

BEFORE THE ARBITRATOR

In the Matter of the Interest
Arbitration of a Dispute Between

**GLENDALE PROFESSIONAL POLICE
OFFICERS ASSOCIATION, LOCAL 212 OF THE
LABOR ASSOCIATION OF WISCONSIN, INC.**

and

Case ID: 447.0003
Case Type: MIA
Decision No. 38786-B

CITY OF GLENDALE

Appearances:

Mr. Benjamin M. Barth and **Mr. Doug Nelson**, Labor Consultants, Labor Association of Wisconsin, 11430 W. Bluemound Road, Suite 104, Wauwatosa, Wisconsin 53226, appearing on behalf of the Association.

Attorney Brian J. Waterman, Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin 53186, appearing on behalf of the City.

ARBITRATION AWARD

City of Glendale is a municipal employer under Wis. Stats. 111.77 (Municipal Employment Relations Act). The Glendale Professional Police Officers Association, Local 212 of the Labor Association of Wisconsin, Inc. represents for collective bargaining purposes a unit of law enforcement employees in the City of Glendale Police Department including all police officers with the rank of Patrol Officer, Detective and Desk Officer. The Association and the City are parties to a collective bargaining agreement which expires on December 31, 2021. The parties engaged in negotiations over a wage reopener for 2021 but were unsuccessful in their attempts to reach a voluntary settlement.

On December 9, 2020, the Association filed an interest arbitration petition with the Wisconsin Employment Relations Commission and a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. The parties submitted their final offers to the investigator by December 29, 2020. On February 8, 2021, the Commission issued an Order appointing the undersigned to serve as Arbitrator. A hearing was held via Zoom videoconference on April 7, 2021, at which time the parties were given an opportunity to present their evidence and arguments. The parties completed their briefing schedule on June 11, 2021.

FINAL OFFERS

In their final offers, hereby incorporated by reference into this decision, the parties agreed and disagreed as follows:

Item	City Final Offer		Association Final Offer	
Article IV – Wages And Salaries	1/1/21	2.00%	1/1/21	2.00%
			7/1/21	1.00%

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis. Stats., as follows:

- (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 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.

POSITIONS OF THE PARTIES

The parties filed thoughtful and well-reasoned briefs and reply briefs. The parties’ basic positions, arguments and cases cited are not reproduced in detail; instead they are summarized below. The parties’ main arguments are discussed below in the DISCUSSION section of the Award.

Association's Position

The Association basically argues the criteria set forth in Wis. Stats. 111.77(6) supports a conclusion that its final offer is more reasonable.

In support thereof, the Association initially asserts the City did not argue inability to pay and introduced no evidence to support such a contention. The Association also asserts the City did not provide any evidence that if the Association's final offer is selected by the Arbitrator it will lose any payments under the Expenditure Restraint Program or be harmed in any way by another state program. Moreover, the Association argues "the trifling difference of \$12, 924.11 spread out over twenty-six (26) bargaining unit members is hardly the substance from which successful inability to pay arguments are made." Per unit member, the Association notes the wage offers amount to a difference of only \$498.04.

The Association adds any suggestion the City is facing uncertainties emerging from the pandemic is "ludicrous" because the City will be receiving approximately \$1.26 million from the American Rescue Plan Act to spend on different City services. The Association also points out through prior negotiations it has agreed to reduce the Retiree Health Insurance benefit for new employees significantly helping reduce substantial future costs to the City relating to retiree health insurance.

The Association next asserts the public interest is well served if the citizens and taxpayers of the City are provided with public servants who are well paid and of high spirits and morale. Conversely, if members of the City's Police Department continue to receive below average wage increases, "morale will almost certainly suffer." That is particularly true because bonuses were given to ALL City employees except members of the Association.

The Association also asserts its final offer is supported by settlements received by other **law enforcement employees** within the comparable communities. It adds no matter which final offer is selected, Patrol Officers of the Association will continue to receive below average wages when compared hourly and annually to the comparables. Association President David Burkart testified: "We're just trying to get to the middle and be treated like...our comparables."

In making the aforesaid argument, the Association rejects the City's attempt to cast River Hills as an outlier because it settled at a significantly higher wage percentage increase than any other comparable community for the past five years. To the contrary, it asserts the parties are in agreement the City's police department is part of a seven community pool of comparables including River Hills established by *City of Glendale, Decision. No. 30084-A (Dichter, 10/29/01)*. The Association notes those comparables show the City police department currently is 6 out of 7 amongst its comparables in regards to top hourly Patrol rate. The Association states if the Arbitrator selects the Association's final offer, the Association will still be fifth out of seven comparables.

