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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Petition of

SOUTH MILWAUKEE PROFESSIONAL POLICE ASSOCIATION

To Initiate Arbitration Between
Said Petitioner and

CITY OF SOUTH MILWAUKEE

Case ID: 461-0003
Case Type: MIA

Decision: 39428-B

Appearances:

MacGillis Wiemer, LLC, Attorneys at Law, by Mr. Christopher J. MacGillis, 11040 West Bluemound Road, Suite 100, Milwaukee, Wisconsin 53226, on behalf of the Association.

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

South Milwaukee Professional Police Association, hereinafter referred to as the Association, and City of South Milwaukee, hereinafter referred to as the City 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, 2020. Said agreement covered all non-supervisory police personnel employed by the City of South Milwaukee and represented by South Milwaukee Professional Police Association. 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 May 9, 2022, issued an Order, dated May 18, 2022, 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 June 3, 2022, 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 conducted a hearing in the matter on September 2, 2022, at South Milwaukee, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was transcribed. Briefs were filed and exchanged and received by October 18, 2022. The record was closed as of the latter date.

THE FINAL OFFERS OF THE PARTIES:

Attached are the City and Association final offers identified as Attachment "A" and "B" respectively.

FACTS:

The City of South Milwaukee has a population of approximately 20,000 – 21,000 and employs approximately 170 employees.

The City has direct oversight over three employee groups. The Police and Fire Department employees are the only unionized employees. The Police Department employs approximately 42 employees, 26 of whom are represented by the Association, herein - South Milwaukee Professional Police Association, Local 201. There are 26 employees in the Fire Department. The non-represented group include the public works, clerical and professional/executive, management group of employees.

The parties engaged in negotiations for the 2021 and 2022 contract years. The City and Fire Department employees were already settled and the City offered, and its final offer is, the same as the Fire settlement. The Association's final offer has the same increases, but proposes different effective dates of the increases. The total package difference between the final offers is $58,456, as calculated by the City, or $34,998, as calculated by the Association. The parties' attempt at a successor 2021-2022 collective bargaining agreement (CBA) was unsuccessful, and they were deemed to be at an 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 one witness, Steve Hesse, Patrol Officer.

The Village presented witnesses, Police Chief William Jessup; Patrick Brever, Assistant City Administrator; and Tami Mayzik, City Administrator.

All of the evidence presented provided important information regarding the issues and how the parties perceive their impact on the proposals made.

POSITIONS OF THE PARTIES:

The parties filed extensive and well-reasoned 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. For the most part, case cites have been omitted. The parties should be assured, however, that the Arbitrator has read and re-read their briefs in their entirety in reaching his decision.

Association's Position

All relevant factors articulated in Wis. Stats. Section 111.77 show that the Association's final offer is more reasonable than that of the City's. The Association's final offer maintains the historical parity between the fire and police unions, and the financial exhibits put forth by the Association establish that the City is in good financial health and can afford to pay the Association's final offer. Moreover, there is ample justification to clarify vague language regarding cancellation of approved floating holidays – it cures the historical problem of the administration cancelling holidays, solidifies cancellation criteria for future administration, increases transparency, promotes officer morale and prevents undue hardship on employees' personal lives. The bottom line is that the Association's offer is simply more reasonable in light of the facts and parties' bargaining history.

I. RELEVANT FACTORS UNDER WIS. STATS. § 111.77(6) FAVOR THE ASSOCIATION'S OFFER

A. Pursuant to Wis. Stats. § 111.77(6)(am), the Economic Conditions of the City Support the Association's Offer

The economic conditions of the municipality support the Association's Offer. The Association's financial exhibits and testimony from the City Administrator and Assistant City Administrator establish that the City is in a healthy financial position and the Association's offer does not adversely impact its economic conditions.

To that end, the City's economic conditions are clear, the City Administrator describes the City as being in a "strong financial position" in the City's most recent financial audit. In the unaudited portion, the report states that the City's bond rating of AA2 reflects "the City's strong financial position," among other factors including "responsible spending and moderate debt burden."

The Association anticipates the City will argue, as a justification for its offer, that the City's financial situation was either uncertain or it otherwise could not support the cost of the Association's proposal. The evidence shows that this Arbitrator should not be swayed by the City's claims of budget constraints and challenging economic conditions to necessitate its lower wage offer. The evidence and undisputed testimony shows not only that the City can afford the Association's offer, but also that it has a variety of resources from which to pull the necessary funds.

The City's argument of financial instability or financial hardship is negated entirely by the $1,266,220 of ARPA funding the City received during the same two-year period of the disputed wage increase, (Association Exhibit 21C at 20). Even using the City's own cost analysis, the difference in cost of the City's and Association's offers for 2021 and 2022 is a mere 2.75 of the ARPA funding received by the City ($58,000).

Besides failing to do her due diligence regarding use of ARPA funds, the City Administrator testified that "I didn't budget the arbitrator would rule against me." Failing to even anticipate the possibility of a wage increase greater than the City's proposal is simply not a valid justification for denying the Association's proposed wage increase.

Based upon the foregoing analysis and argument, the Arbitrator should find that this factor weighs in favor of the Association's offer, or at the very least, that it favors neither party.

B. Other Applicable Factors in Wis. Stats. § 111.77(6)(bm) Support the Association's Final Offer

While the economic conditions in the jurisdiction of the municipal employer is the factor statutorily given greater weight, the other applicable factors under Wis. Stats. § 111.77(6)(bm) also favor selection of the Association's offer.

> 1. The lawful authority of the employer.
> 2. Stipulations of the parties.
> 3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
> 4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
> a. In public employment in comparable communities.
> b. In private employment in comparable communities.
> 5. The average consumer prices for goods and services, commonly known as the cost of living.
> 6. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
> 7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
> 8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.
>
> (Wis. Stats. § 111.77(6)(bm))

In the instant case, factors 1 (Lawful Authority) and 2 (Stipulation of the Parties) do not apply or otherwise have so little value in determining the reasonableness of the parties' offers as to be irrelevant. While there is some overlap in how the remaining factors apply to the parties' respective final offers, each applicable factor either strongly favors the Association's final offer or favors neither party.

1. The Interest of Public Welfare and the City's Financial Ability Strongly Support the Association's Offer

While some of the analysis of this factor overlaps with the preceding section, the interest of public welfare and the financial ability of the City both strongly favor the Association's offer. The City appears to concede that this was not an "inability to pay" situation. In fact, the Assistant City Administrator testified that the City has an "ability to pay."

The issue here is not that the City has an inability to pay. The City has the ability to pay the Association's wage increase. It is simply unwilling to do so. As previously stated, the Association's offer, including annual wage increase, retirement benefits, FICA, health and dental insurance is roughly $58,000 more than the City's.

The City's 2022 Annual Operating Budget further establishes the reasonableness of the Association's offer and shows the unreasonableness of the City's offer. The City's Contingency Account has funds more than sufficient ($80,000) to pay the entire cost of the Association's proposal. Further, the City's calculation is incorrect if the difference is incorrect. For 2021, the difference between the total compensation of the City offer ($2,734,375) and the Union offer ($2,769,373) is calculated as $34,999. However, when $2,734,375 is subtracted from $2,769,373, the difference is $34,998.

Not only does the City's financial situation support the Association's offer, but so do the interests of the public. The City of South Milwaukee residents support the City's public safety programs and have a voting record to indicate such support. In 2017, the City residents voted to

pass a public safety referendum which allowed the City to add two police officers and maintain is paramedic program. (*See* City Exhibit 6C). Residents voted "two-to-one to approve an increase in the property tax levy" to fund public safety. [1]

Furthermore, the Association's offer helps with recruitment by attracting the most qualified and experienced law enforcement officers – something clearly in the public's interest and something the City has admittedly struggled with. Chief Jessup testified that police officers transferring out of South Milwaukee is a concern. Recruitment is also a concern for the City. Jessup was recently interviewed by the Milwaukee Journal Sentinel and explained that "South Milwaukee gets between 50 and 100 applicants when it recruits. That's a decrease from 120 to 130 applicants three or four years ago.

2. Internal and External Comparables Support the Association's Offer

As an initial mater, both the Association and the City agree that the pertinent external comparables consist of the following six municipalities: (1) Cudahy; (2) Greendale; (3) Greenfield; (4) Franklin; (5) Oak Creek; and (6) St. Francis. Moreover, the only relevant internal comparable in the instant case is the City's fire union, as it is the only other public safety bargaining unit in the City. The City's fire union is the only other bargaining unit that maintains full bargaining rights and, more importantly, has maintained wage parity with the Association for several years. The above-referenced six external comparables and the sole applicable internal comparable are the only relevant comparables for the instant case.

