.7% for the Village Offer compared to the Union's 7.92%; a difference of nearly 1.9%. Over a span of 30 years for an employee hired in 2017 and based on a 2% wage adjustment each year, the result is an additional \$58,458 for the new hire.

Next is retiree benefits, specifically Article 16 and the Union's Section 457 proposal. Both sides agree that no new hires should be eligible for post-employment paid retiree health insurance benefits, the Section 4(a) death benefit, and the Article 13, Section 1.b benefit allowing conversion of accrued but unused sick leave. The only issue is the timing of the changes and whether the Village should be forced to contribute a new hire's Section 457 in dispute.

Consistent with the Police settlement, the Village proposes a clear line of division establishing two tiers of employees: (1) those who may become eligible to receive the retiree health insurance benefit, the death benefit, and the sick leave conversion benefit, and (2) those who do not.

The Union creates three tiers, and then adds a new guaranteed Section 457 contribution that employees in only two of those three tiers are eligible to receive. This is a substantial deviation from the internal comparable and is illogical. The difference is not so much a cost difference, but a divergence on philosophy mandating a structural change in how the Village has historically administered benefits. The Union seeks a mandated Section 457 plan contribution by the Village.

The Village proposes a higher wage rate rather than an obscure benefit. Importantly, the Union proposed Section 457 benefit has no retention value. Employees can use the money in the Plan for any purpose and can take it with them when they leave employment. The money does not have to be used for payment of health insurance premiums.

Further, the Union's proposal runs counter to the general trend among external comparables. The issue is about getting rid of retiree health insurance because both offers eliminate same. The external comparability issue involves only whether the external comparables support an employer-paid Section 457 plan contribution. There is only one comparable with a 457 plan and one non-comparable, cited by the Union, Post-Employment Health Plan (PEHP). Further, the lone comparable's, City of Oak Creek, plan is much less lucrative and is not three tiered. Also, it was voluntarily agreed to by the parties.

Worker's Compensation. The only issue is whether an employee should be eligible to receive full salary in lieu of worker's compensation payments for up to 12 months as proposed by the Union or 9 months proposed by the Village. Employees can still receive worker's compensation payments after nine months. There is compelling evidence that most work-related

injuries over the past five years have not resulted in the Fire Department or Police Department employees needing more than nine months of pay continuation. The internal comparable favors the Village and external comparable favors neither.

Proration of Paid Leave. The generous paid leave benefits afforded by the Village may, at times, lead to overtime and also the need to float employees. A snowball effect of this problem exists when an employee is not working and yet continues to accrue paid leave in generous amounts, such as when the employee is receiving paid leave under worker's compensation or when the employee is using extensive sick leave.

The internal comparable supports the Village's need to make a similar change in this unit and that the Village's proposal reasonably addresses the need. The need for uniform benefits is vitally important. The Village has settled with the Police Union for proration and as such a sufficient quid pro quo is one reasonably close to that offered to the other units. Further, among external comparables the Village is not alone in seeking proration of vacation and holidays.

Floats. Floats have long been used as a means of helping control overtime. The Village does not float employees when the Village cannot provide reasonable notice to the employee. The past record shows that some of the reasons for floats do not allow the Village to provide 10 days' notice as the Union demands. To lessen the burden on employees, the Village's Final Offer seeks to broaden the pool of those who can be floated from the smaller pool of three per shift to four per shift. Further, the impact of floats in the future will not be felt by experienced employees because of six new hires and two more that will be hired.

Combining of Services. Regarding the current contract provision, the Village expressed a concern to the Police Union as to the legality of the existing language based on the health insurance component. The Village and Police Unions reached a settlement favorable to both

sides. As the Police Union and Fire Union have had commonality in the past on this language, it makes sense to continue that commonality by selecting the Village's offer rather than distinguishing these benefits. When the Employer has settled with its other units with the same benefit proposal, a sufficient quid pro quo is one that is reasonably close to that offered the other units.

