

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of :
Local 311 of the International Association :
Of Professional Firefighters, AFL-CIO : Case ID: 520.0001
: Case Type: MIA
For Final and Binding Arbitration Involving : Decision No: 38762-B
Public Safety Employees in the Employ of :
: :
City of Verona :

Appearances: Hawks Quindel, S.C. by Mr. Timothy E. Hawks, for the Association
Von Briesen & Roper, S.C. by Mr. Kyle J. Gulya and Mr. Ryan P. Heiden for the City

On December 1, 2020 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as arbitrator to make a final and binding determination of the above-captioned dispute. The governing statute, Sec. 111.77 Wis. Stats., requires the arbitrator to select one of the parties' certified final offers in its entirety. The parties are in disagreement about the percentage wage increases to be paid in 2020-2022 to the bargaining unit consisting of six full-time firefighters employed by the City of Verona.

A hearing was held at Verona, Wisconsin on April 8, 2021. A transcript of the proceedings was made. At the hearing the parties had the opportunity to present testimony, evidence and arguments.

During the hearing the parties agreed to bifurcate the proceedings. They were in disagreement about which jurisdictions should be used as external comparables. Based on the evidence presented, they requested that the arbitrator determine the appropriate external comparables. Their briefs on that issue were received by the arbitrator on May 1, 2021. The parties agreed further that following the arbitrator's decision about external comparables they would brief the remaining issue in dispute: the wage increases to be given to the bargaining unit for 2020, 2021 and 2022. Those briefs were received by the arbitrator on August 9, 2021.

On June 7, 2021 the arbitrator sent an email to counsel in which he identified what he considered to be the appropriate external comparables to be used in this matter:

"I have decided that the following jurisdictions should be used as external comparables:

- | | |
|---------------------|-------------------|
| Town of Beloit | City of Monona |
| Village of DeForest | Village of Oregon |
| City of Fitchburg | City of Portage |

Briefly, both parties have included DeForest, Fitchburg, Monona and Oregon as comparables.

I have not distinguished between primary and secondary comparables. You can address that issue, if you wish, in arguing the merits of the case and how much weight should be given to which jurisdictions.

I have not included Fitch-Rona since it does not employ firefighters.

I have not included McFarland since its firefighters are not unionized.

Neither party did a labor market analysis. The Union argued to include jurisdictions in the same technical college district. The City argued to include jurisdictions in the Southern half of Wisconsin. I do not know from where Verona has recruited its firefighters. I included Beloit and Portage as being reasonably close to Verona, but excluded Burlington, Grand Chute and Onalaska as being too far distant.

I did not rely on the comparisons used in the 20+ year old police arbitrations. Given the differences in police and firefighter positions and qualifications, I was not persuaded to use prior police comparables.

The parties differ on this point, but I was not persuaded by the testimony and evidence at the hearing that there was an agreement reached in negotiations about which jurisdictions were acceptable comparables."

The firefighters in each of the designated comparable jurisdictions are represented by the IAFF.

The parties' complete final offers are shown below.

Final Offer of Local 311

Amend Appendix A- Wage Rates as follows:

2020 Wages

Commencing January 1, 2020

(2.0%)

Firefighter/Inspector

<u>Years</u>	<u>Hourly Rate</u>
Start	\$ 20.72
1 Year	\$ 21.34
2 Years	\$ 21.98
3 Years	\$ 22.63
6 Years	\$ 23.32

Lieutenant/Inspector

Lieutenant \$ 24.48

2021 Wages

**Commencing January 1, 2021
(4.5%)**

Firefighter/Inspector

<u>Years</u>	<u>Hourly Rate</u>
Start	\$ 21.65
1 Year	\$ 22.30
2 Years	\$ 22.97
3 Years	\$ 23.65
6 Years	\$ 24.37

Lieutenant/Inspector

Lieutenant \$ 25.58

2022 Wages

**Commencing January 1, 2022
(4.5%)**

Firefighter/Inspector

<u>Years</u>	<u>Hourly Rate</u>
Start	\$ 22.62
1 Year	\$ 23.30
2 Years	\$ 24.00
3 Years	\$ 24.72
6 Years	\$ 25.46

Lieutenant/Inspector

Lieutenant \$ 26.73

2. **Tentative Agreements.** The parties identified the following Tentative Agreements between the City and Local 311, IAFF and intend that they be incorporated into the 2020-2022 collective bargaining agreement.

