

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
Of a Dispute Between

**INTEREST ARBITRATION
AWARD**

CITY OF WAUWATOSA

and

**WERC: Case 134
No. 68532
MIA-2859
[Dec. No. 32645-A]**

**Wauwatosa Professional Firefighters
Association
LOCAL 1923, IAFF**

APPEARANCES:

Union: Wauwatosa Professional Firefighters Association, Local 1923, IAFF, by **Attorney Timothy E. Hawks** of Hawks Quindel Ehlke & Perry, S.C., 700 W. Michigan, Suite 500, Milwaukee, WI 53201-0442.

Employer: City of Wauwatosa, by **Attorney Beth Thorson Aldana**, Human Relations Director and Assistant City Attorney for the City of Wauwatosa, 7725 W. North Avenue, Wauwatosa, WI 53213-0068

ARBITRATION AWARD

The City of Wauwatosa (hereinafter City or Employer) and the Wauwatosa Professional Fire Fighters, Local 1923 (hereinafter Union) are parties to a collective bargaining agreement that became effective on January 1, 2005 and expired at midnight on December 31, 2007. The parties exchanged initial proposals and bargained on matters to be included in a successor agreement

Responding to a request of the parties, the Wisconsin Employment Relations Commission (WERC) appointed a member of its staff to meet with the parties in an effort to mediate the dispute. The duly appointed mediator met with the parties several times starting in May 2008. However, Union membership failed to ratify a proposed voluntary agreement developed during the mediation sessions. On December 29, 2008, the Union filed a petition with the WERC alleging the parties were at a bargaining impasse within the meaning of Wis. Stats. 111.77(3) and requesting compulsory, final and binding interest arbitration. An informal investigation having been conducted by the WERC mediator prior to the filing of said petition, on December 30, 2008, said mediator recommended that the Commission issue an order directing the parties to compulsory, final and binding arbitration, and the Commission did so on

January 12, 2009.

Pursuant to the Commission's arbitration directive to the parties, the parties selected A. Henry Hempe as the impartial arbitrator to arbitrate the dispute and to issue a final and binding award pursuant to Wis. Stats. 111.77(4)(b) of the Municipal Employment Relations Act. The arbitrator conducted a hearing in Wauwatosa, Wisconsin on March 24, 2009, at which time the parties were afforded the opportunity to present testimony, other evidence and arguments, as they chose. The hearing was transcribed. The parties agreed to submit briefs, reserving the right to submit reply briefs.¹ Reply Briefs were also submitted, the last of which was received by the arbitrator on or about June 10, 2009. Each party also submitted a Supplemental Brief, the last of which was received by the arbitrator on or about June 24, 2007.

Based on Wis. Stats. 111.77(6), full consideration of the arguments of the parties, and the entire record herein, I issue the award that follows.

BACKGROUND

Wauwatosa is one of ten cities located in Milwaukee County.² Historically regarded as a suburb of the City of Milwaukee by which it is buffered on the east and south, Wauwatosa is flanked on the west by the cities of Brookfield and Waukesha (in Waukesha County), and slightly touched on the southwest by the City of West Allis. A group of seven other nearby City of Milwaukee suburbs contiguous to each other are located to the north of both the cities of Milwaukee and Wauwatosa. The parties designate this group as "North Shore."³

Wauwatosa is a scenic, well-ordered community with a property tax base that includes residential, commercial and industrial real estate. The City reports a population of 44,798 and an equalized valuation of \$5,645,219,200.⁴ Obviously dwarfed in both respects by the City of Milwaukee, of the remaining area cities it trails only Brookfield and Waukesha as to equalized value.⁵ It has a population slightly higher than Brookfield, but some twenty thousand less than Waukesha, and fourteen thousand less than West Allis.⁶ None of the individual North Shore communities come close to Wauwatosa either as to equalized value or population; in aggregate; however, the seven have a combined equalized value of \$9,491,950 and a combined population of 66,624.⁷

Wauwatosa employs ninety-eight full-time firefighters covered by the terms and conditions of a three-year contract between the City and the International Association of Firefighters, Local 1923. The contract ran from January 1, 2005 through (and including)

¹ Tr. 191.

² The list of ten consists of Cudahy, Franklin, Greendale, Greenfield, Milwaukee, Oak Creek, South Milwaukee, St. Francis, Wauwatosa, and West Allis.

³ The North Shore suburbs are Bayside, Brown Deer, Fox Point, Glendale, River Hills, Shorewood, and Whitefish Bay.

⁴ City's Initial Brief (hereinafter CIB), p. 25.

⁵ Brookfield has an equalized value of \$6,657, 573,100; Waukesha's is \$6,223,441,200. CIB, 25.

⁶ Brookfield's population is 39,6313, Waukesha's, 67,814 and that of West Allis, 58,710. CIB, p. 25

⁷ CIB, p. 25.

December 31, 2007. In addition to the firefighter union, there are four other Wauwatosa city employee unions, each represented by a separate bargaining representative.

From September 2007 to late spring of 2008, the parties bargained collectively for a voluntary successor collective agreement. Following additional meetings with WERC staff mediator Marshall L. Gratz, the parties agreed that the Union would submit the City's final offer to the firefighters' bargaining unit membership for ratification. The City understood and characterizes this concurrence as a "tentative agreement"⁸ (by the negotiators of both parties to the contents of the offer). At hearing, Local 1923 President Hank Wendt "hesitates" to call the concurrence a "tentative agreement," describing it as "more of an impasse where we could not agree on a final offer."⁹ In any event, following mediation efforts, the parties do concur that the Union agreed at least to take the mediation product back to its membership.