Dental Insurance. The Union proposes to add a sentence to Article 16 that if this benefit is terminated the parties shall meet to negotiate the impact of the termination. The Village would maintain the current language. The Village indicated at the hearing that if the situation arose, the Village would be hard-pressed not to meet if the Union demanded. The Police settlement does not include the proposed language. Regardless, the proposal is much ado about nothing, particularly since dental benefits remain offered for the duration of the 2018-2020 collective bargaining agreement, and as such this proposal favors neither party and has no factor in the decision of the Arbitrator.

### Conclusion

The Village argues that in order to deviate from the internal comparable the Union has the burden of answering the following questions:

1. What is the rationale for having three different tiers of employee groups in the fire unit in the Village of Caledonia receiving varying retirement benefits in the same Village when compared to the clean two-tiered structure for police officers, facing the same local economic conditions, under the same bargaining laws, and having all other statutory factors be essentially the same?
2. What is the rationale for having the fire unit in the Village of Caledonia get a new distinct retirement benefit in the form of fixed Section 457 Plan contribution for new fire union employees in the same Village compared to new police officers, facing the same local economic conditions, under the same bargaining laws, and having all other statutory factors be essentially the same?

3. What is the rationale for having three different tiers of employee groups in the fire unit in the Village of Caledonia receiving varying retirement benefits when compared to the external comparables which offer no such three-tiered structures under the same bargaining laws?
4. What is the rationale for having the fire unit in the Village of Caledonia get a longer workers compensation salary continuation benefit for all fire union employees in the same Village compared to all police officers, facing the same local economic conditions, under the same bargaining laws, and having all other statutory factors be essentially the same?
5. What is the rationale for this Fire Union to lag behind the Police Union employees in wage increases? Will the Union promise to not demand or pursue “catch up” in the future, and if so will the Union realistically put forth an adequate quid pro quo for their “catch up” stance?

On the evidence and testimony presented in this case, the Union has no good answer for these questions that does not risk potential disruption to a strong internal comparability pattern and labor peace between all bargaining units and the Village. The Village’s Final Offer should be selected.

STATEMENT OF THE ISSUES:

The Union correctly sets forth the issues in dispute (in order of the Union’s priorities)

Issue	Union	Village
<b>Insurance:</b>  Effective dates of changes:	Implement following TA’d CBA changes for firefighters hired after <b>1/1/18</b> : <ul style="list-style-type: none"> <li>• Eliminate post-retirement benefit (50% of premium paid by Village)</li> <li>• Eliminate continued spousal coverage for six months following non-duty death of firefighter</li> </ul>	Implement following TA’d CBA changes for firefighters hired after <b>5/1/19</b> : <ul style="list-style-type: none"> <li>• Eliminate post-retirement benefit (50% of premium paid by Village)</li> <li>• Continued spousal coverage for six months following non-duty death of firefighter</li> </ul>
<b>New Post-Retirement</b>	Adopt 457 defined	Reject

<b>Pension Benefit:</b>	Contribution benefit of <b>\$100 per pay period for employees hired after 1/1/18</b>	
<b>Salary Increase</b>	2% -- 1/1/18 2% -- 1/1/19 2% -- 7/1/19 2% -- 1/1/20 2% -- 7/1/20	3% -- 1/1/18 3% -- 1/1/19 2% -- 7/1/19 2% -- 1/1/20 2% -- 7/1/20
<b>Hours of work:</b>	Require <b>10 days-notice</b> of reassignment from regularly scheduled shift.	Current CBA
<b>Hours of work:</b>	Current CBA	Permit Chief to <b>reassign 4, not 3</b> , least senior firefighters from their regularly scheduled shift.
<b>Holiday time:</b>  Revise accrual of holiday time provisions.	Current CBA	Amend CBA's current provision in order to <b>prohibit accrual of holiday time when employee is sick before or after weekend.</b>
<b>Vacation time:</b>  Revise accrual of vacation time provision.	Current CBA	Amend CBA's current provision in order to <b>prohibit earning of vacation time in certain circumstances.</b>
<b>Workers' Compensation Supplemental Income:</b>  Revise CBA's period during which firefighter income will be supplemented during total temporary disability	<b>Reduce</b> period from fifteen to twelve months	<b>Reduce</b> period from fifteen to <b>nine months.</b>
<b>Consolidation</b>	Current CBA	<b>Significantly reduce employment security for all employees</b> particularly employees with less than 12 months service.
<b>Dental Insurance</b>	Amend CBA to permit mid-term bargaining if benefit terminated.	Current CBA, as amended per TA

DISCUSSION:

Wis. Stats. §111.77(6)(a-b) cites the statutory factors to be used by Arbitrators in deciding Interest Arbitration cases involving Fire and Police personnel.