The Association also rejects any reliance on an "internal" pattern because all other City employees do not have representation and do not bargain their wages, hours and conditions of employment with the City. As such, "internal comparability today is no longer a controlling factor and does not hold the same significance, if any at all, when now an employer can act unilaterally without bargaining regarding hours, fringe benefits and other conditions of employment for its other employees." *Green Lake County, Decision No. 35779-B, p. 11 (Yaeger, 6/29/16)*. Moreover, the Association points out the City has not established a historical pattern relating to wage settlements between the City, the Association and its general employees. The Association complains that in 2021

elected officials of the City received big wage and salary increases; the City Administrator got a new car allowance; and departmental budgets increased except the Police Field Services budget which decreased.

Moreover, the Association asserts it raised an issue at hearing with the “0.5%” bonus to non-represented employees in the City because it wanted to show the City DOES NOT treat all employees equally. The Association claims it has never compared itself to the non-represented employees for purposes of negotiating and settling a contract. It rejects the City’s assertion the Association wants it both ways – it does not want to be treated like other employees in the City but it wants the Arbitrator to consider the non-represented City employees comparable for the purpose of the aforesaid bonus they received in 2020. Instead, the Association says it prefers to bargain for terms and conditions that are best for its members and comparable to the terms and conditions of other employees providing similar services in comparable communities.

The Association further notes its wage offer and the City’s wage offer are both above the applicable Consumer Price Index (CPI).

Finally, the Association asserts overall compensation of Association members is average among the comparables and should not be used as a basis to support an award to the City. The Association opines its members are arguing their **wages are below the average** and the City’s offer brings Association members even farther **below the average**. The Association concludes it “is trying not to be the lowest paid out of their comparables while being busiest agency among their comparables.”

For all the above reasons, the Association asks that its final offer be selected by the Arbitrator for incorporation into the 2016-2021 collective bargaining agreement.

City’s Position

Based on the applicable statutory criteria and the record evidence, the City contends its final offer is the more reasonable and appropriate of the parties’ offers. Consequently, the City requests, for the reasons set forth below, the Arbitrator select the City’s final offer and incorporate it into the parties’ collective bargaining agreement.

The City argues economic conditions support its final offer because its offer reasonably reflects current budgetary needs in light of various fiscal challenges the City faces. Challenges in 2021 include significantly increasing expenses with labor costs, particularly police personnel, a large part of that; a 4% increase in health care costs; a limit on general fund budget increases imposed by the Wisconsin Expenditure Restrain Program; an inability to raise its tax levy by more than approximately 2% and a large decrease in shared revenue. The City notes arbitrators have recognized the duty of a municipality to be fiscally responsible and maintain flexibility in order to effectively manage finances. Additionally, the City asserts many arbitrators have selected final offers based upon budgetary goals of municipalities, rather than actual “ability” to pay. The City opines it faces significant economic challenges greater than past municipal employers where arbitrators nevertheless selected the employer’s final offer. The City emphasizes it needs to remain financially cautious as it navigates the uncertainty of a post-pandemic economic environment. Because this factor must be given greater weight than other considerations, the City’s offer is more reasonable and should be adopted.

In contrast to the above, the City argues the Association failed to address the “greater weight” factor of the economic conditions of the City anywhere in its brief. The City opines the parties’ offers must be weighed in light of the economic conditions of the City and the Association’s failure to address this matter is persuasive.

The City also argues just because a municipality may be able to afford the costs associated with the Association’s offer (costs “only” \$12,924.11 more than the City’s final offer) does not justify an award of the Association’s final offer. This is particularly true in the instant case, the City opines, where all other statutory criteria, including the “greater weight” factor completely ignored by the Association, favor an award in the City’s favor.

The City next argues the interests and welfare of the public support its offer. In this regard, the City opines its fiscal health “is in the interests and welfare of the public, and [it] has a responsibility to its taxpayers to cost effectively provide services in the most efficient manner.” The City cites *Village of Greendale, Dec. No. 33924-A (Strycker, 3/27/13)*, “Adopting the Union’s offer will limit the flexibility to address... economic challenges and will impact the other internal employer expenditures.” Arbitrator Strycker concluded under the circumstances the Village’s final offer better served the interests and welfare of the public. The City believes the same is true here.

The City states, on the other hand, the Association offers no proof selection of the City’s offer would negatively affect employee morale. To the contrary, the City submits its highly successful record of recruiting and retaining police officers rebuts the Association’s argument that low wages have negatively affected department morale.

The City further argues both internal and external comparables support its final offer.

With respect to internal comparables, the City states its offer of a 2% wage increase for 2021 is in line with the Association’s history of receiving the same percentage wage increase as other City employees. Rejecting the Association’s contention such a comparison is not appropriate because all other City employees are not represented and do not have bargaining rights, the City points out arbitrators have long recognized where there is a pattern of a union settling at the same rate as other employee groups of the same employer, it is a persuasive indication of the settlement the parties would have reached at the bargaining table, had they been able to do so. (*Outagamie County, Decision No. 31400-A (Petrie, 2/7/06)*). The City also takes issue with the Association’s complaint non-represented employees of the City received a 0.5% bonus in 2020 while the Association members did not. The City points out the bonus was granted to non-represented City employees in lieu of merit payments the City was unable to make to said employees in 2021 and based on a performance evaluation program to which the Association is not subject. The City adds the bonus was a one-time payment which had no impact on future base wages. Finally, the City notes the bonuses paid to said employees were a 2020 expense, whereas the wages in dispute are part of the City’s 2021 budget.