The terms of the result reached in mediation that the Union took back to its membership at that time are the same terms that are reflected in the City's final offer in this case."¹⁰ The Union reports that its members voted on the City's proposal by secret ballot, and did not ratify it. According to Local 1923 President Hank Wendt, bargaining unit members felt the concessions on the part of the Union with respect to the issue of retirement health benefits for new hires were too significant. He also stated the "two-tier system was a definite concern."¹¹

In the course of the interest arbitration hearing, the parties stipulated to the following clarifications:

Stipulations at Hearing

1. The effective date of the provision that limits prescriptions to a 30-day supply will be "from the date the decision (arbitrator's award) comes."¹²
2. Funding dollars for the respective Retirement Health Care Savings Account plans offered by each party are all pre-tax dollars.¹³
3. The Wauwatosa City Council is not interested in raising user, licensing, and permit fees.¹⁴
4. The annual cost to the City of the "wellness provisions" agreed to by the parties is \$155/per employee.¹⁵
5. In the parties' 2004-2005 contract negotiations, the Union proposed a sick leave conversion payout with a Post Employment Health Plan (PEHP), but did not aggressively pursue that proposal and subsequently dropped it as negotiations proceeded.¹⁶

⁸ CIB 2.

⁹ Tr. 60.

¹⁰ Testimony of Local 1923 President Hank Wendt, Tr. 61.

¹¹ Tr. 64.

¹² Tr. 91.

¹³ Tr. 123.

¹⁴ Tr. 136.

¹⁵ Tr. 144.

¹⁶ Tr. 172.

The parties have been able to reach certain other agreements during their negotiations or during the subsequent WERC-conducted mediation sessions. These are substantive provisions that either changed existing contract language or constituted new contractual provisions. Each of the parties' respective amended offers includes these earlier agreements. Although not specifically articulated in the respective final offers, each party's respective offer clearly envisions a three-year agreement that will run from January 1, 2008 through December 31, 2010. This was verbally confirmed at the arbitration hearing.¹⁷

FINAL OFFERS OF THE PARTIES

The Union's Amended Offer is attached hereto as Exhibit A.

The City's Amended Offer is attached hereto as Exhibit B.

The City's document includes notations as to which of its proposals are exact matches with corresponding Union proposals. The Union's document divides its proposals into two categories: *A. As Proposed by the City* (indicating agreement between the parties as to the proposals listed thereunder), and its proposals that are disputed by the City) as "*At Issue.*"

SUMMARY OF REMAINING ISSUES¹⁸

Union Offer:

- 1) City pays 70% of retiree health insurance for employees hired **after 1/1/08**;
- 2) Annual sick leave conversion of 1/4th accumulated, unused sick leave up to maximum of 36 hours per year **only** for employees hired **after 1/1/08**;
- 3) Additional sick leave conversion at retirement **only** for employees hired **after 1/1/08**;
(NOTE: Employees hired before 1/1/08 would not receive sick leave conversion at retirement, but would receive City contribution to their health insurance premiums equal to 110% of the previous year's premium.)
- 4) A one-time lump sum payment of \$500 into the employee's Retirement Health Care for employees hired after 1/1/08; **no** lump sum payment to employees hired **before 1/1/08**;
- 5) **Nationwide** to administer Post Employment Health Plan (PEHP).

City Offer:

¹⁷ Tr. 175.

¹⁸ At the beginning of the arbitration hearing, one of the matters in dispute was the implementation date of the parties' agreement reached during negotiations to a pharmaceutical co-pay provision that limited retail prescriptions to a 30-day supply (previously 90-day supply). The City's Amended Final Offer had proposed 1/1/08 as the effective date of change; the Union's Final Offer proposed either the date of the arbitration award or agreement between the parties, whichever was earliest.

As the arbitration hearing progressed and explanation began on the underlying co-pay provision, the parties stipulated on the record that implementation of the provision would be on the date the arbitration award "comes." Tr. 91. (See Stipulations, p. 3, above.) In effect, each party, with the consent of the other, amended its Amended Final Offer to comply with that proposed by the other. Hence the issue, never regarded as a major one by either party, disappeared as a disputed one and reemerged as a provision the parties agreed should be placed in their successor labor contract.

- 1) City pays 50% of retiree health insurance for employees hired **after** 1/1/08
- 2) Annual sick leave conversion of 1/4th accumulated, unused sick leave up to maximum of 36 hours per year (all employees);
- 3) Additional sick leave conversion at retirement for employees hired after 1/1/08;
(NOTE: Employees hired before 1/1/08 would not receive sick leave conversion at retirement, but would receive City contribution to their health insurance premiums equal to 110% of the previous year's premium.)
- 4) A one-time lump sum payment of \$500 into the employee's Retirement Health Care Savings Account (RHCSA) for employees hired **after 1/1/08**, and a one-time lump sum payment of \$250 into the employee's RHCSA for employees hired **before 1/1/08**;
- 5) Expressed intent to use **ICMA** to administer firefighter RHCSA's.

STATUTORY AUTHORITY

Wis. Stats. 111.77(4)(b): * * * The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer *without modification.*" (Emphasis supplied)

Wis. Stats. 111.77(6): "In reaching a decision, the arbitrator shall give weight to the following factors:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) 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.
 1. In public employment in comparable communities.
 2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) 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.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) 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, arbitrations or otherwise between the parties, in the public service or in the private sector.