The statutory factors are the following:

**Section 111.77(6)**

**(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.

Based on the parties' agreement and positions, there is no issue with the following factors:

Section 111.77(6)(am) (agreement that said factor does not favor either final offer);



Section 111.77(6)(bm)1 (neither party questions the Village's authority to meet either final offer);

Section 111.776(bm)3 (Village does not dispute it has the financial ability to meet the costs of either final offer. The Village, however, claims its final offer has best taken into account the "interest and welfare of the public"; and

Section 111.776(bm)5 (both final offers exceed the cost of living).

The factors that remain then, are stipulations of the parties, 111.77(6)(bm)2; internal and external comparability, 111.77(6)(bm)4; overall compensation received by employees, 111.77(6)(bm)6; and such other factors "normally or traditionally taken into consideration" between the parties, 111.77(6)(bm)8.

It is fair to say that the parties - based on their presentation of the case, positions and arguments - agree that the determining factors in this case are the internal and external comparables as they relate to the parties' positions on wages and the 457 benefit plan. Further, there is no disagreement that the wage and 457 issues are by far the most significant in all respects and, therefore, the determinative issue.

The other issues in dispute are Hours of Work (floats) Article 5, Section 1; Promotion of Paid Leave Benefits (vacation and holiday, Articles 11 and 12); Worker's Compensation Salary Continuation (Article 14); Dental Insurance (Article 16); and Combining of Services (Article 38).

These issues are important in their own right, but their cumulative effect is not great enough to influence the outcome of the case. They do, however, deserve discussion.

#### Floats

It is the Union seeking a change in the status quo and require the Village to provide employees with 10-days' notice of reassignment from regularly scheduled shift. The Union argues there is a need for the change to status quo because the Village in attempting to reduce overtime costs, provides in most cases very little notice of reassignment, thereby creating undue hardship on personal and family life for many of the firefighters. It argues that external comparables clearly favor the Union in that none engage in a practice similar to floating.

It is the Village's position that floats are needed to address overtime costs. It recognizes it may be a hardship on employees, but on the other hand, it is part of the job. Further, however, it has taken steps to help the firefighters by seeking volunteers, and increasing the pool of those who can be floated from three to four per shift. Also, through SAFER, it has increased staff by six employees to help staffing. Further, the floats in 2020 have essentially been non-existent.

In evaluating the positions of the parties, the Arbitrator recognizes that there are hardships to one's private life as a firefighter. The Arbitrator understands and does not find the Union's attempt to minimize hardships created by floats to be unreasonable. That being said, however, it appears the Village has helped minimize the impact of floats by, mainly, the addition of 6 new hires through SAFER. In 2020, at least at the time of the arbitration hearing, there were no floats.

In the opinion of the Arbitrator, if the encouraging start in 2020 continues, the float problem may be less of an issue going forward. Given that the CBA at issue in this case expires at the end of 2020, the parties can revisit this issue at that time. If the Union believes the number of floats in 2020 is still a problem, it can address the issue again. Although the external comparables favor the Union, the Arbitrator finds that for the term of this CBA the Village's Final Offer is the more reasonable.

### Workers' Compensation Supplement

The current benefit is for 15 months of supplemental income. Both parties agree to reduce the number of months of benefit. The Village proposes to reduce the benefit to 9 months and the Union to 12 months.

The Police Union settled for nine months, so the internal comparables favor the Village's Final Offer. The external comparables, however, favor the Union. Of the seven comparables, Cudahy, Franklin, Greendale, Greenfield, Oak Creek, South Milwaukee, and South Shore, four favor the Union. Cudahy (100% of salary for full length of injury), Greenfield (100% of salary for full length of injury), Oak Creek (100% of salary for one year), and South Shore (100% of salary for full length of injury). Two favor the Village, Franklin (30 weeks), and Greendale (100% salary for 30 working days, then review by Board). One, South Milwaukee, is 80% of salary for one year.