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[1] Erik Brooks, James Madlon & Natalie Verette, What We Learned in Our Public Safety Referendum, League of Wisconsin Municipalities (January 2018) [https://www.lwm-info.org/DocumentCenter/View/1927/What-we-learned-in our-public-safety-referendum]

a. Both Party's Offers Maintain Historical Parity Between the City's Police and Fire Unions

The City's police and fire unions have historically maintained parity on wages, (Association Exhibit 4). The Association's offer maintains said parity despite the City's claim otherwise. The Association points out and cites cases [2] that according to arbitral precedent, rigid one-to-one parity is not required, and indeed has not been the case in prior agreements between the City and its public safety unions. The City's definition of parity as a strict one-to-one relationship contravenes arbitral precedent.

Zeidler defined the concept of parity in his 1976 decision in which he noted:

> The arbitrator is of the opinion that the public interest would be best served by maintaining the historic relationships on wage settlements inside the City employment. *The Fire Fighters are at near parity with Police Officers which this arbitrator considers a most important factor in establishing equitable wage relationships.*
>
> . . .
>
> It is difficult to compare employees in the Fire Service with any other type of employees public or private except other employees in public safety. The hours of the two main categories of public employees in public safety, namely Police Officers and Fire Fighters are disparate, their shifts are disparate, and much of their work is disparate except for the element of hazard. Nevertheless, *it has been an historic pattern for local governments to attempt to compensate them at nearly the same levels.* Since other measures of comparison of work are absent, this must serve as the best practical standard which has yet emerged.
> (Emphasis added)

Arbitrator Zeidler's conclusion that *exact* parity is not required is not an exception in Wisconsin interest arbitration decisions; it is the rule. This conclusion as reaffirmed many years

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[2] City of Madison, Dec. No. 14176-A, (Zeidler, 1976); City of Madison, Dec. No. 32509-A, (Vernon, 1984).

later with a different arbitrator finding parity between internal bargaining units and nothing: "[w]ith respect to the history of patterned settlements, all City unions have received *the same increase of substantially the same increase* as far back as 1975." (Emphasis added).

Even if this Arbitrator agrees with the City's rigid conception of parity, the bargaining history between the police and fire unions reflects a substantially similar conception of parity as articulated in arbitral precedent. Association Exhibit 4 shows the historical parity between the City's police and fire unions in terms of percentage increases and corresponding effective dates.

As shown in Exhibit 4, not every year's wage increase, in terms of percentage increase or effective dates, were necessarily a one-to-one exact copy between the City's police and fire unions. Arbitral precedent does not command it. Based on the police and fire unions' bargaining history, the unions ultimately maintained parity in their agreements with the City throughout this almost two-decade time period despite these minor differences. For example, in 2014 the fire union received a 2% wage increase effective January 1, and a 1% wage increase effective July 1. During the same year, the Association received a 3% wage increase effective January 1. While these numbers resulted in temporary differences in both percentage increase and corresponding effective dates, both police and fire unions received a 3% wage increase at the end of the day, thereby maintaining parity. In other words, despite the differences in the timing of wage increases, at the end of the day the fire and police unions experienced the same wage increase. That is parity as defined by established arbitral precedent, and also as defined by the parties through their course of dealing.

Further, although during the hearing the City preached that the practice of maintaining exact one-to-one wag parity between the City's police and fire unions was the foundation for its assertion that its offer is more reasonable, its own prior proposals reflect the opposite. The

evidence shows that the City's second package proposal diverged from the City's own conception of parity as stated during the hearing, (Association Exhibit 10). The City's wage proposal from February 5, 2021 breaks parity (as defined by the City) with the fire union's 2022 wage increase.

Finally, during the negotiations, the City urged the Association that because the fire unit took the deal, the police unit should bake the deal too. A decision in the City's favor would render the Association's ability to negotiate a contract illusory and contravene arbitral precedent. Arbitrator Torosian noted in a recent decision that he "agrees with the Union that it should not be automatically locked into the policy settlement based solely on internal comparability with no chance to bargain its own agreement. [3] Indeed, if this argument is allowed to carry the day, there would be no reason for the Association to bargain in any respect if the fire union already reached an agreement with the City. Based upon the foregoing, the internal comparables should not be given greater weight than other factors, and this factor does not favor either party's offer.

b. External Police Union Comparables Support the Association's Final Offer

The Association has fallen behind its comparable municipalities with regard to wages since 2018. From 2013 to 2017, the police union ranked third among its external comparables for wages. However, the Association's ranking started to slide in 2018. Its ranking, based on actual hourly wages, continued to fall in 2019 and 2020. Since 2017, the Association has fallen from third down to fifth out of seven comparable departments.

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[3] Village of Caledonia, Dec. No. 37996-B at 22, (Torosian, 2020).

The Association anticipates that the City will attempt to minimize the Association's drop in its wages relative to comparable departments by asserting the Association's calculation of wages was correct. If the City so argues, such an argument is nothing more than a red herring. Admittedly, Association Exhibit 5 contained a minor calculation error in its external wage table. However, and more importantly, even using the correct calculations, as seen in Association brief, p. 20), the Association's wages have gone from third to fifth out of seven in wage rankings.

As shown in the Association's brief, both parties' final offers will result in Association members at the top step briefly returning to third in comparable rankings in 2021. However, it must be noted that the additional 0.25% increase to top step wages does not apply to all members, and was part of a package that included the Association agreeing to give up longevity pay. Put another way, Association members gave up a form of additional compensation that they otherwise would have received in order to return to their historical third place ranking among their comparables. Yet, by 2022, Association members at the top step fall back to fifth out of seven comparables.

Moreover, while the Association's calculation of its rank of fifth out of seven at the end of 2022 is based upon the actual wages received and reasonable extrapolations from the current data for those CBA's not yet settled, the City's exhibits dealing with relative wage rankings evince an attempt to conceal the Association's true drop amongst its comparables. Specifically, City Exhibit 11B asserts the Association ranks "3 of 5," primarily owing to two contracts that are not het settled for 2022. (*See* City Exhibit 11B). However, one of the contracts that has not yet settled is Greenfield which has a 2021 hourly rate of $41.65. Even assuming Greenfield does not receive any wage increase in 2022, Greenfield would still remain at a higher ranking than the Association under either party's proposal. The other agreement that has not yet settled for 2022

is Franklin, for which, based on recent bargaining history and wage increases, a projected 3% wage increase is reasonable; and indeed, anything above a 2.4% wage increase would result in Franklin's wages remaining at a higher rank than the Association. Since Franklin received a 2.5% increase in 2021 – before the extraordinary rises in inflation and corresponding increase in the Consumer Price Index ("CPI") – it is reasonable to assume that Franklin would also remain above the Association with regard to relative hourly wages upon settlement of a contract covering 2022.

As of 2022, the wages of Association members lag behind all but two of their comparables. By delaying the effective dates of the wage increases, the City's offer causes Association members to be paid at a lower wage for a longer period than they would if the effective dates were adopted from the Association's proposal.

Despite the City Administrator's role as South Milwaukee's lead negotiator for over a decade, she testified that she never looked at external wage comparables for the City. When asked during the hearing why the City only presented data going back to 2019, which notably fails to capture Association members' slide from third to fifth in external comparable wage rankings, she testified that it was the "only data that was relevant because it was the most recent," (City Exhibits 11A-11J). The City's failure to analyze or provide evidence of external comparables prior to 2019 is neither a valid excuse for the Association's slip in wage rankings nor a justification for its lower offer, (City Exhibits 10A1-10A6).

The impact of a drop in wage rankings affects countless issues for the City and the Association, including recruitment, as testified to by Chief Jessup.

Ultimately, however, neither proposal greatly alters the relative position of Association members when compared to members in comparable municipalities. At the end of the day,

Association members' yearly take-home pay is significantly less than comparable departments, and the City's offer only exacerbates financial difficulty that Association members face relative to their comparables. The recent slide in comparative wages and its current low ranking establish that this factor favors the Association's offer.

3. The Increasing Average Consumer Prices for Goods and Services Favor the Association's Offer

The historic increases in the cost of living support the Association's offer. From December 2020 to December 2021, CPI rose 7.0%, the largest December to December percent change since 1981. From January 2022 to July 2022, the CPI rose an additional 5.2%.

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]." Therefore, relevant for the purposes of this matter is the three-year period of December 2017 to December 2020. In that time, the CPI increased by 5.6%. As a result, the Association's offer is more reasonable because, while both offers include identical wage increases at the end of the day, the Association's offer more closely matches the increases in CPI during that time period. Accordingly, this factor strongly supports a selection of the Association's offer.

4. The Overall Compensation Received by Association Members Favors the Association's Proposal

As with previous sections, there is quite a bit of overlap between the analysis necessary to address the overall compensation factor and other factors. In the interest of brevity, those arguments will not be reiterated in full but instead should be considered incorporated by reference herein.