Article 10- Holidays and Personal Leave

a. **Article 3. The Union**

- i. Delete Section 3.4 and renumber the remaining paragraphs
[The deleted language is not shown here]

Article 10- Holidays and Personal Leave

i. **Section 10.1 Paid Holidays**

i. Add "Martin Luther King Day."

c. **Article 11 -Authorized Leave**

i. **Section 11.4(g)-Sick Leave**

i.. Amend this subsection to read as follows: Employees who have ten (10) or more years of service with the City shall, upon separation, have ~~seventy-five~~ eighty percent (~~75~~80%) of their accrued sick leave to a maximum of ~~seventy-five~~ eighty percent (~~75~~80%) of one thousand eighty hours (1,080), placed at the employee's current hourly rate into a Post-Employment Health Plan account."

Final Offer of City of Verona

1. **Appendix A – Wage Rates.** Rename the title of "firefighter/inspector" position to "apparatus engineer/inspector." Provide the following wage increases to the "apparatus engineer/inspector" and "lieutenant/inspector" wage schedules:
 - a. January 1, 2020 2.0%
 - b. January 1, 2021 2.0%
 - c. January 1, 2022 3.0%

2. **Tentative Agreements.** The intent of the Village [sic] is that the following Tentative Agreements between the City and Local 311, IAFF be incorporated into this 2020-2022 collective bargaining agreement.
 - a. **Article 3 The Union.**
 1. Delete Section 3.4 and renumber the remaining paragraph:
[the deleted language is not shown here]

 - b. **Article 10- Holidays and Personal Leave.**
 - i. **Section 10.1 – Paid Holidays**
 1. Add "Martin Luther King Day."

 - c. **Article 11-Authorized Leave.**
 - i. **Section 11.4(g) – Sick Leave.**
 1. Amend this subsection to read as follows: Employees who have ten (10) or more years of service with the City shall, upon separation, have ~~seventy-five~~ eighty percent (~~75~~80%) of their accrued sick leave to a maximum of ~~seventy-five~~ eighty percent (~~75~~80%) of one thousand eighty hours (1,080), placed at the employee's current hourly rate into a Post-Employment Health Plan account."

Chapter 111.77 enumerates the factors which the arbitrator shall consider in making his decision. One of the factors is “3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.” During the arbitration hearing the parties stipulated that there is no issue of the City’s financial ability to meet the cost of either party’s final offer in this matter. In their briefs they made arguments with respect to “the interests and welfare of the public” which are discussed below.

The first enumerated factor in the statute is “The lawful authority of the employer.” The parties are in agreement that there is no issue with respect to the lawful authority of the employer to implement either party’s final offer.

The second enumerated factor is “Stipulations of the parties.” Those stipulations are contained in the parties’ final offers as “tentative agreements.” Nothing in those stipulations weighs in favor of one final offer more than the other final offer.

As mentioned above the third enumerated factor, insofar as it is in dispute is “the interest and welfare of the public.” The City argues that this factor supports its final offer more than it supports the Union’s final offer. The City cites the fact that its offer is identical to what has been voluntarily accepted by the police bargaining unit and what has been given to the City’s unorganized employees, whereas the Union’s final offer would increase the City’s costs and would break the consistent wage increase given to the other City employees, and would result in morale problems to those employees who accepted what the City offered. The City also cites the fact that it has not experienced recruitment or turnover problems with the firefighters unit, evidence which it views as supporting its position that what it has offered has had no adverse effects on the interests and welfare of the public.

The Union argues that the interests and welfare of the public is not an issue in this case, citing the fact that the cost difference between the offers is negligible, amounting to \$ 28,500 over the three year period which on a per capita basis is 72 cents greater under the Union’s offer than the City’s offer in 2021, and \$ 1.22 greater than the City’s offer in 2022.

In the arbitrator’s opinion this cost difference is not persuasive in weighing the interest and welfare of the public. What is more persuasive is the potential effect of the final offers on the City’s relationship with its other employees. In that context the arbitrator views the City’s final offer as being more in the interests and welfare of the public than the Union’s final offer.

The fourth enumerated factor is 4a. “Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hour and conditions of employment of other employees performing similar services and with other employees generally: a. In public employment in comparable communities.

With respect to “public employment in comparable communities,” the parties were in agreement about “internal comparisons” namely: City of Verona Police Department and City of Verona General/Library Employees. The City employs some 100 full-time employees of which 6 are in the firefighters bargaining unit. The City’s final wage offer is identical with what was given to its unorganized employees, and identical also to what the police union agreed to voluntarily in bargaining. The City’s final wage offer is thus preferable to the Union’s final wage offer which exceeds what has been accepted by or given to the City’s other employees.

At the hearing the Union presented data to support an argument that there was a need for wages paid to firefighter classifications in the department to catch up to wages paid to classifications in the police department. The arbitrator does not support the Union’s arguments for several reasons. First, no evidence was presented that there has been wage parity between those classifications since the Union’s certification as bargaining agent in 2015. Second, in the several contract negotiations between the City and Union which preceded the present dispute, the Union reached voluntary agreements with the City. Those agreements had the same wage lifts as were negotiated by the police union. There is no evidence that the Union asserted a need for catch up during those negotiations. Given this history, the arbitrator is not persuaded that there is a need or justification for catch up with police classifications where there has been no prior attempt to make such adjustments through bargaining.