This is a clear case of internal comparables versus external comparables; the former favoring the Village and the latter favoring the Union.

The history of the Village's Worker's Compensation cases is as follows: In 2015 there were no cases exceeding nine months, in 2016 two cases, in 2017 one case, and 2018-2020 no cases.

Clearly, from the case history, there does not seem to be a usage problem with only three cases of more than nine months in approximately three and one-half years. So there does not seem to be a real need for a change. The only need appears to be the internal comparable, the Police settlement. The Union here is voluntarily agreeing to reduce the current 15 months of coverage to 12 months. At 15 months, the Village ranks fourth among the comparables behind

Cudahy, Greenfield and South Shore. The Village's offer would further reduce its ranking to sixth ahead of Franklin and Greendale.

Based on the above, the Arbitrator finds the Village's reliance on the internal comparables of the Police unit with no compelling need for its offer of nine months to be less reasonable than the Union's offer which is supported by the external comparables.

#### Proration of Vacation and Holiday Benefits

The Village's offer is to prorate the holiday and vacation benefit while the Union offers no change to the current CBA. The Village's position is that Village employees accrue generous paid leave banks. It makes sense to not reward the extensive use of paid time off by giving the employee even more sick leave or vacation leave. Likewise, if an employee is not working and substituting paid leave for the shifts on, before, and after a listed holiday in the CBA, then the employee should not earn the holiday leave for use as paid time off on another date.

The Village settled with the Police unit with the same change so the only internal comparable favors the Village. Further, four of the seven comparables permit proration; Greendale (Holiday), Oak Creek (Holiday), South Milwaukee (Holidays and Vacation), and South Shore (Holidays). Thus, the external comparables do not heavily support either final offer.

Based on the above, the Arbitrator finds that the factor of internal comparables and the importance of uniform benefits and equity favors the Village's Offer.

#### Combining of Services

The Village's Final Offer is the same language change agreed to by the Police Union. The Village's concern for the change was its legality of the existing language based on the health insurance component.

The Union claims the Village's Offer is a drastic departure from the status quo and reduces job security for members with less than 12 months' service. There is no compelling need for change.

Again, the Police Union internal comparable favors the Village as the Police CBA includes the same language as offered to the Fire Union. However, the externals are a mix. The only external that guarantees employment of employees represented by the Firefighter Local is South Short. On the other hand, five of the externals (Franklin, Greendale, Oak Creek, South Milwaukee, and Cudahy) guarantee not only wages but also "benefits" either until a service provider is in place or until the adoption of a CBA.

If this issue were standing alone, the Arbitrator would find in favor of the Union on the basis that the Village and Fire Union could reach settlement on terms more agreeable. However, as discussed earlier, the outcome of this issue has no influence in the determination of this case.

#### Dental Insurance

This issue in the scheme of things is minor. Currently, the CBA provides for dental insurance. The Union's offer adds a sentence that provides that in the event the benefit is terminated, "the parties shall meet to negotiate the impact of the termination." Since the Union's proposal probably reflects the parties' legal obligations, the Arbitrator finds in favor of the Union.

#### Wages, 457 Plan, and Effective Date of Tentative Agreement Regarding Retirement Benefit Insurance

As discussed earlier, while the above issues needed discussion and resolution, the wage and 457 Plan issues are by far the most significant in all respects and, therefore, the

determinative issues. The cumulative effect of the other issues and their outcome does not influence the outcome of the case.

With respect to the two issues, the Village's Final Offer is defined by the police internal comparable on wages and further that said internal comparable does not include a 457 Plan sought by the Union. The Union proposes a new benefit, a 457 Plan, and offers a quid pro quo for the Plan in the form of a wage offer that is 2% less than the Village's.