ARGUMENTS OF THE PARTIES

UNION:

The Union asserts “the primary issue at the core of this interest arbitration is the City’s proposal to make a 50% reduction in the post retirement health insurance benefit of newly- hired firefighters,” which the City proposes to implement by creating a two-tier structure of employees within the bargaining unit. The Union describes this as a drastic change from the *status quo*: under the City’s proposal, the City would contribute 50% of the retiree monthly health insurance premiums for this group, once they retire. The Union acknowledges this would apply only to newly hired employees who were hired after 1/1/08. The status quo currently requires the City to pay the entire retiree monthly health insurance premium for all retiring firefighters, not exceeding 110% of the previous year’s premium, regardless of their dates of hire.

The Union describes its offer as a less severe reduction in the benefit. Employing the City’s 1/1/08 date of hire criterion as the definitional difference between “newly hired employee” and “current employee,” the Union’s offer would change the City’s premium contribution from City’s proposed 50% of the retiree monthly health insurance premium to 70%. The Union proposal as to premium contribution would not apply to employees hired *before* 1/1/08.

The Union cautions the arbitrator that “making assumptions as to the future cost of either proposal requires a great deal of speculation.”

Union Offers Eleven Milwaukee Area Groups as External Comparables; Makes Comparisons

The Union argues the City’s final offer has limited comparable support. The Union also observes, “Reference to the comparables, however, offers no guidance to the arbitrator as to the choice of the competing offers.”¹⁹

The Union suggests the external comparability pool consist of eleven municipalities with full-time fire departments in the Milwaukee metropolitan area namely, Cudahy, Franklin, Greendale, Greenfield, North Shore, Oak Creek, South Milwaukee, St. Francis, West Allis, Brookfield, and Waukesha. The Union urges rejection of Menomonee Falls as a comparable because its recently organized Fire Department has a permanent personnel structure that heavily features paid on-call part-time, and paid on-call standby reserve firefighters, with only a small handful of full-time firefighters. The Union suggests the previous awards of Arbitrators Flaten, Petri, and Weisberger should control the analysis of comparable firefighting units in surrounding cities, with West Allis the closest in comparability to Wauwatosa.

The Union computes that firefighter retirees in the eleven communities listed above pay an average of 24.24% toward their health insurance premiums. Given this average, the Union finds its 30% retiree premium contribution proposal more reasonable than .the 50% proposal of the City.

The Union explains that in the same group of comparables, the average 2008 premium paid is \$1,484.35, which is lower than the 2008 family plan health care premium of \$1,530.35 in Wauwatosa. But the 2009 premium figures show a premium cost in the comparables of

¹⁹ Union Initial Brief (hereinafter UIB), p. 16.

\$1,618.24. This is higher than the 2009 Wauwatosa premium cost of \$1,509.96 – a reduction, says the Union, due in part to the Union’s concessions to part of the agreed-upon changes in the health care plan.

The Union believes that under the City’s proposal firefighter retirees hired after 1/1/08 would be worse off in actual dollars than retirees in comparable fire departments in the Milwaukee metropolitan area. The Union asserts that in 2008, the average retiree cost for health care premiums was \$372.58, and grew to \$379.65 in 2009. But under the City’s proposal, the Union contends the 2008 premium cost to retirees would be \$765.01, and \$754.98 in 2009. This represents premium costs to Wauwatosa retirees in 2008 and 2009 that exceed the average retiree costs in the comparable communities of \$412.63 and \$375.33, respectively. Under the Union proposal the cost figures are closer to those in the comparable communities.

The Union notes that West Allis requires only a 5% retiree health care premium (at time of retirement) contribution. The Union calculates its proposal is over \$300 closer to the average premium cost for firefighter retirees among the comparable municipalities.

No Quid Pro Quo

The Union charges that although the City has proposed a 50% reduction in retiree health insurance benefits for newly hired firefighters, it has failed to provide a reasonable basis and *quid pro quo* for such an extreme change. Arbitration awards, instructs the Union, support the principle that when one side wishes to deviate from the terms of the previous collective bargaining agreement, the proponent of the change must fully justify its position, providing strong reasons and a proven need. If not, an adequate *quid pro quo* should be offered to balance the change.

The Union discounts City claims that its proposals that would grant conversion of accrued, unused sick time constitute a *quid pro quo*. The Union says it made other concessions on employees’ health care premium cost sharing, which negate the City’s argument that its sick pay buyout provides balance to its drastic retiree health proposal. Since there is no compelling need for the drastic reduction in the *status quo* and no *quid pro quo* for the proposed change in the *status quo*, the City’s offer that new hires pay 50% of their health care premium in retirement is unreasonable.

Both Parties Propose Sick Leave Conversion by Employees, but the Union’s Total Offer is More Reasonable.

The Union observes that prior contracts did not allow conversion of any accumulated, unused sick leave. Under both parties’ final offers employees will be able to convert a maximum of 36 hours per year. The Union proposes to make this benefit available to only employees hired after 1/1/08, but the City’s proposal extends the benefit to all bargaining unit members. The Union calculates that extending that benefit to all bargaining unit members as opposed to only the “newly hired employees,” amounts to a \$750 per year payment to members who are not being asked to give up anything, except their votes at ratification time.

The Union analyzes the City's proposed accumulated unused, sick time conversion rates, for employees hired prior to 1/1/08. Under the City's offer, the City will provide up to 36 hours of pay per of accumulated unused sick leave to be placed in a retirement health cost savings account. In 2008 there were 92 members of the bargaining unit entitled to that benefit. The Union asserts the cost of the City's proposal at the top firefighter wage of \$20.44/hour would total \$67,6797.28. [36 (hrs.) x \$20.44 (top wage rate) x 92 (bargaining unit members = \$67,6797.28.]