Moreover, as shown in the City's own exhibits, members of the Association pay a higher monthly dollar amount for City-provided health insurance than every single comparable, further decreasing members' actual take-home pay. Additionally, the Association gave up several items during bargaining or agreed to City proposals that have a direct impact on their overall compensation, such as the elimination of longevity pay, the term of agreement, non-certified Academy wage, and field training officer pay, as well as dropping its proposals regarding modifications to the grievance procedure and to bereavement leave. To the extent that the City addresses this factor, even when adding in holiday pay and other non-wage benefits received by Association members, South Milwaukee Association members remain at or near the bottom of all comparable municipalities, as shown by the identified wages and benefits found in the collective bargaining agreements submitted into evidence by the Association.

5. The Changes in Circumstance During the Pendency of the Arbitration Proceedings Support the Association's Offer

Inflation continues to rise. Since the hearing, the CPI rose an addition 0.5%, for a total 12-month yearly increase of 8.2%. The Association's offer is closer to the increase in the CPI than the City's offer. Accordingly, this factor further supports selecting the Association's offer.

6. Other Factors Normally or Traditionally Taken into Consideration Favor the Association's Offer

The only other issue in this matter beyond the effective date of wage increases resolves around the floating holiday language.

Even though Police Chief William Jessup's intent, which the Association does not question, is to fairly handle floating holidays, his intent is not memorialized in the contract. When something is not in the contract, employees cannot rely on it. Once Chief Jessup retires, there is no guarantee that the next Chief will handle things in a similar manner.

There is a history of the prior administration cancelling days off. Officer Steve Hesse testified that a fellow officer had his day off cancelled when that officer already made plans to support his wife who was undergoing cancer treatment. Hesse further credibly testified that cancellation of a floating holiday affects morale and causes undue hardship on personal and family life for employees that rely on having the approved day off. The Association is merely asking that once a floating holiday is approved, it is guaranteed except in the case of an extreme emergency. The unfair and uncertain practice of cancelling an employee's approved floating holiday after personal plans have been made and non-refundable travel expenses (e.g., flight, lodging, rental car, etc.) have been paid, should be ended.

The City's prior proposal reaffirms the need to change floating holiday terms as it clarified under what circumstances an approved floating holiday could be cancelled, (Association Exhibit 15 at 2). Specifically, the City's July 8, 2021 proposal stated: "The two floating holidays off with pay under this section will be guaranteed when approved except in cases of emergency situations determined by the Chief." Without explanation, the City removed this proposal from all subsequent proposal packages, (Association Exhibit 17).

The Association's offer further clarifies the floating holiday cancellation criteria proposed by the City by defining the term extreme emergencies. The Association's offer for Section 5.02(k) is as follows:

> The two (2) floating days off with pay under this section will be guaranteed once approved by the Chief or his/her designee. Once approved, these two (2) floating days cannot be canceled except in the case of extreme emergencies, defined as an unforeseen circumstance or combination of circumstances that call for immediate action, or in cases of declared local, state, and/or federal emergency.
> (City Exhibit 2B)

While the City argues that the current language provides flexibility to the Chief to cancel a floating holiday once approved, the reality is that such flexibility is complete, unilateral control. The Association's offer still grants the Chief final discretion regarding cancellation of floating holidays by including the language "an unforeseen circumstance" in its definition of extreme emergency.

The Association's proposal clarifies vague language regarding cancellation of approved floating holidays. It cures the historical problem of the administration cancelling approved holidays, solidifies cancellation criteria for future administration, increases transparency, promotes officer morale and prevents undue hardship on employees' personal lives. And it costs the City absolutely nothing. Accordingly, this factor further supports a selection of the Association's offer.

Conclusion

For the foregoing reasons, the Association's final offer is the more reasonable offer, and the Association respectfully requests the Arbitrator select the Association's offer for inclusion in the parties' final collective bargaining agreement.

City's Position

The City of South Milwaukee has no sacred cows. All City Departments are important. All City employees are important. This philosophy of equity and fairness is necessary and generates stability for the City's workplace culture and for budgeting in consideration of the

City's significant economic constraints and inability to grow revenue. The Police Union's Final Offer cuts again that philosophy without any compelling reason or good meaningful, let alone any, quid pro quo. The City's Final Offer respects the longstanding internal comparability pattern and settlement with the Fire Union, is competitive with the external comparables, and preserves employee morale and budgeting and bargaining stability. When applying the statutory factors, the only reasonable offer before this Arbitrator is the City's Final Offer.

I. Issues in Dispute

There are two issues in dispute: 1) whether this Arbitrator should break the longstanding internal comparability pattern between the City and the Police Union and Fire Union, and 2) whether the Police Union should receive guaranteed floating holidays unless the ambiguous and undeveloped standard of "extreme emergencies" exist for the Chief to cancel the floating holidays.

The Union truly bears the burden of justifying their Final Offer because it is the Union who seeks to break the internal comparability pattern on wages and it is the Union who seeks to dramatically restrict the Chief's right to cancel a scheduled floating holiday. To justify a deviation from the internal pattern on either issue, the Police Union must show an extraordinarily compelling case to warrant remarkable deviation from internal comparability and the internal settlement pattern. The burden is entirely on the Police Union to justify their wage adjustment that yields more than the increase received by the Fire Union, as well as a restriction on the City's and Police Chief's management rights to cancel floating holidays. Yet the Police Union does not even offer the City a quid pro quo for either change.

The City's offer is the more reasonable in light of both the internal and external comparables and when measured against the statutory criteria which the Arbitrator is required to apply in this matter.

In terms of wages, the parties' respective Final Offers proposal identical wage increases as to percentage adjustments and the wage rates under both parties are the same at the end of each year of the contract and at the end of the contract as a whole. Only the timing of the increases is in dispute.

II. Statutory Criteria

Wis. Stats. § 111.77(6)(am)-(bm) sets forth the statutory factors to be used by the Arbitrator in this case. Many of the factors are not in serious dispute in this case. Neither party asserted any question as to whether the City has the lawful authority to satisfy either party's Final Offer (§ 111.77(6)(bm)1), nor have the parties identified any relevant changes in the foregoing circumstances during the pendency of the proceedings (§ 111.77(6)(bm)7). Under Wis. Stats. § 111.77(6)(bm)5 – the cost of living factor – both parties' Final Offers exceed or are well within the appropriate measures of the average consumer price index and general cost of living, particularly when total compensation increases are compared with both parties' Final Offers result in the same ending wage rate each year of the contract.

In reviewing the remaining statutory criteria, the major relevant factors are fivefold:

(1) § 111.77(b)(bm)8 – such other factors "normally or traditionally taken into consideration" between the parties (i.e., the internal comparables);

(2) § 111.77(b)(bm)4a – comparison of the wages, hours and conditions of employment of other employees performing similar services in public employment in comparable communities (i.e., the external comparables);

(3) § 111.77(6)(bm)6 – the overall compensation presently received by the Police Union.

(4) § 111.77(6)(am) – the "greater weight" factor, under which the Arbitrator is required to give greater weight to the economic conditions in the jurisdiction of the employer than he gives to any other statutory factors; and

(5) § 111.77(6)(bm)3 – the interests and welfare of the public and the City's ability to pay.

III. Internal Comparisons and the Longstanding Internal Pattern

a. The City's Final Offer on wages is identical to the voluntary internal settlement reached with the City's Fire Union and generally matches or exceeds the wage increase provided to the City's other internal employee groups.

1. The City of South Milwaukee

The City has three employee groups over whom it exercises direct oversight. Two groups are unionized – employees within the Police and Fire Departments – while the remaining group is non-represented. The non-represented group is comprised of employees working in several different capacities, including public works, clerical, and professional/executive/ management employees, also know as the PEC group. The City's two represented Employee groups, police and firefighters, have a long history of consistent wage increases that mirror one another. Indeed, all three of the City's employee groups have a strong pattern of internal consistency when it comes to both wage increases and general benefit levels.

The internal wage settlements show a longstanding internal pattern of consistency.

The parties' Final Offers on wages, both parties' offers propose the exact same wage increases in each year of the contract. Only the timing of the increases is different.

For 2021, both parties propose identical split increases. The first increase has three components: 1) a 1.25% increase to the "over 5 Years" step (the maximum patrol officer wage rate); 2) a 1.25% increase to the investigator wage rate; and 3) a 1.00% increase to all other wage rates. The second increase for 2021 is a straight 2.00% increase to all wage rates. (See City Exhibits 2.A, 2B.; see also wage grid in current collective bargaining agreement, p. 11 of City Exhibit 3).