First, a word about the Arbitrator's analysis. The dominance of internal comparables over external comparables is so well-established that no cites are needed. The undersigned in prior cases has discussed and accepted the principle that internal comparables, especially involving benefits, are given significant weight in determining the most reasonable final offer unless there is compelling reason to deviate.<sup>1</sup> This is to promote uniformity, fairness, morale of its employees, and stability between an employer and its various collective bargaining units. That being said, the Arbitrator agrees with the Union that it should not be automatically locked into the police settlement based solely on internal comparability with no chance to bargain its own agreement. However, given the importance of internal comparables, the deviation proposed must be for a compelling reason and part of a more reasonable total package.

The Union acknowledges the importance of internal comparables, but argues that it has met the criterion, compelling need, for deviation from the internal police comparable. The Village, on the other hand, as argued by the Union, has not met the same criterion of compelling need for its take away of the retiree insurance benefit and change of status quo. The Arbitrator

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<sup>1</sup> Washington County (Department of Social Services), Decision No. 60925 (Torosian) (5/03), City of Cudahy (Fire Department), Decision No. 60108 (Torosian) (4/03). Also, see cases cited therein.

disagrees that Village is required to do so. The change of discontinuing payment of retiree health insurance premiums for new hires was by way of a tentative agreement. The tentative agreement, along with others, was bargained. The Arbitrator finds reasonable that the Village and the Union in the normal course of the give and take of bargaining considered all of the criteria including compelling need, quid pro quo, and external comparables in reaching an agreement. Therefore, the Village does not have to justify the merits of the mutually agreed tentative agreement as part of its final offer. Further, the parties agreed to the tentative agreement knowing the wage offer settled by the Police unit. One can only reasonably conclude that the Fire Union believed the Tentative Agreements along with the wage increase offered - the same as the Police unit - was a reasonable package but for the 457 Plan. This is apparent to the Arbitrator because the Union's final offer accepts the final offer of 3%, 1/18; 3%, 1/19; 2%, 7/19; 2%, 1/20; and 2%, 7/20 and backs off said wage increases in support of its new benefit 457 Plan; 1% less increase in the first two increases. In the opinion of the Arbitrator, this is most reasonable conclusion one can reach. The Union clearly would not agree to the Tentative Agreements it did and give up the substantial benefits it had in the CBA without knowing what the Village was willing to pay (wage increase) in exchange. It follows, then, that the fact that the Union agreed to the Tentative Agreements means they did so based on the percentage wage increase offered; the same wage offer accepted by the Police Union.

Apart from the above, the Union argues that the Village's offer is deficient because it is not supported by the external comparables with regard to retiree health insurance for new hires. Most externals contribute 50% of the premium. True, but again, the Union was well aware of the externals when it bargained and voluntarily agreed to eliminates the benefit for new hires. Thus,

while it is true the Village does not compare well with the externals, the Union nevertheless agreed to the change. Under the circumstances, the Arbitrator cannot reasonably conclude that the externals favor the Union for the purposes of the final offers.

The issue remains whether the Union has made a case for its final offer. The Union is willing to take 2% less in wage increases in exchange for a 457 Plan. The Union's argument and support for the Plan is that it is needed to help new retirees with their health insurance upon retirement. The Plan, however, is not specifically set up for use for retiree health insurance. The Plan is really a deferred compensation plan and the money in the Plan can be used for any purpose. When employees leave their employment, they can take the money with them.

The Union offered testimony, studies and facts about the physical history of the life of a firefighter. It is hard to disagree with the conclusion that the cost of health insurance upon retirement, especially at age 53, is a real problem. The current family plan insurance premium of \$23,094 takes a significant amount out of a firefighter's pension. As stated earlier, the Union is willing to give up 2% of wage increase for the new benefit.

So, which of the two offers is the most reasonable? First, in the opinion of the Arbitrator, this is not a case when the Arbitrator, as in some cases, is faced with selecting the least unreasonable offer of two unreasonable offers. This is the opposite. Here, both offers are reasonable in their own right. In the end, of the two, the Arbitrator finds the Village's Final Offer more reasonable.

The Village's wage offer is substantial and the same as its internal comparable. It also exceeds its external comparables. The Village's offer provides for wage increases totaling 12%. This far exceeds the comparables: South Shore 8.25%, Greendale 7.5%, Franklin 6.5%, Cudahy 6%, South Milwaukee 6%, Greenfield 6%, and Oak Creek 5.75%.