Assuming an average retirement rate of bargaining unit members of 5% per year, and an average career of 26-years as a firefighter, the Union calculates that in twenty-three years the City would pay a total of \$812,367.36. Adding to that cost the City's offer to make a one-time payment of \$250/per employee to employees hired before 1/1/08 or \$23,000), raises the City's total cost of its proposal to \$835,367.36, the Union argues.

The parties have agreed that the City will make a one-time \$500 payment on behalf of non-probationary employees hired *after* 1/1/08, but the City also proposes a similar one-time lump sum \$250 payment for employees hired before 1/1/08. The Union computes its rejection of the City's proposed \$250 lump sum to the 92-firefighters hired before 1/1/08 as representing a potential savings to the City of \$23,000.

The Union finds little guidance from the external comparables in assessing differences in the respective offers. However, the Union observes that the same benefit was not provided to any other represented Wauwatosa employees, except for the police officers' union..

The Union believes the City's offer has limited comparable support in the Milwaukee County area. The Union notes there is no (unused) sick day payout for firefighters in West Allis.. Other municipalities have varying payout provisions.

Furthermore, argues the Union, making assumptions as to the future cost of either proposal requires speculation by the arbitrator. One cannot accurately predict whether the number of employees in this bargaining unit will remain go up or down. The Union predicts only that there is a likelihood of change in that number.

Financial Repository of the Payment

The Union bases its preference for Nationwide as the vendor/administrator for the Post Employment Health Plan because of the Union's familiarity with Nationwide as one of the International's preferred companies in dealing with post-employment health care or deferred compensation plans.

Application of Statutory Criteria Favors Local 1923's Final Offer

In the Union's opinion, the following statutory criteria factors in Wis. Stats. 111.77(6) have little or no applicability to the Arbitrator's choice of a final offer: a) lawful authority of the employer; b) stipulations of the parties; interests and welfare of the public and the financial ability of the unit of government to meet the proposed costs; e) average consumer prices for

goods and services or the cost of living.

The Union points out that the City's Final Offer will not save it any money until the retirement date of a firefighter hired after 1/1/08. Thus, assuming the usual hiring age of a new hire is age 27 and that the typical retirement age of a member of this bargaining unit is 53, it will be 26 years before the City might save any money under its final offer. Thus, although statutory factors (a) through (c) and (e) are not determinative, in the Union's view, they favor the Union's Final Offer.

The Union cites Criterion (d) (comparables) as favoring the Union's proposal as to the retiree health insurance premium contribution, and also finds Criterion (h) as highlighting the more reasonable nature of the Union's final offer, especially with respect to the thought that trying to anticipate the nature of employees' use of sick leave is speculative.

The Union notes the admission of the City Administrator that neither Final Offer will reduce the total cost to the Employer and that the City has the ability to pay either offer.

The Union argues that under the City's offer decreases in the City's liability for retiree health insurance premiums will be relatively slight – about \$10,000 per employee on a \$144,000 exposure. However, the Union continues, “the difference to an individual firefighter is significant in that fifty percent of the cost of the health insurance is worth about \$9,000 a year for a family plan.”

Finally, the Union underlines Local 1923 President Wendt's hearing testimony that the membership rejected the proposed agreement because the decrease in benefits of 60% for employees hired after 1/1/08 was a radical one that would result in 60-year old firefighters refusing to retire because of the reduced City health insurance premium contribution. This, the Union argued, is not beneficial to the City, the firefighters or the people that live in the City of Wauwatosa. The Union also recalled that President Wendt additionally relayed membership concerns that the proposed two-tier benefit system would be divisive to the bargaining unit, pitting the interests of older firefighters against those of those more recently hired.

CITY:

The mediation sessions conducted by a WERC mediator began in May 2008 and resulted in what the City describes as a tentative agreement (TA). The Union took the TA back to its members, where it was rejected by the membership. The City agrees with the Union that the City's final offer in this arbitration proceeding mirrors the contract proposal rejected by Local 1923 members.

The parties' respective final offers match on many issues, with only three issues unresolved. All three issues relate to the health insurance benefit for retired employees: 1) City paid premium for retiree health insurance, 2) annual unused sick leave contribution into RHCSA, 3) one time lump sum payment into RHCSA. The vendor for the City's RHCSA is listed as a fourth issue, but the City does not name its preferred vendor in its formal final offer because the City believes it has the unilateral discretion to make the vendor selection. However, the City

prefers ICMA as the vendor, noting that ICMA is the vendor for other RHCSA for all other City groups.

The City explains it has two protective service groups – firefighters and police. City non-protective service employees are represented by AFSCME (DPW, Parks and Water), OPEIU (clerical) and IBEW (911 Dispatchers). Collective bargaining with all five represented groups took place during the same time period. Each contract was scheduled to expire at the same time. The police unit was the first to reach a voluntary settlement with the City. Currently, the City has reached voluntary settlements with all remaining employee unions except for IAFF Local 1923. The City asserts it tries to obtain consistency and equity among all its employees, represented and unrepresented.

City States Primary Goal Was to Constrain Health Insurance Costs

The City asserts that this goal became necessary because of the rate of increase of health insurance costs and was set by the City’s Common Council. Wages and benefits represent 77% of the City’s general fund budget, and grow at a rate faster than the City’s capacity to generate new revenue. The City specifically focused on constraining retiree health insurance costs because 1) City bargaining in previous years had not focused on this cost; 2) it is a significant cost to the City’s health plan and projected to be so in the future; 3) the benefit was out of line with the City’s comparables.