The parties propose the exact same wage increase for 2021, and the only difference is the effective date of those increases. The City's offer implements the first increase on July 1, 2021, and the second increase on December 1, 2021, the same effective dates (and the same wage increases) that the Fire Union and City voluntarily agreed to for 2021. Contrary to the fire settlement, the Police Union's Final Offer implements the first increase on January 1, 2021, and the second increase on July 1, 2021.

2022. For 2022, both parties again propose the same wage increase, a 2.00% increase to all wage rates. The City's offer implements the increase on July 1, 2022 (the same effective date and the same wage increase that the Fire Union voluntarily agreed to for 2022) while the Union's offer implements the increase on January 1, 2022, contrary to the fire settlement.

The Union will no doubt assert that wage increases are more commonly implemented with a January 1 effective date or, in the case of split increases, with January 1/July 1 effective dates. However, Assistant City Administrator Patrick Brever testified as to the reason behind the City's proposed 7/1/2021, 12/1/2021 and 7/1/2022 implementation dates. In order to reduce the impact of the extra 1.25%/1.00% and make it more affordable for the City, effective dates for the 2021 split increases were deferred to July 1 and December 1, and the effective date for the 2022

increase was deferred to July 1. The Fire Union voluntarily agreed to these deferred effective dates, and the City proposes the same dates in its Final Offer to the Police Union.

As City Administrator Tami Mayzik testified, these deferred effective dates also provided a way for the City to offer the Police and Fire Unions a larger wage lift over the course of the contract. Rather than the 4% lift that would result from a simple across-the-board wage increase of 2% at the beginning of each year of the contract, which is what the non-represented employee group received, the Police and Fire Unions will receive a wage lift of approximately 5.25% by the end of the 2021-2022 contract.

Another aspect of the parties' 2021 wage proposals that warrants further mention is the extra .25% provided for those employees at the top step of the wage grid in 2021 (1.25% versus 1.00% for all other steps). As Assistant City Administrator Brever testified, in both the police and fire bargains, the City proposed the extra .25% as a quid pro quo to eliminate longevity, which is eliminated under both parties' Final Offers by voluntary agreement of all parties. This extra .25% was applied to employees at the top step of the wage grid because they are the employees most affected by the elimination of longevity.

The City's Final Offer mirrors the 2021-2022 wage increases and effective dates voluntarily agreed to by the City and Fire Union, while the Police Union's Final Offer demands these same wage increases earlier each year resulting in greater cost to the City and money the Fire Union did not receive. The Police Union offers no quid pro quo for these earlier effective dates. Instead, the Police Union's Final Offer also demands an additional change to the collective bargaining agreement – language guaranteeing floating holidays unless "extreme emergencies" exist to cancel the floating holiday – again with no quid pro quo to the City.

At the hearing, the Police Union did not argue that a quid pro quo was not required for its Final Offer demands. Instead, the Police Union asserted that its Final Offer contains a quid pro quo in that it eliminates longevity and contains changes to a number of non-economic items, (Tr. pp. 86-87). But their claim is simply unsupported by the very reasons the City and Fire Union eliminated longevity in exchange for the 0.25% increase to top step pay in July 2021, and why the City has made that very same proposal in the City's Final Offer to the Police Union.

The City's Final Offer also matches or exceeds the wage increases provided to the City's non-represented employees. In looking at the historical wage increases received by the non-represented employees, (City Exhibit 8.C.), it is clear that the City has made it a priority to closely align non-represented wage increases with the increases received by the Police and Fire Unions. Where the non-represented employee wage increases have not been identical to the Police and Fire, they have generally been lower.

Internal consistency in wage increases for all City employees has been a City priority, and the City has maintained a longstanding history of internal comparability among all three of its employees groups, but especially among its two represented unions.

City Exhibit 8.A. shows a 14-year history (from 2007 through 2020) of consistent wage increases between the Police and Fire Unions. Union Exhibit 4 shows an even longer, 17-year history (2004 through 2020) of consistent wage increases between these two unions. As shown in Union Exhibit 4, in those 17 years there were only two settlements in which the Police and Fire Unions did not agree to identical wage increases and identical effective dates for those wage increases. The Union offered no meaningful explanations for those differences which they bear the burden to do in order to justify their proposed deviation from the longstanding pattern.

Nonetheless, the City provided testimony showing the reasonable justifications for those deviations as follows:

2012-2014. In the 2012-2014 police settlement, the police agreed to the same wage increase and same effective date as the firefighters in 2013, the second year of the contract. In the first and third years of the contract, however, the police received greater wage increases because of two issues – timing of WRS contributions and a Light Duty Program. City Administrator Mayzik and Assistant City Administrator Brever testified that the reason for the different wage increases in 2012 was because the firefighters wanted and negotiated for a light duty program in that year and, in exchange, the Fire Union voluntarily accepted a wage freeze. The Police Union opted for a wage increase instead of the light duty program. As part of the 2012-2014 settlement, in 2014, the Fire Union agreed to a 3.00% lift accomplished through split increases of 2.00%/1.00% effective January 1/July 1, while the Police Union received a full 3.00% wage increase up front (i.e., effective January 1). The Police Union's full 3.00% was because the police were implementing incremental employee WRS contributions. From 2013 to 2014, the Police Union's share of employee WRS contributions increased from 4.43% to 7.00% (7.00% equated to 100% of the employee WRS share in that year). The upfront 3.00% wage increase for the police was in recognition of that increased WRS employee contribution that year. By contrast, the Fire Union had been paying full employee WRS contributions since 2013 (in that year, the full employee share equated to 6.65%).

2005. In the 17 years of data reported in Union Exhibit 4, the only other year in which the police and fire wage increases – and effective dates – were not identical was 2005. The police agreed to split increases of 2.00% effective January 1/July 1 while the firefighters agreed to split increases of 3.00% effective January 1/December 31. The Police Union once again

offered no evidence regarding a possible reason for these deviations, nor could City Administrator Mayzik recall the specifics of the negotiations occurring 18 years ago that resulted in the 2005 Fire Union wage increase, (Tr. p. 215). Again, the Police Union, as the proponent of breaking the internal settlement pattern, bears the burden of producing that evidence. The Police Union did not.

Even if we take the 2005 deviations at face value, the fact remains that in the last 17 years there were at most only three years in which the Police and Fire Unions did not agree to identical wage increases and identical effective dates. And in at least two of those years (2012 and 2014), there were specific good reasons and quid pro quo to the City for the deviations - reasons which recognized the unique preferences of each individual Union while still maintaining internal comparability over the course of the contracts.

From the City's perspective, maintaining wage and benefits comparability among the Police and Fire Unions is critical. That comparability is accomplished with identical year-for-year wage increases; and when deviation is reasonable and appropriate, comparability is achieved with differing annual wage increases only when there are recognized preferences that are unique to a particular bargaining unit where the City and that Union voluntarily reached that understanding and where a quid pro quo has been present. The City has made a concerted effort to establish and maintain a longstanding pattern of consistent wages and benefits.

Citing numerous cases, the City's position is that treating its Police and Fire Unions similarly has strong support and that the longstanding internal settlement pattern must be honored.

b. The benefit levels among the City's various employee groups are also evidence of internal consistency, which reinforces the principle of internal comparability as a determinative factor in this proceeding.

The evidence shows the City has strived for internal consistency not only with respect to wage increases, but also with respect to other benefit levels. When the unique aspects of the Police Union's varying work schedule and annual hours are taken into consideration, many of the benefit levels among the City's employee groups are identical or very similar.

As City Exhibits 8.C. and 8.D. confirm, all the City's employees currently have the same number of holidays; the same WRS contribution employee share; the same or similar vacation accumulation schedules (when the Police and Fire Unions' unique work schedules are factored in); the same level of health, dental and vision insurance benefits; and the same City contribution to premiums for those insurances. In fact, the City has made the same health insurance premium contributions for all of its employee groups since 2014. In addition, in terms of sick leave and sick leave payout upon retirement, only the police receive a more generous benefit than any other City employee group. In terms of personal days, the police receive more personal days (3) than any other employee group except the PEC employees, who receive six. The Fire Union receives zero personal days, (City Exhibit 8.C.).

By contract, the Police Union's proposal on the scheduling of floating holidays is another Final Offer demand that deviates from the internal pattern. The Police Union proposes to restrict the Police Chief's existing authority to cancel floating holidays by adding language guaranteeing that floating holidays may be taken once they are approved, except in the case of an "extreme emergency" (defined as an unforeseen circumstance or combination of circumstances that call for immediate action) or in cases of declared local, state, and/or federal emergency. The current language requires the approval of the Chief of Police.