Enumerated factor 4b. is “Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hour and conditions of employment of other employees performing similar services and with other employees generally: In private employment in comparable communities.” The parties did not present any evidence pertaining to “private employment in comparable communities” and thus the arbitrator does not view this factor as of any significance in determining which of the parties’ final offers is preferable.

As discussed earlier, the parties disagreed about which “external comparables” were appropriate to be used in this arbitration and they left that determination to the arbitrator.

For the years 2020-2022 the percentage wage adjustments in the external comparables are as follows:

	<u>2020</u>	<u>2021</u>	<u>2022</u>
Town of Beloit	3%	1.5%	1.5%
Village of DeForest	2.5%	2.5%	2.5%
Fitchburg	2%	2%	not settled
Monona	2.25%	5.95%*	0%*
Village of Oregon	3%	3%	3%

Portage	50 cents** (2.5%)	50 cents** (2.5%)	not settled
City Final Offer	2%	2%	3%
Union Final Offer	2%	4.5%	4.5%

In its exhibit the City offers the following explanations for the asterisks in the table:

* 0% wage increase in 2021-2022 in exchange for schedule change to 2 days on, 4 days off and reduction in annual work hours from 2912 to 2752, at same salary; equates to 5.95% increase in 2021

** Average calc. utilizes % incr. to Portage's firefighter max rates that equated to 50 cents in 2019 (2.6%), 2020 (2.5%) and 2021 (2.5%). Where split increases were provided, average calc. utilizes actual cost impact of split incr. rather than lift (i.e. a 1%/1% split incr. on Jan.1/July 1 is calc. as 1.5%, not 2%).

Both the City and Union final offers increase wages by 2% for 2020, an increase which ranks last among the comparables, tied with Fitchburg.

For 2021 the City's 2% final offer increase is the same as Fitchburg's increase, which is ranked 5 of 6 among the comparables. The Union's 4.5% final offer increase is higher than five of the six comparables.

For 2022 the City's 3% final offer increase is the same as Portage's increase, which is the highest among the four settled comparables. The Union's 4.5% final offer thus is 1.5% above the highest settlement.

The City argues that "...there is no evidence that the relative position of Verona's firefighters to the external comparables has fallen over the years [and] ...the Union did not offer any evidence as to historical wage rates among the external comparables." Thus, the City argues, there is no justification for catch-up. It argues that the City's offer "maintains or improves the firefighters' existing wage rankings among the external comparables as well as a favorable relationship to the external comparables' average."

The Union argues that "the evidence demonstrates that Verona's firefighters are paid substantially below the average of the peers." It argues "In 2021, even if the arbitrator selects the Union's final offer of a 4.5% increase, Verona's firefighters will fall 6.2% short of the average salary of their comparably situated peers on the base...\$3700 light ...under the Union's final offer and \$5200...under the employer's offer." When direct compensation is used, it argues, the lag is \$ 9000 under the City's offer, and \$ 7300 under the Union's offer.

The Union argues further, “Even though the Union proposal appears relatively anomalous at 4.5% in 2021 and 2022 , it accomplishes only a modest first step toward a goal of reaching the average direct compensation of this set of comparables and must be viewed with an eye to the lower wage to which the increase is being applied.”

As discussed above, prior to the present dispute, the parties had no agreement about appropriate external comparables, not the ones designated by the arbitrator or any others. Thus, in their prior bargains which were reached voluntarily, the parties did not focus on wage rates or wage increases paid to firefighters in the designated comparables and thus there was no focus by either party on the need for catch up in relation to them.

In its brief the City showed the wage settlements in the designated comparables for 2018 and 2019. They averaged 2.25% in 2018 and 2.39% in 2019. Verona’s wage increases were 3% in 2018 and 2% in 2019. Thus, Verona’s wage increases kept pace with the average wage increases in the designated comparables for those years. It is not clear to the arbitrator that heading into the 2020-22 bargaining, had the parties been using the designated comparables, that they would have had a compelling reason for catch-up wage increases for the Verona firefighters. As noted previously, the parties’ final offers were identical for 2020 and, in terms of annual wage increases, ranked 5th among the external comparables.

For 2018 and 2019. Verona’s wage increases in those years would have ranked 4th. The Union’s final offer for 2021 would move from 5th in 2020 to 4th among the comparables, while the City’s final offer would maintain the 5th ranking. The rank for 2022 is not known since two of the external comparables have not yet reached settlements.