City Cites Significant Retiree Health Care Insurance Cost and Predicts Future Cost

According to the City, a high number of City employees are anticipated to retire within the next two years: 82 City employees are currently eligible to retire with City paid health insurance and another 111 will be eligible to retire with that benefit within five years. 10.3% of eligible employees are projected to retire each year. By 2012, the City projects that its health care costs for pre-65 retirees will increase by \$1,580,000. According to a 2006 City-hired GASB 45 study, from 2006 to 2008 the number of retired City employees on City paid insurance will rise 64.38%, and the City’s future liability for post-retirement benefits is \$55 million.

City Says Its Retiree Health Insurance Benefits Out of Line with the Comparables

The City also found its retiree health insurance benefit was out of line with its comparables. If the City’s premiums increased 10% over those of the previous year, the retirees were responsible for only that portion of the premium that exceeded the 10% increase. According to the Union analysis, the comparable municipalities on average contributed 76% of retiree health insurance premiums, not Wauwatosa’s 110% (of the previous year’s premium.)

Moreover, according to Union Exhibit 6, the City’s eligibility for retiree firefighter health insurance was and continues to be more generous than all but one of the comparables. Wauwatosa firefighters are eligible for City paid health insurance at age 50 regardless of the number of years of service, a standard that only West Allis equals. The average eligibility age among the comparables is 51.5 coupled to 11 years of service.

The City asserts that since the final offers of both parties each propose a two-tier benefit, the Union's concern about the two-tier system is not relevant in determining which offer is more reasonable. Every employee hired after 1/1/08 under this proposal will decrease the City's future liability.

City Denies Its Offer Lacks Quid Pro Quo

Although the City negotiated a reduction in City paid premiums for retiree health insurance, it replaced that benefit with City contributions into Retirement Health Care Savings Accounts. The contributions into the accounts are tax-free, the funds appreciate tax-free, and are tax-free when used. Once the City contributions are sent to the vendor for deposit into individual employee accounts, the individual employees may direct how the funds in their respective accounts are invested, based on the employees' individual risk tolerance.

City funding of these accounts will take place in three ways: 1) annual unused sick leave conversion; 2) unused sick leave conversion at retirement; 3) a one-time lump sum contribution. This is a new benefit; previous City-firefighter contracts did not provide for any cash value of employee unused sick leave time. The combined value of these City contributions is designed as a *quid pro quo*. In current dollars, the approximate value of 10 years on a family plan is \$144,000. The City's proposal reduces the City's current 110% monthly retiree premium contribution to 50%, but replaces that reduction with the aforesaid contributions into a RHCSA, the approximate value of a 10-year family plan is \$133,000.

City Describes Its Proposed Changes to Retiree Health Insurance Benefit as Equitable and Consistent with Internal Comparables

The City's final offer to the firefighters in this matter is identical on salary and benefits issues to City's contract with the City's police union, the firefighters' closest internal comparable. Negotiated changes with the general employee groups are consistent with the police package and the final offer to the firefighters, but not identical.

For instance, police and firefighters become eligible for City paid retiree health insurance at age 50, regardless of years of service, and the average age of retirement for the protective service groups is age 55. General employee groups (including non-represented) must be at least 55 years of age and have 15-years of service. The average retirement age for general City employees is age 59. For both protective and non-protective employee groups, eligibility for the health care benefit extends until the retiree is eligible for Medicare. Thus, the City has a 4-year lengthier exposure of City paid premiums for the protective class than for the general, non-protective class.

The City's final offer on salary and health insurance benefits is identical to the Police Union, Local 1923's closest internal comparable.

While the City's offer to the firefighters is not identical to the changes negotiated with the general employee locals, it is consistent and equitable among the groups as expressed above. Moreover, the difference extends only far enough to preserve a more generous benefit for the

protective service employee groups.

This results in a more generous benefit than that which general employees received because the benefit replaces what was a more generous benefit to start and the intent was to make an equitable change.

City Urges City's Final Offer More Reasonable Because It Mirrors Tentative Agreement Reached by the Parties.

According to the Union, the arbitrator should show deference to the Tentative Agreement the parties reached prior to entering the arbitration process. The Union was well represented throughout the negotiating and mediation process by knowledgeable, experienced negotiators.

The City contends the current situation is similar to a 1994 instance where this Local rejected a tentative agreement its negotiators had reached with the City. In finding for the City, Arbitrator Flaten concluded that changing that would risk unrest from the other City unions. *Wisconsin Professional Firefighters, Local 1923 and the City of Wauwatosa*, WERC Dec. No. 27869-A (Flaten, 1994).

City Says Either Set of External Comparables Support City's Proposal; OK to Drop Menomonee Falls as Comparable, but Prefers Arbitrator Grenig's

The City claims its final offer is supported by the comparables proposed by either party.

Arbitrator Grenig initially established the seven comparables the City urges in a 1999 arbitration involving the 911 dispatchers. *IBEW v. City of Wauwatosa*, Dec. No. 29479-A (Grenig, 4/99). Grenig's list consisted of Brookfield, Greenfield, Menomonee Falls, Oak Creek, South Milwaukee, Waukesha and West Allis. Two years later Arbitrator Engmann found the same list of comparables to be appropriate in police arbitration. *In Re Wauwatosa Peace Officers v. City of Wauwatosa*, Dec. No 29936-A (Engmann, 3/01).