The existing commonality of benefits across the City's three groups is no accident, and the benefit levels for the Police and Fire Unions are particularly consistent. The City has

engaged in sustained efforts over time, including in this most recent round of negotiations, to continue to seek internal comparability between employee groups whenever possible. The Union's Final Offer deviates from the City's internal pattern, without a compelling reason or a quid pro quo.

c. The stipulations of these parties demonstrate clear respect for the importance of internal comparability.

The statutory criteria which the Arbitrator is required to apply in this matter also includes § 111.77(6)(cm)2 which directs the Arbitrator to consider the stipulations of the parties. In this case, there were no separately memorialized stipulations between the parties, other than the identical proposals contained in both parties' Final Offers – and there are quite a few.

Page 1 of City Exhibit 1 sets forth eight items that are found in both parties' Final Offers. In addition, at the hearing, the Union agreed to another two proposals contained in the City's Final Offer but not included in the Police Union's Final Offer – elimination of the detective position and deletion of archaic Section 18.02 Agency Shop language. All in all, there are ten identical items contained in both parties' Final Offers.

This is evidence that both parties have looked to the City's internal patterns, particularly that pattern with the Fire Union, to determine appropriate wage and benefits levels, as well as contract language, for the Police agreement. The statutory factors of internal comparability under Wis. Stats. § 111.77(6)(bm)8 (such other factors "normally or traditionally taken into consideration" between the parties (i.e., the internal comparables) and § 111.77(6)(bm)2, which directs the Arbitrator to consider the stipulations of the parties, both favor the City's Final Offer.

IV. External Comparisons

Six municipalities shown in City Exhibit 9 comprise the appropriate external comparable group to be utilized in this proceeding (Cudahy, Franklin, Greendale, Greenfield, Oak Creek and St. Francis). However, the parties are not in agreement on the City of South Milwaukee's relative wage ranking among these six external comparables, particularly since Union Exhibit 5 is inaccurate and unreliable and the Police Union has failed to fix it during the correction period. Nonetheless, the Union's catch-up argument is manufactured, was never raised during bargaining, and the Union and City Final Offers reach the same wage rates at the end of each year of this agreement. If the Union truly wanted to raise a catch-up argument, then they should have raised it during the bargaining and they could have proposed a more lucrative wage settlement to support their position to "close the gap" if there was one worth closing. But the Police Union did not fulfill their burden.

a. <u>The Police Union fails in its burden of proof to show that the Police Union is deserving of a wage "catch-up" as compared to the established external comparables.</u>

1. <u>The Union's "evidence" of a long-term historical pattern of wage erosion is unsupported, inaccurate, and based on erroneous data.</u>

At the hearing, the Union asserted that South Milwaukee's wage rates dropped from a ranking of 3rd to 6th and that, as a result, the police deserve a "catch-up" wage increase, (Tr. pp. 20, 50-51). However, both City Administrator Mayzik and Assistant City Administrator Brever testified that the Union never raised this argument during negotiations. The hearing in this matter was the first time the Union ever put forth this argument or presented such data. At no time during negotiations did the Union ever mention it or present any evidence to that effect, (Tr. pp. 153-54, 200).

Even more important, the Union's claim that South Milwaukee's police wage rates have dropped from a ranking of 3rd to 6th is completely inaccurate and based on erroneous data. In support of its claim for catch-up, the Union submitted Union Exhibit 5 which, according to the Union, represents a listing of the top year-end hourly wage rates for patrol officers in the City of South Milwaukee and in the six external comparables. According to the Union's presented data, South Milwaukee ranked 3rd among the comparables from 2012 through 2017, and then dropped to a ranking of 4th in 2018, 5th in 2019 and 6th in 2020. As the City will show, however, the Union's data is severely flawed and the purported conclusions the Union draws from it are erroneous.

Perhaps the most significant and impactful error found in Union Exhibit 5 is the fact that the hourly wage rates the Union listed for South Milwaukee for 2019 and 2020 are the same rates each years - $37.35. This is not accurate. As the Union's and City's other evidence confirms, the Police Union received a wage increase of 2.00% in 2020, (Union Exhibit 5; see also City Exhibit 8.A.). Therefore, the wage rate for 2020 could not have been the same wage rate as in 2019 and this error undermines the reliability of the Union's proposed data for 2019-2022 in Union Exhibit 5.

The Union did not submit a corrected exhibit so we are left to speculate as to their methodology for trying to convince this Arbitrator that there was no increase in wage rates from 2019 to 2020, even though all other evidence presented shows there was an increase – including testimony from Officer Hesse.

For clarification purposes, it should also be noted that Union Exhibit 5 only lists the total wage lifts, and the year-end wage rates, that were provided in each year for each of the comparables. By contrast, City Exhibit 11.A. shows a more complete picture of the wage

adjustments and wage rates that were provided in each of the comparables by including the full details of any split increases that occurred. For example, in 2022, St. Francis provided a split increase of 2.00% effective January 1 and 1.00% effective July 1. Union Exhibit 5 reports this settlement as 3.00% and shows only the year-end wage rate, while City Exhibit 11.A shows the full details of the increases and wage rates that were effective on both January 1 and July 1. But this point here is really of importance – the Union's own flawed math is the reason for showing the slippage in rank – not the voluntary settlements of the parties.

The Union's wage exhibits are flawed, unreliable, and incomplete, and should not be utilized by the Arbitrator to evaluate any Union claims of a drop in South Milwaukee's wage rankings. The City's wage exhibits are the more accurate, thorough, and reliable, and the Arbitrator should rely upon the City's wage exhibits to evaluate the parties' wage offers. Those

exhibits, particularly Exhibits 11.B.-C., show what the City believes are accurate calculations and the City's stable place in the rankings during the term of this agreement through either party's Final Offer.

2. The City's more accurate comparative wage data shows no evidence of a historical long-term pattern of substantial and serious wage erosion.

Analyzing the City's wage data in detail and in proper comparison supports the City's Final Offer and shows no external support for the Union's alleged catch-up argument.

Because police officer's annual work schedules vary, and some of the external comparables' collective bargaining agreements list annual wage rates while others list hourly wage rates, the City's exhibits include comparisons of both annual and hourly wage rates. Converting annual salaries to hourly wage rates allows for more equitable "apples-to-apples" comparisons. Comparing only annual salaries fails to take into account the number of hours police officers must work in order to earn those annual salaries.

City Exhibits 11.B.1 and 11.C.1 show hourly and annual patrol officer wage rates among the external comparables. Rather than dropping in rank, both parties' Final Offers will result in an increase in South Milwaukee's maximum patrol officer wage ranking from 2020 to 2021 – from 5th to 3rd. For 2022, final wage rankings cannot be determined because there are two external comparables still unsettled for 2022 (Franklin and Greenfield). However, in 2021 one had higher maximum wage rates than South Milwaukee (Greenfield) and one had lower (Franklin). Thus, unless either of those two communities settles on a wage increase that is wildly outside the norm of the comparables, there is a good chance that South Milwaukee's final hourly wage rankings will remain at 3rd for 2022.

The City's starting wage rates compare even more favorably. Since at least 2019, the City has ranked #1 on starting wage rates, will maintain that ranking in 2021 under both parties' Final Offers, and likely will maintain that ranking in 2022 as well, since its 2021 starting wage rate is higher than either of the two external comparables who remain unsettled for 2022. Nothing in the Union's offer improves the police officers' wage ranking.

Indeed, even if the Union's wage comparisons were used to evaluate this case, both parties' offers would generate the same wage rates, and the same wage rankings (albeit flawed), by the end of each year of the contract. There is simply no "wage gap" to bridge here, since both parties' offers result in the same year-end wage rates.

It is clear, then, that the City's Final Offer does absolutely no harm to the City's positioning with respect to the external comparables. Indeed, the City's offer – even with its later effective dates – will result in an increase in the City's end-of-year wage ranking from 5th in 2020 to 3rd in 2021.

The Police Union bears the burden of proving the need for addressing catch-up. Arbitrators are in widespread agreement that the party proposing catch-up bears the burden of justifying that its catch-up proposal is so compelling that it must be awarded through arbitration.

The City's Final Offer maintains stability within the external rankings and maintains consistency with the internal wage increase pattern established with the City's other union, while the Union's offer destroys that pattern.

The Police Union in this case bears the burden of showing there is a compelling need for its higher "catch-up" wage demand, including showing a long-term historical pattern of falling behind. The Union has not met its burden to justify why the Arbitrator should select the Union's

higher wage demand, which deviates from the clear pattern of consistent wage settlements among the City's other unionized employee group, the firefighters.

3. The City's offer provides wage increases aligned with the wage increases provided to the external comparables for 2021 and 2022.

While the longstanding internal wage settlement pattern is the determining factor in this proceeding, the City's offer provides reasonable wage increases that are aligned with the wage increases received among the external comparables.