The City also takes issue with the contradictory positions the Association has taken regarding internal comparables: asking the Arbitrator to ignore the past pattern of Association members receiving the same annual percentage wage increases as other City employees but at the same time asking the Arbitrator to consider those same employees comparable for the purposes of other compensation. In this regard, the City claims the Association’s brief contains factual inaccuracies and omits important information about the Police Field Services budget, compensation to the City’s Common Council members and Mayor and the City Administrator’s “new benefit” of a \$250 monthly car allowance.

Turning to external comparables, the City first notes the Association alleges its final offer is more reasonable than the City's final offer based on the wages of comparable police departments. Specifically, the Association claims the City's patrol officers are paid below the average of comparable departments. The City adds the Association's stated reason for the percentage wage increases is "We're just trying to get to the middle and be treated like . . . our comparables." However, the City believes an evaluation of the City's comparables shows Association members don't need to "get to the middle," because they are already there, and then some. In this regard, the City highlights its minimum wage step at "a full \$4,055.00 higher than the average and was the second highest of all comparable communities." Under the City final offer, that step "would increase to \$5,511.00 greater than the average, and would be the most of any comparable community that has settled for 2021." The City adds at hearing the Association drew attention to the fact under the City's final offer, its maximum wage step for 2021 would be slightly below the average among comparable communities that have settled for 2021. However, the City notes under its offer, the "2021 maximum wage step would only be below the average by \$934.00." The City asserts its 2021 minimum wage step more than makes up for this deficiency.

Second, the City points out the statistics cited by the Association only include the wages of patrol officers and not that of detectives, the latter of which receive pay well above the average of the City's comparables.

Third, "[E]ven assuming *arguendo*, that the City's wages were not at or above the average of the comparables, the Association should not be permitted to 'get to the middle and be treated like... like our comparables' through interest arbitration."

Fourth, excluding River Hills as an outlier because it has consistently settled at higher wage percentages than other comparable communities, "the average settlement among those comparable communities who have settled wages for 2021 is a 2.1% increase, which is much closer to the City's offer than the Association's offer."

In conclusion, the City submits external comparables in this matter favor the City's offer over the Association's. They demonstrate City wages are higher than many and competitive with all.

Furthermore, the City argues cost of living data supports its final offer.

Finally, the City argues overall compensation presently received by Association members supports its final offer. In this regard the City complains the Association argues the City's total compensation to Association members is "average" compared to other communities without any substantive analysis to support that claim. In reality, the City opines of the seven communities in the City's comparable pool, the City has the second highest overall compensation per officer.

The City adds the only issue the Association raises in its brief regarding overall compensation relates to a formerly bargained change to retiree health insurance benefits. "The Union suggests that it previously gave up benefits for which it is now asking the Arbitrator to recoup by awarding the Union's final offer in this matter." The City states in exchange for the reduction to some retiree health care costs for the City, the Association gained the benefit of a Health Reimbursement Account (HRA) for its members. Second, and more importantly, prior voluntarily bargained agreements should not be considered in this matter or relied on as a basis for awarding one offer over the other.

In conclusion, the City cites total wage and benefits costs paid by the City to Association members, its exceptional health insurance benefit and generous retiree benefits as reasons “overall compensation is yet another statutory criteria that convincingly favors selection of the City’s final offer.”

For all the reasons set forth above, the City requests the Arbitrator select the City’s final offer and that it be incorporated into the parties’ collective bargaining agreement.

DISCUSSION

At the outset, the Arbitrator notes that the only issue in dispute is wages.

Wis. Stats. 111.77(6) sets forth the criteria to be utilized by the arbitrator.

Wis. Stats. 111.77(6)(am) states:

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.

The following is written in compliance with the above Sec. 111.77(6)(am). The Arbitrator also incorporates into this narrative by reference the section below discussing the City’s ability to meet the costs of the Association’s offer to the extent it is relevant and responsive to the above directive.

While Sec. 111.77(6)(am) is the starting point for an evaluation of the offers, the Arbitrator recognizes that, in applying the statutory criteria, he should not go outside the evidence and arguments submitted by the parties on this point. *Dodge County, Decision No. 33914-A, pp. 13-14 (Vernon, 1/28/13); Washington County, Decision No. 34039-A, p. 5 (McGilligan, 7/19/13).*

Neither party offered any persuasive evidence or testimony regarding the economic conditions in the City of Glendale.