The City offers no objection if Menomonee Falls is dropped as a comparable in this case.

City urges that Comparables Show City's Overall Retiree Health Benefit More Reasonable than the Union's Offer.

The City's Final Offer has a larger sick leave conversion than all of the comparables in two ways: 1) it provides for up to 1940 hours of unused sick leave to be converted at retirement (more than any comparable) and 2) it provides an annual sick leave conversion of unused sick leave up to 36 hours (no other comparable provides annual sick leave conversion).

The City urges that Union Ex. 5 shows the City's proposed total sick leave payout is more than double the next highest comparable. Union Exhibit 4 demonstrates that for the comparables the average number of months of retiree health insurance premium paid by sick leave conversion is 51.77. The number of months of retiree health insurance premium would be paid by sick leave conversion under the City's proposal is 79.91. The number of months of

retiree health insurance would be paid by sick leave conversion under the Union's proposal would be 133.18.

Based on Union Exhibit 5, the City's proposed change to a 50% retiree health insurance premium contribution is neither high nor low, but within the range and therefore reasonable.

The City also emphasizes that the City's proposed change to 50% contribution in retiree health insurance premium contributions affects only a small group of employees – i.e. those hired after 1/1/08. But the much larger group of employees in the firefighter bargaining unit that were hired before 1/1/08, will continue to receive a retiree health insurance premium contribution equal to 110% (of the previous year's premium). This is not apparent in Union Ex. 5, says the City, but when this information is factored into a comparative analysis of the respective premium contributions of the comparables listed in that exhibit, the City believes it has the most generous retiree health insurance contribution.

City Predicts Change in Economic Circumstances Support City's Attempt to Reduce Compensation Expenditures through Sick Leave Conversion for Current Employees.

The City anticipates intergovernmental revenues are likely to decrease, expenditure restraint limits are likely to be lower, City contributions to the Wisconsin Retirement System will increase by 10% or \$250,000, and assessed property values in the City are likely to decrease.

City Says Final Offer Better Manages Future Retirement Health Insurance Expenses.

The City's believes its long-term and short-term interests are better served by its offer, stating that cost shifting alone is not a good cost constraint strategy. The City contends that its proposal creates a greater incentive for employees (and later retirees) to help control health insurance costs. The lower the cost the lower will be the 50% premium contribution. Moreover, the City adds, the City's Offer provides for sick leave conversion for current employees, which will reduce sick leave usage and result in a reduction of overtime and possibly staff reductions.

City Cites Merits of ICMA Selection as RHCSA Vendor

The Union's Final Offer proposes a specific vendor, Nationwide, for the RHCSA. The City suggests this Union preference seems to be based solely on familiarity with the vendor, not concerns about the plan itself. The City acknowledges that its Final Offer does not identify a vendor. But, it points out, neither did any of the previously settled contracts.

The City notes it has established RHCSA's with ICMA for all other employee groups. On this basis, the City argues, it is administratively more efficient to use ICMA as the vendor with the firefighters' Local. In addition, ICMA charges lower fees to employees and offers greater flexibility in permitted fund usage with ICMA than does Nationwide.

UNION REPLY

The Union contends the City's proposal to slash by half its contribution to the affected members' post-retirement health insurance premium, beginning in 26-years, is based on speculative assertions as to the City's future liabilities.

The Union says Local 1923's offer is more reasonable. It recognizes the City's need to trim post-retirement health care costs, but proposes a more equitable treatment of those costs for new members, with only a 30% reduction in the City's contribution to post retirement health insurance premium costs.

Union Disputes City Assertion that Parties Had Tentative Agreement

The Union disputes whether the parties actually reached a tentative agreement and repeats the hearing testimony of Local President Hank Wendt: "I would hesitate to call it a tentative agreement. More of an impasse where we could not agree on a final offer." President Wendt merely tried to inform the members about the terms. He stated he "would hesitate to say he was promoting ratification of the contract as presented from the City." What the City calls a tentative agreement was its contract proposal and that was rejected by the membership.

There is Insufficient Employee Retirement Data in Support of City's Offer Based on City's Desire to Move the Internal Comparables to the same Retiree Health Benefit Level

The City asserts that its final offer is consistent with bargains reached with other City unions. But the Union argues that selection of the most reasonable offer should not turn on concerns about internal comparability of health care benefit concerns.

The Union accuses the City of ignoring Union's concessions resulting in health care savings as manifested in the parties' final offers. The Union believes savings resulting from the City's offer will not take place until after the new hires begin to retire, and that will be about 26-years away. The Union acknowledges that the City's post-retirement premium share for current employees is not reduced by its offer.

The Union also acknowledges that the City's 50% retiree health insurance premium offer to the firefighters does mirror the City's new contract with its police union. But, the Union claims it does not mirror its agreement with Local 35 OPEIU, under which the City will continue to pay the full health insurance premium for retirees, not exceeding 110% of the previous year's premium. The Union notes that agreements with other City unions include length of services requirements for premium contribution.

The parties agree with the Union's premise that the average career of a firefighter is 26 years, with firefighter retirement at age 53. The City's other employees retire later, but according to the Union there is no evidence regarding the comparable cost that provide support for the City's Final Offer on the basis of its desire to move all internal comparables to the same retiree health insurance benefit level. The City's desire for consistency must draw support from the shared characteristics of the employees involved in this the dispute with those of employees

in the other City bargaining units, but the City has not offered such proof.

Moreover, consistency with only one other labor contract (police) is not a reasonable basis for an arbitral choice of the City's Final Offer in this matter.