The Union may argue that the pattern of wage increase effective dates among the external comparables favors its Final Offer because the other external comparables who provided split increases did so with effective dates that more closely resemble those in the Union's Final Offer than the City's offer. However, as City Exhibit 11.A. reveals, not all split increases among the external comparables were provided on a January 1/July 1 basis. In Franklin, wage increases were delayed until April 1 in both 2020 and 2021, showing the City's Final Offer is not alone in providing adjustments later in the year.

Even if the Arbitrator concludes that the timing of the Union's proposed wage increase slightly favors the Union's offer on the basis of external comparables, that is not to say the Union's Final Offer is still reasonable. Since the parties' Final Offers differ only in the implementation dates, they will result in the exact same year-end wage rates in each year of the contract. Thus, neither party's Final Offer will affect the City's comparative ranking whatsoever. The more important factor is that the Police Union's proposed effective dates stray from the internal pattern set by the Fire Union, with absolutely no compelling reason to upset a longstanding pattern of internal parity. As a result, comparison to the external communities

takes a decided backseat to internal comparability. And on that score, it is the City's Final Offer that compares more favorably.

Two final assertions made by the Union are that its Final Offer should be selected because 1) it will help to retain the City's existing police officers, and 2) it will help to attract and recruit new applicants for police officer positions. As to the first assertion, Officer Hesse testified that since January of 2022, four officers have left the Police Department.

In the seven years prior to 2022, only five officers left the Police Department. Two resigned during an investigation, and the remaining three left to look for positions outside of public safety.

Turning to the Union's second assertion that the Union's offer will help to attract and recruit police officer applicants. Officer Hesse testified that the number and qualify of police officer applicants is down, both for the City of South Milwaukee and across the state and nation. Chief Jessup agreed with that assessment that this is a nationwide problem, (Tr. 119). However, Chief Jessup also noted however that there are other issues at play besides wages; in fact, the Police Department has received applications from individuals that already made more money or had better benefits than South Milwaukee offers, (Tr. p. 119).

The City's Final Offer proposes wage increases which are aligned with the pattern of wage increases among the external comparables and are consistent with the internal pattern established with the Fire Union.

b. <u>The Union's proposal on the scheduling of floating holidays is without merit, unsupported by the external comparables, and constitutes a solution in search of a problem, for which the Union offers absolutely no quid pro quo</u>.

The second issue in dispute in this arbitration is the Union's proposal to modify the existing language on floating holidays. The Union proposes to restrict the Police Chief's

existing authority to cancel floating holidays by proposing language guaranteeing that floating holidays may be taken once they are approved, except in the case of an "extreme emergency" or in case of declared local, state, and/or federal emergency. The City, on the other hand, proposes to retain the status quo on this issue which contains no restrictions on the Chief's authority to cancel floating holidays. Under the existing floating holiday language of the collective bargaining agreement, there are restrictions on the Chief's authority to cancel an approved day off of any kind, including floating holidays.

So, what is the problem? There is no problem here to solve. Both Chief Jessup and Officer Hesse testified that, in Chief Jessup's 4½ years as Police Chief in South Milwaukee, Jessup has never cancelled a floating holiday for an officer. He has cancelled comp days, but no scheduled holidays or floating holidays.

Given this background, the question must be asked: What "problem" is the Union's proposed language trying to fix, or better yet, what problem is the Union's proposed language also creating? The Union alleges that under the prior Chief's administration, the Police Department "abused" its authority to cancel approved days off, and that is what led to the establishment of the Department's existing protocol for requesting days off. However, Chief Jessup testified that the discussions resulting in the establishment of the existing protocol centered around a desire to make sure days off were being granted uniformly on all three shifts. The discussions did not center around the issue of floating holidays.

The Union's language defines an "extreme emergency" as "an unforeseen circumstance or combination of circumstances that call for immediate action." The Union believes this language is clear and, therefore, reasonable because it provides a definition of "extreme

emergency." However, the definition of "extreme emergency" is anything but clear and that was made evident by Chief's testimony that it was ambiguous and open to interpretation.

The Union asserts its floating holiday proposal is reasonable because, according to the Union, at one point during negotiations the City in substance "agreed with" the Union's proposal and the City even proposed "very similar" language itself. The City's proposal did not provide a definition of "emergency"; instead, it gave the Chief the sole discretion to determine what constituted an emergency. This is hardly "very similar" to the Union's proposed language.

The fact that the City made a counterproposal on floating holidays during negotiations is in no way indicative of any inherent reasonableness of the Union's floating holiday proposal.

The Union's proposal also finds no support among the external comparables. As City Exhibit 11.I. confirms, no external comparable has floating holiday language even remotely similar to the Union's proposal.

The Union's proposal also has no internal comparable support and actually is contrary to the fire contract. The status quo language in the Police contract closely mirrors the language in the Fire collective bargaining agreement, reserving to both of the City's Chiefs the authority to decide when to cancel a floating holiday.

Contrary to the Union's assertions, the Union's Final Offer on floating holidays is without merit, it is unclear, it is unsupported by the internal and external comparables, and it constitutes a bad solution in search of a problem – all in exchange for absolutely no quid pro quo on the part of the Police Union.

V. Overall Compensation

In addition to direct wages, Wis. Stats. § 111.77(6)(bm)6 requires the Arbitrator to give weight to the "overall compensation presently received by the employees," which is inclusive of

"vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received."

When one analyzes the "overall compensation" received by the Police Union under the parties' respective proposals, it is readily apparent that there is simply no need for the Union's higher wage demand in light of how well the City's police officers already fare, and will continue to fare, under the City's proposal, with regard to overall compensation among the external and internal comparables.

The City compares well with respect to health insurance premium rates and contributions to premiums among the external comparable; number of sick days; number of holidays/personal days; and vacations.

The overall compensation received by the Police Union is highly competitive when compared to the external comparables. The statutory factor requiring the Arbitrator to give weight to the police employees' overall compensation thus favors the City's Final Offer.

VI. The Greater Weight and Interest and Welfare of the Public Factors.

Under § 111.77(6)(am), the "greater weight" factor, the Arbitrator is required to give greater weight to the economic conditions in the jurisdiction of the Employer than he gives to any other statutory factor. Under § 111.77(6)(bm)3, the "interest and welfare of the public" factor, the Arbitrator must consider the City's financial ability to pay the costs of parties' respective Final Offers. Oftentimes, these two statutory factors are closely intertwined. That is certainly the case in the instant proceeding. The City's economic conditions in recent years have significantly impacted its financial resources. While the City does not assert an absolute inability to pay for the Union's proposal, the City does assert an unwillingness to pay the higher cost of the Union's Final Offer and for very good reasons.

The City of South Milwaukee has taken massive hits to its economic base in recent years. As Assistant City Administrator/Economic Development Director Brever testified, the City very much identifies with its manufacturing history, (Tr. p. 124). The City was home to several large manufacturing companies over the years. Bucyrus International, the City's largest employer for 118 years, was bought by Caterpillar which significantly downsized from what was once 2,100 employees to 350 today.

Similarly, the City's current largest employer, Eaton's Cooper Power Systems, has reduced their employee count by 20% since 2016, and in 2020, Everbrite, the City's fifth largest private employer, vacated their 32-acre campus after owning and operating the site since 1963, resulting in the loss of 116 more jobs.

The loss of these major manufacturing companies and the jobs they afforded has resulted in significant and severe negative ripple effects for the City, its residents, and its small business community.

This reduced revenue sources tie the City's hands in knots when raising revenue, and the City's hands are tied even tighter when it comes to the ability to increase revenues from other sources.

As both City Administrator Mayzik and Assistant City Administrator Brever testified, South Milwaukee is a 125-year old community that is 98% developed, which translates to an extraordinarily low rate of net new construction growth. This low rate only allows a $25,262 increase in the tax levy for 2023.

Besides the tax levy, the City has few other sources of significant revenues. The City is highly reliant on state aids, but those state aids have been stagnant or decreasing as well over the last 20 years. Another revenue source that has been decreasing is the City's general fund interest

income. From 2019 to 2021, the City's interest income decreased from $453,000 to $7,600. This is income that can be used to offset the City's general operating budget, so a reduction of that magnitude has a considerable impact.

According to the City's costing calculations, over the two years of the contract, the Union's Final Offer will cost $58,456 more than the City's Final Offer, $34,999 more in 2021 and $23,457 more in 2022. The Union scoffs at this figure, labeling it an insignificant amount. However, this $58,456 far exceeds the total amount by which the City was allowed to increase its tax levy for the two years of the contract (4,960 in 2021 and $23,062 in 2022). In addition, the City did not budget for the increased cost of the Union's Final Offer.