The City contends its final offer reasonably reflects current budgetary needs in light of the various fiscal challenges with which the City is faced and is supported by the above criterion. The Association notes the City does not make an inability to pay argument and argues the City can easily afford the cost of the Association’s final offer. The Arbitrator will address these contentions below.

Consequently, based on same, all of the foregoing, and the record as a whole; and absent any persuasive evidence to the contrary, the Arbitrator finds this factor favors both the Association and the City equally. Thus, the Arbitrator has given greater weight to the economic conditions in the jurisdiction and has found that the other factors under Sec. 111.77(6)(bm) will determine which party will prevail.

Further, the parties do not rely on all of the remaining statutory criteria in support of their offers. The criteria not relied upon include the lawful authority of the employer, stipulations of the parties, comparison with private sector wages, “changes during the pendency” and “such other factors” provisions of (bm) 1, 2, 4b, 7 and 8. Since said criteria are not addressed by the parties, the Arbitrator,

like the parties, finds them to be non-determinative of the issues presented. *Sawyer County, Decision No. 31519, p. 6 (Torosian, 9/20/06)*.

With respect to the remaining criteria, the “interests and welfare” of the public, the “cost of living,” and the “overall compensation presently received” by employees provisions of (bm) 3, 5 and 6 were addressed by the parties but clearly they are not as significant as the primary criteria of 4, external and internal comparables, and the financial ability of the unit of government to meet these costs. However, their relative significance will be discussed below.

The Arbitrator turns his attention to the issue in dispute.

Wages

The parties’ wage proposals are straight forward. The Association proposes a 2% wage increase on January 1, 2021 and a 1% increase in wages July 1, 2021. The City proposes a 2% wage increase January 1, 2021.

Interests and Welfare of the Public

The parties argue their respective offers meet the “interests and welfare of the public” criterion.

The Association asserts the public interest is well served if citizens and taxpayers of the City have public servants who are well paid and of high spirits and morale. Conversely, if police officers continue to receive below average wage increases, “morale will almost certainly suffer.” It is important pay be high enough to positively impact recruitment and retention of police officers.

The Association correctly recognizes the importance to public safety of police officers who are fairly paid and of high spirits and morale. There are morale benefits and economies in recruiting competent employees and in retaining them. However, the Association offered no examples of problems the City has encountered in recruiting and retaining police officers. To the contrary, in its reply brief, the City highlights its successful efforts to recruit and retain police officers from January 1, 2016 to present.

The Association also fails to provide any other examples of poor morale among police officers due to lower wages. Association President David Burkart testified the Association was just trying “to be reasonable.” (Tr. p. 12). He stated “We’re not looking to be the highest paid PD in the North Shore. We’re just trying to get to the middle and be treated like... our comparables.” *Id.* These concerns will be addressed below.

The City, on the other hand, opines its fiscal health “is in the interests and welfare of the public, and [it] has a responsibility to its taxpayers to cost effectively provide services in the most efficient manner.” City administrator Rachel Safstrom testified extensively about the City’s efforts regarding same. (Tr. pp. 10-37). Safstrom explained various state programs the City has utilized to be fiscally responsible. (Tr. pp. 20, 22-23). She also talked about the possible impact of the American Rescue Plan Act, a bill passed as a result of the pandemic. (Tr. pp. 25-28). However, at no point did she say the City was unable to afford the cost of the Association’s final offer on wages.

The parties make excellent arguments on how their respective final offers satisfy the “interests and welfare of the public” criterion. Based on same, and all of the foregoing, the Arbitrator finds this criterion does not favor either party’s offer.

Ability to Pay

The Association argues the City has the “financial ability” to pay the cost of the Association’s wage offer especially given the small cost difference between the parties’ final offers on wages.

The City counters it has a responsibility to its taxpayers to cost effectively provide services in the most efficient manner possible. It adds just because a municipality may be able to afford the costs associated with the Association’s offer does not justify an award of the Association’s final offer. The City opines this is particularly true in this case because other statutory criteria favor an award in the City’s favor.

City administrator Safstrom testified persuasively about the City’s efforts to be a good steward of the taxpayers’ money. (Tr. pp. 18-37). In particular, Safstrom described increasing expenses with approximately 60% of the City’s overall budget attributable to labor costs, (Tr. pp. 20-21), and for each of 2018, 2019, 2020 and 2021, 75% or greater of those labor costs have been, or are estimated to be, attributable to the City’s police personnel. (City Exhibit 9-A; Tr. p. 21). Safstrom also described several fiscal restraints on the City from the State of Wisconsin including the tax levy restraint and the Expenditure Restraint Program. (Tr. pp. 20, 22-23). Additionally, she testified the City’s shared revenue has continued to decrease year after year, with an estimated 12.65% decrease in 2021. (City Exhibit 8-A; Tr. p. 23). This was the second highest among the comparables. *Id.* Finally, she talked about uncertainties the City faces emerging from the current pandemic. (Tr. p. 25-28). Specifically, she addressed the fiscal impact on the City of the American Rescue Plan Act (federal stimulus bill) and the estimated \$1.26 million the City is expected to receive which is a decrease of more than half of the funds from the prior estimate of between \$2.4 and \$2.8 million. (Tr. pp. 25-26). Those monies have specific earmarks none of which include base wages for police officers. (Tr. pp. 26-27).