The Union attacks the Village's argument supporting its wage offer by arguing that it does not take into account the average base among the comparables, the average direct compensation payment, and the average hourly rate. When compared this way, both the Village's and Union's offer lag in all three. This may be true, but regardless of total compensation comparisons, it still remains that the Village's offer provides for a 12% increase and the Union's a 10%. Any comparison of the two offers still comes down to the same, less the 2% of the Union's offer. Further, as discussed earlier, the reasonableness of the Village's wage offer is in a sense not questioned because the Union accepts and works off of the Village's wage offer in support of its final offer. It reduces the wage increase by 2% in exchange for a 457 Plan. So, in the end, both wage offers, in terms of percentage increase, are supported by the externals, but the Village's more than the Union's. The Village's wage offer improves the Village's ranking for starting firefighters from second to last to fifth; top level Firefighters from last to fifth place; Lieutenants from last to fifth place. The Union's final offer keeps the Village's ranking at the bottom.

Given that the Village's Final Offer is supported by both the internal and external comparables, the issue becomes whether the Union's offer is supported by a compelling need to create a new benefit of a 457 Plan.

As discussed earlier, firefighters have a very demanding job physically and health-wise. The nature of fighting fires results in heart and lung damage contributing to duty disability. At time of retirement, new hire employees are left with no health insurance benefit. The substantial cost of a family plan (\$23,094) significantly reduces the amount of pension realized. As stated earlier, this issue standing alone certainly has merit. Is it, however, the most reasonable of the two final offers? The Union in support of its offer argues that given the above discussed need,

there is a compelling need for the 457 Plan. A major argument of the Union is that the Village has not met the criteria for changing the status quo of retiree health insurance benefit of 50% of premium paid by the Village. It argues that there is no support of the Village's offer among the comparables. The Arbitrator agrees, but undermining the Union's position is that it agreed to the change. The compelling need position of the Union is weakened by its tentative agreement to change the status quo of the retiree benefit which provided a 50% contribution of premium by the Village.<sup>2</sup> Because the Union agreed to the change, the Arbitrator does not find that the merits of the elimination are before the Arbitrator. Further, the Union argues that its replacement, the 457 Plan, is needed to address the extremely high cost of insurance faced by retirees. But, the money in the 457 Plan can be used for any purpose, purchase of a home, car, etc.; not just for retiree insurance. The Union argues that the external comparables favor its offer because all but one of the comparables provide for some form of retiree health insurance. This is true, but again, the Union voluntarily agreed to eliminate this benefit. Further, only one comparable has a 457 Plan.

Based on the above, the Arbitrator does not find that the Union has met its burden of establishing a compelling need for its proposed new benefit.

With respect to the statutory factors, as indicated earlier, the parties agree that Section 111.70(6)(am), (bm)1, 3, 5 are not in dispute. The Arbitrator has considered the remaining factors, but of the remaining, the parties do not disagree that the determinative factors in this case are the internal and external comparables.

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<sup>2</sup> The Village argues that the Union's proposal on its face is unreasonable because it creates a three-tier system. The Arbitrator agrees with the Union that the Village's reaction is overstated. The Arbitrator is not convinced that it is as problematic as claimed because, 1) there are only two employees in the third-tier, 2) unlike the second-tier, no future employee will move

Based on the discussion above regarding the comparables and considering all of the statutory factors, the Arbitrator finds the Village's Final Offer the more reasonable.

Notwithstanding the above, this is not to say that the Union cannot craft a reasonable offer that includes wages and a saleable retiree health insurance plan in the upcoming contract negotiations.

Based on the record evidence and arguments of the parties and statutory factors, the arbitrator makes and issues the following

AWARD

The Village's offer is to be incorporated in the 2018-2020 collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as along with those provisions in their expired agreement which they agreed to remain unchanged.

Dated at Madison, Wisconsin, this 14th day of July, 2020.

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Herman Torosian, Arbitrator

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into the third-tier, and 3) once the two employees that are in the third-tier leave employment, the tier will evaporate.