According to the Union, the City could easily pay the increased cost of the Union's Final Offer out of its ARPA $.2 million funds. However, as City Administrator Mayzik testified, the City Council gave her specific directives on what she could spend the ARPA funds on: one-time projects for the community because the ARPA funds are "one-time money." The Union's suggestion that one-time ARPA funds be used to pay for increased Police Union wages is financially irresponsible.

The City should not have to cut services or operations to fund the Police Union's proposed wage increase that is higher than any other employee group received. Cutting services is an undesirable method that the City has utilized in past years to balance its budget.

The option for the City to offset its tax levy by taking on more debt service is not feasible because the City's increasing use of debt has led to a sizable increase both in the City's debt load and the City's tax levy.

The City's annual budget report reveals the City is the only taxing entity whose tax levies are increasing. This is a critical factor in the evaluation of the parties' Final Offers. The City's increasing tax levies mean high tax rates for the City's taxpayers.

To the extent the interests of the taxpaying public are intertwined between the "greater weight" factor and the interest and welfare of the public factor, both of these factors weigh heavily in favor of the City's Final Offer. Given the limitations in the City's ability to increase taxes and the substantial decline in its tax and other revenues in recent years, the $58,456 cost of the Union's offer is anything but insignificant when compared to the levy limit increase of $28,022 over the two-year life of this contract, (City Exhibits 7.F, 13). The City's proposal would cost $58,456 less than the Union's proposal over the life of the 2021-2022 contract, which weighs in favor of the interests of the taxpaying public.

It is the City-wide morale that is at risk in this case and it is the stability in bargaining and budgeting that are at risk. Those considerations clearly favor the interests and welfare of the public and the greater weight factors in favor of the City's proposal.

VII. Conclusion

Morale, equity, fairness, stability, affordability, and working within the constraints of the City's budget challenges matter. Accepting the City's Final Offer respects all City employees, maintains the longstanding internal wage increase pattern, supports stable and predictable bargaining and budgeting, maintains or improves the existing wage rankings among the external comparables, generates wage rates that continue to compare favorably when measured against the external comparables' average wage rates, provides wage increases that are in line with the increases received by the external comparables, better respects the City's budget, and reduces the likelihood of cuts to services. The City's offer in this proceeding is strongly favored.

The relevant statutory factors heavily favor the City's offer and, therefore, it should be selected by the Arbitrator.

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 Section 111.77(6)(bm)1 factor, the lawful authority of the Employer.

The others are discussed by one or both of the parties.

It is clear to the Arbitrator from the record established at the arbitration hearing that the most relied upon and determinative factors are the internal and external comparables. This is not to say that the Arbitrator will not give greater weight to the economic conditions of the Employer as required by Section 111.77(6)(am).

Although the parties argue that other factors favor their position, they are not significant in the outcome of this case. In this regard, Interest and welfare of the public is served by both offers. The City argues that this factor favors the City because the interests and welfare of the public is best served with its package due to the economic hits the City has taken in recent years, including the loss of large employers. Further, the City is 98% developed and has little room to grow. On the other hand, the Association argues that the City has the ability to pay the small sum of $58,000 (even assuming the City's figures) and the City residents have a strong record of supporting their police and their programs. The Arbitrator, in the end, does not find this factor, in light of the positions of the parties, to be persuasive in the selection of the most reasonable offer.

Cost of living factor is noteworthy because clearly the CPI has risen rapidly over the last couple of years. However, the parties agree that in considering the CPI factor, it is the increase in previous years of the proposed contract that is the appropriate increase to analyze when making comparisons to the cost of living. For said period, the Union points out that the CPI in the three year period December 2017 to December 2020 increased by 5.6%. The agreed upon lift for the two year contract here is 6.25%, not counting the 1.25% increase to over 5 years step.

The lift exceeds the CPI, but not the cost. The Arbitrator agrees that the CPI standing alone favors the Union, but not when considered with the internal and external comparable for the same period of time. The recent increases form the basis for going forward in negotiating the successor to the instant collective bargaining agreement. Lastly, this finding holds true with the factor "changes in circumstances" as it relates to the CPI.

Both parties argue that the factor of overall compensation favors their offer. The Association argues that there is overlap between this factor and the others. Members of the Association pay a higher monthly dollar amount for City-provided health insurance than every single comparable. Additionally, the Association gave up several items during bargaining or agreed to City proposals that have an impact on overall compensation. Even adding in holiday pay, as argued by the City, South Milwaukee Association members remain at or near the bottom of all comparable municipalities.

The City argues that the Association does not need its higher offer to continue to fare well compared to internal and external comparables. In this regard, the Association fares well in health insurance premium rates and contributions, sick leave, holidays, and vacation accumulation.

The other factors criteria, as argued by the Association, favors its offer because the other issue herein, floating holiday language, favors their position. Its position clarifies vague language regarding cancellation of approved floating holidays. There is a history of prior administration cancelling days off. The Association does not question the current Chief's intent to fairly handle floating holidays, his intent is not memorialized in the contract. Future chiefs may not be as fair as the current Chief.

The City argues that the current language has no restrictions on the Chief's ability to cancel floating holidays. Here there is no problem to be solved. Both the chief and Officer Hesse testified that in Chief Jessup's 4½ years as Chief he has never cancelled a floating holiday for any officer. The Association's proposed language takes authority away from the Chief and leaves the interpretation of what constitutes an "extreme emergency" completely as guesswork, which could create disputes and litigation. The Association's offer is without merit, unclear, and unsupported by internal and external comparables and should be rejected.

The Arbitrator finds that the Association in the future may have reason to include assurances in being able to take their floating holidays, but there is no support for a change now with the current Chief. If this changes, the Association can introduce new language in a future contract.

The remaining factors, then, are the economic conditions of the City, and the internal and external comparables. Of the factors, the Arbitrator is required to give greater weight to the economic conditions of the City. While this factor is weighted more, the impact it has on the two offers is not great. Firstly, the difference in the two offers is at most $58,000 (the Union claims it's more like $34,000). Secondly, the City clearly has the ability to pay the difference in dispute. This is because, and the City concedes, there is sufficient funds in the $2,166,220 ARPA funding the City received during the same two-year period of the disputed wage increase to pay for the difference. There is no need to cut city services to meet to cover the difference of $58,000. In the end, the determinative factors to consider are the internal and external comparables. The greater weight of the economic conditions of the City supports either offer.

The significance of internal comparables has long been established in prior arbitration decisions. In short, internal comparables should be given significant weight in arbitration

proceedings. The instant arbitrator in the City of Milwaukee (Supervisory Law Enforcement), [4] City Arbitrator Zel Rice held as follows:

> Forgetting the concept of parity, the mainstream of arbitral opinion is that internal comparables of voluntary settlements should carry heavy weight in arbitration proceedings. The Employer's attempt to offer the same wage increase to all of its bargaining units in the protective services is a significant fact to be considered by an arbitrator in the absence of a factual situation that would distinguish one bargaining unit from another. The goal of collective bargaining is to have agreements reached by the parties through voluntary settlements as opposed to arbitral awards. Arbitrators should not issue awards that encourage the Employer's various collective bargaining units to seek to resolve their labor disputes through arbitration rather than at the bargaining table. If the Employer is to maintain labor peace with the many bargaining units with which it negotiates, changes in wages and benefits must have a consistent pattern.

This Arbitrator also held:

> While arbitrators have stated their reasons favoring internal comparables differently, they all show a concern for the negative effect on morale, equitable treatment of employees, the whiplash effect of multiple bargaining units, and the stability of the bargaining relationship, i.e., reluctance by Unions to settle if they think other units going to arbitration may obtain a benefit not attainable through voluntary settlement. [5]

There are many other arbitrators who have held the same. So, basically, internal comparables are favored over any deviation unless for good reason.

Here, the internal comparables are the Fire unit and general City employees. The main comparable is the Fire unit; the remaining unit is non-represented. The Fire settlement is exactly the City's final offer to the Police. The Police's offer is different only in the timing of the increase; not the total wage increase (lift).

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4 Decision No. 32859-A (7/20/2016).

5 Iowa County (Courthouse), Decision No. 29393-A (2/22) 1999.

The City has had internal consistency in wage increases for all City employees. The Association, however, argues that while the Fire and Police have maintained through their contracts parity of wage rate, there have been several differences in the effective dates of increase as here. The Union cites the settlements in 2005, 2012 and 2014. In 2005 not only was there different effective dates of the increases, but a difference in the wage increase (in favor of the Fire). However, and importantly, there is no evidence offered explaining the reason for the differences. So, yes, the parties' history in 2005 reflects different settlements for Police and Fire but undoubtedly there was either a quid pro quo involved or some other good reason. The Arbitrator notes that the successor agreements reflect same. In 2006 both units received the same 3% increase on the same dates. In fact, this was true from 2006 through 2011. This tells the Arbitrator that there was some reason, acceptable to the City, Fire, and Police units, for the differences in 2005. As for the 2012 - 2014 differences, City administrator Mayzik credibly testified that the reason for the additional increase received by the Police was because, 1) in 2012, while the Police received an increase, the Fire settled for no increase in exchange for a Light Duty Program, and 2) in 2014 Police received a larger increase because of a large increase in WRS contributions that was not experienced by the Fire.