The arbitrator would note also that even if, prior to the parties’ request that the arbitrator designate the comparables, he had confined the external comparables to the four jurisdictions which both parties asserted at the hearing were comparables (DeForest, Fitchburg, Monona and Oregon), the City’s final offer for 2020-2022, in terms of annual percentage wage increases, was in line with the settlements in those jurisdictions.

The arbitrator has concluded that in terms of both annual percentage wage increases and in terms of rank in relation to the percentage wage increases in the external comparables, there is no persuasive evidence that catch-up is called for. Verona’s wage increases and ranking relative to the designated comparables came about as a result of voluntary bargaining settlements since 2015, and did not reflect a worsening of Verona’s relative standing over these years which should now be remedied through arbitration.

As discussed above, the Union’s emphasis is on direct compensation paid to firefighters by the comparables in relation to the compensation paid to the bargaining unit. The City views as more relevant than annual compensation the hourly rate received since, as the City notes correctly,

there is a wide range of hours worked by firefighters in the comparable jurisdictions. The minimum hourly rate paid by the City to firefighters in its final offer is above the average minimum rate paid by the designated comparables in 2020 by (0.73), in 2021 by (0.55), and in 2022 by (0.81) where settlements have been reached. In 2020 both final offers were identical and ranked 3rd. In 2021 the City's final offer (0.55) ranked 4th. The Union's final offer (1.07) ranked 2nd in 2021 and 1st in 2022 (1.67) among the settled comparables. The City's minimum hourly rate was also above the average minimum rate paid by the designated comparables in 2018 by (0.93) and in 2019 by (0.83) where it ranked 2nd.

These figures show that both parties' final offers continue to be above the minimum hourly rate which was paid by the comparables in 2018-19; the City's by a lesser amount, the Union's by a greater amount. As noted above, the final offers are identical for 2020. In the arbitrator's opinion there is not justification for a catch-up wage increase in 2021-22 for the minimum hourly rate in relation to what was paid by the designated comparables in the 2018-19 period.

The maximum hourly rate paid by the City to firefighters is below the average maximum rate paid by the designated comparables in 2020 by (-0.16), in 2021 by (-0.37), and in 2022 by (-0.11) where settlements have been reached. In 2018 the City's maximum rate was above the average by (0.15) in 2018, and was below the average by (-0.04) in 2019 and ranked 5th. In 2020 both final offers were identical (-0.16) and ranked 5th. In 2021 the City's final offer (-0.37) ranked 5th. The Union's final offer (0.21) ranked 4th. For 2022 among the settled comparables, the City's final offer (-0.11) ranked 3rd. The Union's final offer (0.85) ranked 2nd.

These figures show that the City's final offer results in maximum hourly rates below the average paid by the external comparables in 2020 and 2021 and considerably below the average paid by them in the 2018-19 period. The Union's final offer is below the average maximum hourly rate paid by the comparables in 2020 and above their average in 2021. In the arbitrator's opinion these figures favor the Union's final offer more than the City's final offer but do not persuade the arbitrator that there is a need to award catch-up pay through arbitration.

The fifth enumerated factor is "the average consumer prices for goods and services, commonly known as the cost of living." Neither party argued that this factor weighed in its favor or that it should affect the arbitrator's decision in this matter.

The sixth enumerated factor is "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. The evidence presented shows that the overall compensation received by the firefighters is identical to or comparable to the overall compensation paid by the City to the police and to the City's unorganized employees.

The parties differ in their assessment of the weight to be given to the overall compensation factor when compared with the external comparables. The Union argues that the data presented are inadequate to compare overall compensation, since with the exception of DeForest the health insurance plan designs are not known. The City argues that overall compensation doesn't justify catch-up since maximum wages are higher than paid by the comparables when the City's longevity payments are factored in. It argues further that unlike the comparables, the City has a zero-deductible health insurance plan for employees, and when longevity and insurance benefits are factored in, "it becomes clear the overall compensation received by the ...bargaining unit is highly competitive and reasonable when compared to the external comparables."

In the arbitrator's view, the data presented do not support the Union's argument that the overall compensation factor should be given weight in favor of catch-up with the external comparables.

The seventh enumerated factor is "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." Neither party has cited changes in circumstances which should affect the arbitrator's decision in this matter.

The eighth enumerated factor is "Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hour 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." Neither the parties nor the arbitrator have identified any such factors which affect the outcome of this case.

The statute also has (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 [enumerated factor discussed above]. The arbitrator shall give an accounting of the consideration of this factor in the arbitrator's decision." As discussed previously economic conditions in the City of Verona are such that there is no issue about the City's ability to pay either of the parties' final offers.

The arbitrator is bound by the statute to select one party's final offer in its entirety. Having reviewed the facts presented by the parties and their arguments, it is the arbitrator's decision that the final offer of the City of Verona is selected.

Dated this 7th day of September, 2021 at Madison, Wisconsin


Edward B. Krinsky, Arbitrator