However, it is noteworthy both that the City is not making an inability to pay argument and that it introduced no evidence or testimony to support such a claim.

Therefore, based on all of the above, the Arbitrator also finds this criterion does not favor either party’s offer.

External Comparables

The parties are in agreement the City’s police department is part of a seven community pool of comparables established by *City of Glendale, supra*. The other communities included in the comparable pool are Bayside, Brown Deer, Fox Point, River Hills, Shorewood and Whitefish Bay.

The Association argues its final offer is supported by settlements received by other **law enforcement employees** within the comparable communities. Its stated reason for the percentage wage increases contained in its final offer is “We’re just trying to get to the middle and be treated like” our comparables. (Tr. p. 12). However, an evaluation of the City’s comparables shows Association members don’t need “to get to the middle” because generally they are there, and, in some cases, more

so. The Association wants a higher percentage wage increase for the purpose of being “treated like their comparables” but, in fact, they already enjoy even greater compensation than many of their comparables in a number of different ways. For example, looking at wages alone, in 2020 the City’s minimum wage step for a patrol officer was \$4,055 higher than the average and was the second highest of all comparable communities. (City Exhibit No. 11). Moreover, the City’s final offer of a 2% increase for 2021 would increase the difference between the City’s minimum wage step and the comparable average for patrol officers even more to \$5, 511. Id. It would be the most of any comparable communities which have settled for 2021. Id.

At hearing, the Association drew attention to the fact under the City’s final offer the City’s maximum wage step for patrol officers for 2021 would be below the average among the comparable communities which have settled for 2021. (Tr. p. 35). Under the City’s final offer, the 2021 maximum wage step for patrol officers would be below the average by \$934. (City Exhibit No. 11). Thus, “under the City’s final offer the difference between the City’s 2021 minimum wage step and the average minimum wage step would be over four times greater than the difference between the City’s 2021 maximum wage step and the average maximum wage step.” (City Exhibit No. 11, Tr. pp. 35-36).

In addition, the statistics cited by the Association only include the top wages of patrol officers and not that of detectives, the latter of which receive pay well above (\$1.21) the average top monthly detective pay rate of the City’s comparables. (Association Exhibit No. 601). In 2021 under the City’s final offer, the monthly detective pay rate increases even more above the average (\$1.35) top monthly detective pay rate of settled City’s comparables. (Association Exhibit No. 606).

The Association states its claim for an across the board increase of 2% effective January 1, 2021 and an additional 1% effective July 1, 2021 is more reasonable than the City’s proposed 2% raise on January 1, 2021 based upon the wages received by comparable police departments in the North Shore since 2018. The Association notes City patrol officers it represents are \$0.51 (actually \$0.57) below the average top monthly patrol pay rate in 2018, \$0.72 below the average in 2019 and \$0.66 below average in 2020. (Association Exhibit No. 601). Under the Association’s final offer, the top monthly patrol pay rate in 2021 would drop to only \$0.16 below the average while under the City’s offer it would also drop but to \$0.55 below the average. (Association Exhibit No. 603, 605). Thus, the City’s final offer on the top monthly patrol pay rate is much closer to the below average top monthly patrol pay rate the City has maintained since 2018. (Association Exhibit No. 600). It also continues a two year improvement in getting closer to the average top monthly patrol pay rate. Id. This conclusion is contrary to the Association’s assertion that if the City’s final offer is selected the Association’s patrol officers will fall further behind the comparables average top patrol officer rate. Even under the City’s final offer patrol officers represented by the Association will continue to improve their standing among the comparables relating to the top monthly patrol pay rate.

Likewise, detectives will continue their relative standing among the comparables. In this regard, the record indicates under the Association’s final offer the top monthly detective pay rate will climb to \$1.78 above the average thereby ranking second among settled comparable communities while under the City’s offer said rate will also rise higher above the average (but not as much) while maintaining a second place ranking among those comparables. (Association Exhibit Nos. 604, 606).