External Comparables Support Union's Final Offer as the More Reasonable Choice.

The Union claims the City's assertion that Union Ex. 5 presents a distorted comparison of the smaller group of potential City retirees hired after 1/1/08 against all retirees in the comparable communities misses the point. According to the Union, the point of the comparative data in that exhibit is to show what retirees hired after 1/1/08 would be required to pay for their health insurance benefits as compared to firefighter retirees in other municipalities.

In addition, the Union asserts the City also misses the fundamental distinction in the parties' final offers. The Union's final offer saves the City money, while costing retirees less contribution to their health insurance premium contribution. The City's final offer allows all employees to convert one-fourth of their accumulated unused annual sick leave at the end of each year. The Union's final offer applies this sick leave conversion only to new hires. The comparable labor agreements offer no guidance on this issue. However, as noted in Local 1923's initial brief, the Union's offer ranks closer to that of the comparable cost for West Allis and is closer to the average cost of all the comparable municipalities.

Conclusion

The City's final offer rests on pure speculation as to health care and sick leave usage, as well as costs, wages and the size of the work force in 26-years. In the words of Arbitrator Petrie, "guesswork cannot be elevated to the same level of importance as certain of the more definitive arbitral criteria such as comparisons." Joint School District No/ 1, City of Lake Geneva, Dec. No. 19817-A (Petrie, 4/83)

CITY REPLY

Tentative Agreement is Evidence of the Reasonableness of the City's Offer.

The City insists that the Union bargaining team took a tentative agreement back to the membership because the team thought the terms of the agreement were reasonable. The City does not emphasize the Union's rejection of the tentative agreement as evidence of bad faith.

Two-Tier Issue is Irrelevant in Assessing which Offer More Reasonable

The City argues the Union's argument citing discomfort with the two-tier retiree health insurance issue should be given no weight. Moreover, since both Final Offers now feature a two-tier benefit proposal, the two-tier aspect of the benefit has no relevance in determining the reasonableness of one offer over the other.

City Says City Offer Better Manages City Resources in both Short and Long Term

The Union argues that its offer is more reasonable because it believes its offer is better for the City. The Union may have expertise in determining what is good for the Union, but the City suggests that the Union does not have the same level of expertise in determining what is best for the City.

The City claims a long-term advantage to the City is that a 50% health insurance premium contribution from retired employees instead of a 30% contribution represents a greater decrease in the City's liability for retiree health insurance.

The City also claims a short-term advantage to the City, because the premium differential for future retirees will result in a greater immediate reduction in the City's projected OPEB liability as it is reflected in the 2010 GASB 45 report.

The City also believes that the inclusion of annual unused sick leave conversion into RHCSA's for current employees, as well as new hires, there is a potential to reduce sick leave utilization..

City's Offer More Reasonable because it is Consistent with Internal Comparables

The City contends internal equity and consistency has long been important to the City in its labor relations. But the Fire Union's offer would create a benefit package that is different from that of any other employee group – represented or non-represented. The premium amount is different, the sick leave conversion is different, and the Union's offer requires the City to establish a RHCSA with a second vendor.

Furthermore, the City continues, under the Union's offer, future firefighter retirees would have a City paid premium contribution 20% more generous than the police retirees.

Finally, as to the vendor issue, the City argues that multiple vendors with multiple post-employment benefits make administration of the benefit more complicated and difficult. While this issue may not initially seem as significant as some of the others, the City suggests it is an important one.

City Insists Its Offer Includes Sufficient Quid Pro Quo

The City recounts the City Administrator's testimony that the proposed new benefits of the City paid contributions in RHCSAs were intended as to replace the reduction of City contributions to retiree health insurance premium costs from 110% (of the previous year's premium cost) to a 50% contribution. The City contributions to the RHCSAs consist of three items: annual unused sick leave conversion, unused sick leave conversion at retirement, and a onetime lump sum contribution.

The City contends that Union Ex. 4 and 5 and City Ex. 15, Part 3 demonstrate the value of these contributions as a *quid pro quo*. Furthermore, the City says there is no set requirement as to what constitutes a sufficient *quid pro quo*, citing, *Oconto Unified School District -Clerical and Professional*, Dec. No. 30295 (Torosian, 10/9/02), The City also cites *Mondovi School*

District (Support) Dec. 30633-A, (Knudsen, 1/2/04) in which the arbitrator concluded that rapidly increasing insurance premiums provide a sufficient basis to justify a change in the *status quo* without a traditional *quid pro quo*.

The City disputes the Union argument that the City's sick leave conversion and lump sum payment cannot be considered as a *quid pro quo* for the reduction in City premium contributions for retiree health insurance. The City strongly objects to the Union's view that these new benefits should be more properly be considered as the *quid pro quo* for the new cost sharing premium contributions both City and active employees will make under both parties' respective final offers,

The City notes that at present there is no premium cost sharing on its health insurance for active employees. The City states this bargain resulted in all groups, including the firefighters, agreeing to very low current employee contributions. No *quid pro quo* was necessary because the City's benefit was so out of line with the comparables. Even if one were required there is a sufficient *quid pro quo* contained in the City's offer to cover the new, nominal cost sharing contributions.

Furthermore, the City points out that all of the comparables have some current employee premium contribution (City Ex. 11 and Table A at end of City Reply Brief). The contributions agreed to by the Wauwatosa employees are still the lowest of the comparables. Thus, according to the City, there is no need for a *quid pro quo*.