Thus, it is clear that the parties have settled differently in the past, although not often. However, the fact that there have been deviations in the past, the Association in this case must still establish that there is compelling reason to deviate from the Police settlement. This Arbitrator in the Village of Caledonia case [6] held that the Union ". . . should not be automatically locked into the Police settlement based solely on internal comparability with no chance to

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[6] Decision No. 37996-B (2020).

bargain its own agreement." However, this Arbitrator went on to say ". . . given the importance of internal comparables, the deviation proposed must be for a compelling reason and part of a more reasonable total package."

The question then is what is the compelling reason to deviate in this case? As stated earlier, the parties have deviated in the past, but that alone is not reason to deviate in this case. The Association, in this regard, argues that external comparables support its position. The parties agree to the appropriate comparable pool in this case. It is the Association's position that from 2013-2017 the Police ranked third but has fallen to fifth by the end of this contract.

The problem with the importance of external comparables in this case is that the wage rates at the end of the contract term under both the City and Association offers are the same. So, the Association's offer does not change its ranking among the comparables or represent any catch-up with comparables. It may be the Association has a legitimate catch-up argument, but its offer does not address that issue. Thus, the Arbitrator does not find this factor or criteria important in this case in determining which of the two final offers is most reasonable.

In the end, the Association is seeking different effective dates for the same wage rate increase for the term of the agreement. This, however, with no compelling reason to find otherwise, is not reasonable. The reasoning behind the Firefighter Association settlement is that the parties were able to agree upon a larger wage rate increase (lift) by splitting the increases and using the effective date of implementation of the increases to keep the cost to the City down and affordable. The Association is seeking the same lift without, in essence, paying for it with split increases as did the Fire.

As discussed above and citing a number of cases including the undersigned, consistency and treatment of employees (unless compelling reason to deviate) promotes stability in the

collective bargaining process and positively impacts employee morale. To find for the Police for a much better payoff for this term of the agreement with no compelling reason would create a whiplash effect. Why would the Fireighter unit settle with the City in the next go around when the Police unit gained more by going to arbitration? This is one of the reasons why internal comparables are given significant weight.

Based on the discussion above, the Arbitrator does not find that the Association met its burden of establishing "compelling" reason for the deviation from the internal comparables.

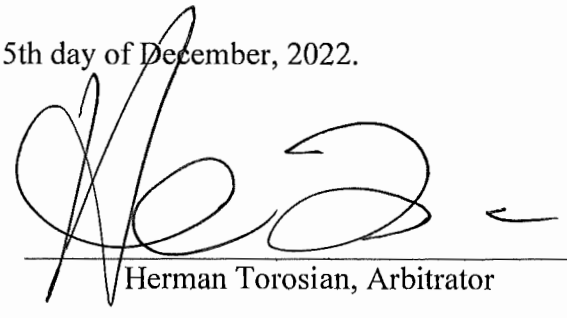
Based on the above facts and discussion thereon regarding the comparables and considering all of the statutory factors, the Arbitrator finds the City's Final Offer the more reasonable.

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

AWARD

The City's offer is to be incorporated in the 2021-2022 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 Scottsdale, Arizona, this 15th day of December, 2022.



Herman Torosian, Arbitrator

April 19, 2022

FINAL OFFER OF THE CITY OF SOUTH MILWAUKEE TO SOUTH MILWAUKEE PROFESSIONAL POLICE ASSOCIATION, LOCAL 201 FOR A SUCCESSOR COLLECTIVE BARGAINING AGREEMENT

1. **Term**. January 1, 2021 through December 31, 2022

2. **Article VII, Section 7.07**. Incorporate March 2018 Side Letter regarding Section 7.07

3. **Article VIII Wages**

   a. **Wages.**

      2021: 1.0% July 1, 2021 (1.25% to Over 5 Years Step and to investigator, instead of 1.0%: the parties agree this increased wage rate applies when the employee reaches the over 5 years step)

      2.0% December 1, 2021

      2022: 2.0% July 1, 2022

   b. **Non-certified Academy Wage Rate**. The City proposes to clarify when the non-certified/Academy and less than six month wage rates apply. The date of graduation for the non-certified employee is considered the "hire" date and then the employee must serve six full months to complete the "less than six months" rate.

   c. **Detective**. Delete contract language regarding the "Detective." There is no longer a Detective position. Delete: "The present position of Detective shall remain in existence during the term of this Agreement. The employee presently in this position shall remain in said position unless removed for just cause."

   d. **Section 8.02**. Delete Section 8.02 Longevity.

   e. **Section 8.03**. Address FTO compensation. Add the following sentence: An employee assigned and working as Field Training Officer shall receive an additional $1.00 per hour during the field training period, for each hour that the Field Training Officer is training a new officer, as approved by the Chief.

4. **Article XVIII Association Security**. Delete Section 18.02.

Appendix A

5. **Article I – Recognition**. Amend Section 1.01 and add the underlined language:

The Municipality hereby recognizes the South Milwaukee Professional Police Association as the exclusive bargaining agent in the matter of wages, hours of employment, and terms and conditions of employment of all members of the Police Department with powers of arrest excluding the Lieutenant, Captain, Chief of Police, and any other managerial, executive, confidential or supervisory employees.

6. **Article XIV – Grievance Procedure**. Amend Section 14.02 - Grievance Procedure Steps: Add the underlined language to Step 1:

Step 1: The Association or the employee who has a complaint shall discuss it with the Chief of Police or his/her designated representative within twenty (20) calendar days after the event giving rise to the complaint occurred, or the employee could reasonably have been expected to have knowledge of it. A representative of the Association shall be given an opportunity to be present during the discussion on the complaint. The Chief of Police shall attempt to make a mutually satisfactory adjustment and, in any event, shall be required to give an answer within five (5) days of receipt of the Step 1 grievance, not including Saturdays, Sundays and Holidays. Under this Article, a grievant may be an individual or the Association; however the Association may only be a grievant if two (2) or more members of the Association are affected by the event or occurrence which gives rise to the alleged contract violation. If the grievance is not answered in the appropriate time frame, the grievance shall be considered as automatically presented to the next step.

7. **Mutually agreed upon archaic language clean-up and clarification of errors.**

Final Offer from the South Milwaukee Professional Police Association

May 4, 2022

1. **ARTICLE I – RECOGNITION**

Agree to the City of South Milwaukee's Proposal dated July 8, 2021 concerning revisions to recognize the South Milwaukee Professional Police Association as the exclusive bargaining agent.

2. **ARTICLE V – HOLIDAYS AND ADDITIONAL DAYS OFF**

Amend Section 5.02(k):

The two (2) floating days off with pay under this section will be guaranteed once approved by the Chief or his/her designee. Once approved, these two (2) floating days cannot be canceled except in the case of extreme emergencies, defined as an unforeseen circumstance or combination of circumstances that call for immediate action, or in cases of declared local, state, and/or federal emergency.

3. **ARTICLE VII – EXTRA HOURS**

Agree to the City of South Milwaukee's Proposal dated July 8, 2021 concerning incorporating the March 2018 Side Letter regarding Section 7.07.

4. **ARTICLE VIII - WAGES**

Amend Section 8.01:

2021 – 1% Effective January 1, 2021 (1.25% to Over 5 Years Step and Investigator, instead of 1% - The parties agree this increased wage rate applies when the employee reaches the Over 5 Years Step)

2% Effective July 1, 2021

2022 – 2% Effective January 1, 2022

Agree to City of South Milwaukee's Proposal dated July 8, 2021 concerning Non-certified Academy Wage Rate.

Agree to City of South Milwaukee's Proposal dated July 8, 2021 concerning deleting Section 8.02 - Longevity.

Agree to City of South Milwaukee's Proposal dated July 8, 2021 concerning additional $1.00 of compensation per hour for employee assigned and working as a Field Training Officer.

Appendix B

5. **ARTICLE XIV - GRIEVANCE PROCEDURE**

Agree to City of South Milwaukee's Proposal dated July 8, 2021 concerning amending Step 1 of Section 14.02.

6. **ARTICLE XXII – TERM OF AGREEMENT**

Amend Section 22.01:

Term of agreement: January 1, 2021 through December 31, 2022.

All other terms status quo.

Parties agree to review and sign contract within forty-five (45) days of ratification.