In addition, assuming *arguendo* the City’s wages are not at or above the average of its comparables, the Association should not be permitted to “get to the middle and be treated like... our comparables” through interest arbitration. As Arbitrator Hempte noted in *City of Mequon, Decision No.*

33818-A (*Hempe*, 11/15/12), “Maintaining position in the comparable rankings can be a reasonable test of a reasonable offer.” *Id.* As noted by the City, this concept has been similarly supported by other arbitrators, including Arbitrator Zeidler: “[T]he arbitrator is of the opinion that an offer sufficient to maintain rank as comparable need not be made higher.” *City of Platteville, Decision No. 27911-A (Zeidler, 7/21/94)*. The City and the Association have not been parties to an interest arbitration proceeding for the last twenty (20) years. “This highlights the indisputable fact that prior contracts and prior wage increases have been settled voluntarily and the resulting wage rates and rank among the comparables has been accepted by both parties.” The Arbitrator agrees with the City to penalize it for terms and conditions previously agreed to by the Association would be unfair. Arbitrator Nielsen commented on this issue when awarding in favor of the employer’s final offer stating: “The current wage rankings are the result of voluntary settlements, and the County’s offer maintains the relative position of County employees among their peers.” *Barron County, Decision No. 26009-B (Nielsen, 1/5/90)*. Absent persuasive evidence and/or testimony to the contrary, this dispute like that in Barron County, should not be settled by disregarding prior voluntary settlements.

In reaching the above conclusions, the Arbitrator rejects the City’s attempt to eliminate River Hills as an outlier because it has settled “at a significantly higher wage percentage increase than any other comparable community for at least each of the last five years.” The City notes if River Hills is eliminated as an outlier, the average settlement among those comparable communities who have settled wages for 2021 is a 2.16% increase, which is much closer to the City’s offer than the Association’s offer. (City Exhibit No. 12).

However, the problem with the City’s argument is that River Hills has only settled at a “significantly higher wage percentage increase” than other comparable communities three of the past four years. *Id.* This is not the historical pattern of an outlier cited by the City. Moreover, the City agrees on the seven community pool of comparable communities including River Hills. (City brief, page 9). Finally, City witness testimony, exhibits and written arguments are replete with examples of reliance on comparisons with all of the various aforesaid comparable communities in support of its position the City’s wage offer is more reasonable. Any attempt by the City to exclude River Hills as an outlier only with respect to wage percentage increases is therefore undermined.

The average settlement among comparable communities including River Hills is 2.37% which is closer to the cost of the Association’s final offer (2.5%) than the City’s offer.

This is a close call. However, based on all of the above, the Arbitrator finds the external comparables support the City’s offer.

Internal Comparables

The Association notes all other City employees are non-represented, which means no other City employee has the right to bargain over wages, hours and conditions of employment. In addition, the Association argues even if they did have the right to bargain, the statute does not mention “internal” comparability at all. The Association cites Arbitrator Yaeger’s observation in *Green Lake County, supra, p. 11* in support of its position internal comparables should be given little or no weight:

Regarding internal comparability, in prior arbitration decisions I have stated on several occasions that this factor should be considered as a significant, if not controlling, factor in evaluating the parties’ final offers relating to benefits and wages. However... [I]nternal

comparability today is no longer a controlling factor and does not hold the same significance, if any at all, when now an employer can act unilaterally without bargaining regarding hours, fringe benefits and other conditions of employment for its other employees.

Other arbitrators agree internal comparables do not carry as much weight as they did before Acts 10 and 32 were passed. For example, in *La Crosse County, Decision No. 33888-A, p. 15 (Mawhinney, 12/26/12)*, the arbitrator noted:

The County has a very strong argument about its internal pattern. The Arbitrator acknowledges that the County has a long history of pay and benefits that have been consistent among 8 union groups. Prior to Act 10 and 32, this would have been very significant and probably the most relevant factor with regard to benefits.

Arbitrator Mawhinney added:

The Arbitrator feels compelled to give some deference to the statutory scheme that changed everything, taking away bargaining rights and benefits for general employees while leaving them in place for public safety employees This means the internal comparables – general employees without bargaining rights who were forced to pay the employee share of the WRS – have less weight than they did in the past when arbitrators recognized internal consistency in benefits as being desirable This is not to say that in a certain case[s], internals do not count or are not to be given weight. It only means that internal comparables do not carry as much weight as they have in the past before Act 10 and 32 when looking at such things as the WRS and insurance where the law made changes for general employees and exempted public safety employees. *La Crosse County, supra, p. 16.*

Likewise, Arbitrator McAlpin acknowledged the decreased value of internal comparables when compared to law enforcement noting the use of internal comparables is “questionable at best” because other units have no choice on contribution levels. *Town of Rome, Decision No. 33866-A, p.24 (12/14/12).*

Other arbitrators, however, argue nothing has changed regarding the relative importance of internal comparables. Arbitrator Strycker stated:

The role and importance of internal comparables has been impacted through the enactment of Acts 10 and 32. . . . With the advent of Acts 10 and 32, only protective services employees can negotiate complete contracts and proceed to interest arbitration. Employers are now prohibited from negotiating with general employees over many terms that were once found in labor contracts. Further, the law defines numerous employee obligations including health insurance premium sharing and responsibility for WRS employee contributions. Comparing general employees who no longer have full collective bargaining rights and access to interest arbitration with protective services employees can be challenging yet still appropriate. Both general and protective services employees continue to work for the same employer and fairness and equity are relevant concerns for both the employer and employees. *Village of Greendale, Decision No. 33924-A, pp. 33-34(Strycker, 3/27/13).*

Another arbitrator reached similar conclusions:

While the law governing final offer arbitration is not the same as for the other Sauk County employees, these other county employees share the same locality, the same financial burdens and taxes. Widely divergent wage rate increases in a single county stimulates begrudgement on the part of the rest of the Employer's workers unless extreme grounds can be justified for such divergence. This observer could find none. *Sauk County, Decision No. 33811, pp.5-6 (Flaten, 12/20/12)*.

Some arbitrators seek a middle ground. Arbitrator Vernon in *Dodge County, supra, p. 19* concluded internal comparables are less instructive than they have been in the past. Arbitrator Vernon added: "It is not for the arbitration process to mitigate the practical impact of legislatively created 'haves' and 'have nots.'" *Id.* However, he pointed out: "This isn't to say internal comparisons are irrelevant or without value." *Dodge County, supra, p. 20.*

Arbitrator Hempe in *City of Mequon, supra, pp. 48-49* put it well:

Notwithstanding the enactment of Acts 10 and 32, it seems clear that the long-established provisions of Wis. Stats. 111.77 still require the arbitrator to give weight to the Factors listed in subs. 111.77(6)(bm) 4.-8. Factor 4. includes not only a comparison with external comparable public sector employees, but also "other employees generally," listed at the end of Factor 4. In labor relations parlance, this group is often referred to as "internal comparables."

Most arbitrators are in general agreement with this view. . . .

I thus conclude that comparison with the internal comparables is statutorily required. But I also perceive the arbitral *weight* to be given is discretionary, depending on the facts and circumstances of the case. In the end, the assessment of weight relies on the judgment of the arbitrator. (Emphasis in the Original).

Consequently, the Arbitrator will determine the weight to be afforded the internal comparables favoring the City in the context of weighing all the criteria of Sec. 111.77(6)(bm). In doing so, the Arbitrator notes in 2019 all City employees, including the police, received the same percentage increase of 2%. (City Exhibit No. 7; Tr. p. 23). Looking back at 2019 and 2020, all City employees, including the police, received the same percentage increase for those years. *Id.* In 2021 all City employees except the police received a 2% increase.

In reaching the above conclusions, the Arbitrator rejects the Association's (incorrect) arguments over all the ways other City personnel have been treated more favorably than Association members and suggesting this as a basis for awarding its final offer.

For example, non-represented City employees received a 0.5% bonus at the end of 2020. (Tr. p. 31). "It was within the 2020 budget year as the council was not able to administer any merit increases due to budget restraints in 2021. It was not a building on their wages, it was a one-time bonus." *Id.* It was in addition to their wage increase in 2020. (Tr. p. 32). It also was in lieu of merit increases

involved in an evaluation and performance evaluation program for non-represented employees that the police bargaining unit does not have. Id.

The Association claims the police field services budget decreased 4.6% from 2020 to 2021 while the police administration budget increased 16.8% in 2021 over 2020. However, as City administrator Safstrom testified at hearing this decrease was largely the result of the City moving \$175,000 for police squad vehicles from the police field services budget, where it would have been included previously, to the City's capital projects fund. (Tr. pp. 33-34).

Next, the Association points out compensation to members of the City's Common Council as well as to the Mayor increased significantly from 2020 to 2021. (Association Exhibit No. 1203). The Association notes the mayor and common council's total budget similarly increased significantly during this time. Id. The City counters in its brief the Council members' salaries have not increased in at least ten (10) years and the increases for its elected officials took place on May 1, 2021, due to conflict of interest rules. They were approved by the Council back in November 2019. More importantly, as elected officials their significance as comparisons is little to none.

Finally, the Association claims not only did the city administrator's budget increase over 3.9% from 2020 to 2021, (Association Exhibit No. 1205), but she received a car allowance of \$250 per month, a new benefit for 2021. The City claims the Association's car allowance claim is false; this was not a new benefit. Instead, in its reply brief, the City states Safstrom's original city administrator contract from November 2016 expressly provides for her \$250 monthly car allowance, and she has continuously received this benefit since her promotion to city administrator.

Consumer Price Index (Cost of Living)

The Association argues both its and the City's wage offers were above the cost of living when the offers were certified in December 2020. The Association also notes on the day of the hearing the Consumer Price Index ("CPI") was 1.28%. "After the hearing the Department of Labor released the March CPI which was set at 2.6%."

Many arbitrators believe "what is most relevant, in terms of the cost of living, is what changes occurred in that measure during the prior contract period which the parties would then have taken into account in formulating their bargaining proposals for [the years in dispute]." *Monroe County, Decision No. 32254-A, p. 6 (Krinky, 2008)*. See also, *City of South Milwaukee, Decision No. 31993-A (Hempe, 10/8/07)*. Therefore, relevant for the purposes of this matter is the twelve (12) month period of December 2019 to December 2020. In that time, the CPI increased by only 1.4%. (City Exhibit No. 16). So, while the Association is correct that both parties' final offers are above the cost of living during the relevant time period the City's offer of a 2% is easily more reasonable because it is closer to the CPI in 2020.

Based on the foregoing, the Arbitrator finds the cost of living criterion favors the City's offer.

Overall Compensation

The statute requires an arbitrator to give weight to 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 Association argues the City's total compensation to Association members is "average" compared to other communities and should not be used to support an award to the City. It emphasizes this arbitration is about wages not benefits. It states its members will still be below the average if the Arbitrator selects the Association's final offer or the City's, the only difference being how far below the average members will be.

In reality, according to the City, of the seven communities in the City's comparable pool, the City has the second highest compensation per police officer. (City Exhibit No. 13; Tr. pp. 23-24).

The City also points out the Association fails to recognize the great health plan the City offers which, in its opinion, is far superior to that of any of its comparable communities. In fact, the City notes its health plan is the only one among the comparables that does not require employees to pay any deductible at all. (City Exhibit No. 15-D; Tr. p. 25). The City's health plan also has no co-pays, with the exception of those for emergency room visits and prescriptions. *Id.*

The City further points out to the extent current retiree benefits are appropriately considered for the purposes of evaluating the City's overall compensation to Association members, its retiree benefits are significantly more generous than those of other comparable communities, particularly in light of retiree benefits for those members who were hired before January 1, 2019, which is approximately 73% of current Association membership. (City Exhibit No. 6). The City will pay these officers a very significant estimated \$281,535.40 per retiree. (City Exhibit No. 14). This is the highest cost of any comparable community by far, with the Village of Shorewood being a distant second at an estimated cost of \$164,591.70 per retiree. (City Exhibit No. 14; Tr. p. 24).

Another issue the Association raises regarding overall compensation relates to a formerly bargained change to retiree health insurance benefits. The Association suggests it previously gave up benefits which it now asks the Arbitrator to consider by awarding the Association's final offer in this matter. However, in exchange for a reduction to retiree health care costs for the City, the Association gained the benefit of a HRA for its members. (Tr. pp. 9-10, 24-25). In addition, "along with that, there was also changes made to change back the handbook so that we could promote from within." (Tr. pp. 13-14). These negotiations took place late 2018 to early 2019, (Tr. p. 14), and on their face have no relevance to this dispute. Therefore, the Arbitrator rejects the Association's arguments regarding same.

Based on all of the above, the Arbitrator finds this criterion strongly favors the City's offer.

Conclusions

The only issue in this proceeding is wages. The Association makes its case for improvement in the top monthly patrol pay rate. In fact, the City's police officers lag all comparables except River Hills in this category and are \$0.66 below the average. (Association Exhibit No. 600). This disparity could become more problematic as the many newly hired police officers move to the top of the salary schedule. (Association Exhibit No. 800). However, selection of a party's final offer herein is based solely on the record evidence, the statute and the parties' arguments. Based on same, and application of the criteria of Sec. 111.77(6)(bm) as discussed above, the City's offer is favored. Specifically, the criteria of the external and internal comparables, the Consumer Price Index (Cost of Living) and overall

compensation provisions of (bm) 4, 4a, 5 and 6 provide strong support for the City's final offer. Selection of the City's offer of a 2% wage increase January 1, 2021 also puts the power to determine appropriate wage levels back in the hands of the parties where it has traditionally been. In six months or less the parties will be negotiating a successor collective bargaining agreement. (Association Exhibit No. 200). Under this Award, the Association and City will again have an opportunity/responsibility for their mutual contractual success.

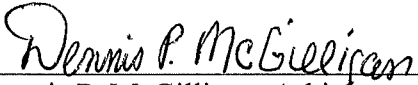
Selection of the Final Offer

Having considered the statutory criteria, the evidence, and arguments presented by the parties, the Arbitrator, based on the above and the record as a whole, and in particular on the external and internal comparables, the "cost of living," and the overall compensation criteria, concludes the offer of the City is more reasonable than the offer of the Association, and to that effect the Arbitrator makes and issues the following

AWARD

The City's final offer of a 2% increase in wages effective January 1, 2021 is to be incorporated into the 2021 collective bargaining agreement between the parties.

Dated at Madison, Wisconsin, this 3rd day of July, 2021.

By 
Dennis P. McGilligan, Arbitrator