If the arbitrator disagrees, the City again points to its offer, which includes annual sick leave conversion and a one-time lump sum payment of \$250 (for current employees). The City believes the RHCSA contributions for current employees can be linked to the new cost sharing premium contribution for current employees, and the RHCSA contributions for new hires linked to the reduction in City paid health insurance premiums for retirees.

The City urges the arbitrator to consider also other enhancements for the Union in the proposed labor contract, including a 30% increase in the dental benefit, more than reasonable annual wage increases over the three year contract term of 3.25%, 2.75%, and 2.75%, increased eligibility for spouse/dependent insurance from 12 to 24 months for employees killed in the line of duty, and accelerated vacation eligibility by two years.

City Says Offer More Reasonable under Factors (d) (Comparability) and (f) (Total Compensation) of the Arbitral Criteria

The City alleges that the Union's discussion of the external comparables is misleading, for the Union discusses 2009 retirees as if they are under the City's proposed plan. In its Initial Brief at p. 9, the Union states: "In 2009, under the City's proposal a Wauwatosa retiree will bear a premium cost \$754.98, which is \$375.33 more than the comparables average cost."

This, avers the City, is not true. In 2009 a Wauwatosa retiree pays nothing under the City's proposal. Under the City's proposal a Wauwatosa retiree will not pay any premium until employees hired after 1/1/08 begin to retire.

The City's proposal of 50% premium contribution for retiree health insurance is neither high nor low among the comparables. Another important comparison is one that includes the entire retirement health insurance benefit. The City's proposed retirement health insurance benefit includes not only the City premium contribution, but also very substantial City paid contributions into RHCSAs.

Union Ex. 4 indicates that the City's total proposed retirement benefit package is in line with the comparables and the Union's proposal is not.

EXTERNAL COMPARABLES

The Union proposes the following eleven communities, each with a full-time fire department, to serve as the external comparables, in this matter: Brookfield, Cudahy, Franklin, Greendale, Greenfield, North Shore, Oak Creek, South Milwaukee, St. Francis, Waukesha and West Allis. While Brookfield and Waukesha are located in the adjoining Waukesha County, all of the comparables are what the Union describes as the metropolitan Milwaukee area. The Union further notes that Arbitrators Flaten, Petri and Weisberger have found West Allis as the most comparable city to Wauwatosa as to their firefighters.²⁰

The City finds the comparables established by Arbitrator Grenig²¹ instructive. In that matter involving the Wauwatosa's dispatchers, represented by IBEW, Local 494, Grenig named eight communities as appropriately comparable to Wauwatosa, namely, Brookfield, Greenfield, Menomonee Falls, New Berlin, Oak Creek, South Milwaukee, Waukesha, and West Allis. The arbitrator found each of these comparables to be geographically proximate to Wauwatosa and each to have paid fire departments. Arbitrator Engmann subsequently followed Grenig's list in a *police* arbitration three years later.²²

The City suggests the comparables used in the recent Wauwatosa arbitrations involving the IBEW and the police be again used in this case. But the same comparables for City dispatchers and City police arbitrations are not necessarily appropriate for the Wauwatosa firefighters. In the context of this case, the Village of Menomonee Falls presently relies for its fire protection on a combination of a small handful of paid full-time firefighters assisted by a very large component of part-time, part-time on call, and volunteer firefighters. The combination may work well for the Village of Menomonee Falls with its somewhat smaller population and equalized value, but despite its geographic proximity to Wauwatosa the

²⁰ *Wauwatosa Professional Firefighters, Local 1923 and the City of Wauwatosa*, WERC Dec. No. 27868-A (Flaten, 8/94); *City of Wauwatosa Fire Department*, WERC Dec. No.19760-A (Petrie, 3/83); *City of Wauwatosa (Fire Dept.)*, WERC Dec. No. 18414-A (Weisberger, 8/81). Arbitrator Flaten identified only the cities of Milwaukee, West Allis, Waukesha, Brookfield and Greenfield as individual comparables, and referred to, but did not individually identify, another group offered by the Union. Arbitrator Petrie found communities that have an identity of interest and a common proximity to Milwaukee offer the most significant comparisons. Arbitrator Weisberger identified only West Allis as a comparable. She mentioned other local and statewide comparables as having been presented, but did not identify them. All three arbitrators found West Allis as the closest comparable to Wauwatosa.

²¹ *In Re IBEW v. City of Wauwatosa*, Dec. No. 29479-A (Grenig, 4/99).

²² *In Re Wauwatosa Peace Officers*, Dec. No. 29936-A ((Engmann, 3/01)..

municipal fire protection structure of the Village is too dissimilar to the structure of the City's Fire Department to offer a suitable basis for comparisons. Perhaps in recognition of this, the City expressed agreement to dropping Menomonee Falls from its list of comparables.

The City makes no similar agreement with respect to New Berlin, but notes that the City of New Berlin has no firefighter union. Although New Berlin is geographically proximate to Wauwatosa, the fact that its *firefighters* are *not* union-represented makes its comparability with any represented department of marginal value. Perhaps in tacit recognition of this, neither party submits any data from New Berlin.

The Union's preferred list of eleven includes neither Menomonee Falls nor New Berlin. The City's list of seven, including both Menomonee Falls and New Berlin, does not include Cudahy, Franklin, Greendale, North Shore and St. Francis. Thus, the parties agree on six: Brookfield, Greenfield, Oak Creek, South Milwaukee, Waukesha and West Allis. Since each of these six are geographically proximate to Wauwatosa, have full-time fire departments with union represented firefighters, *and are agreed upon as appropriate comparables by the parties* in this matter, I will include them as primary comparables without further review. .

Given the major differences in fire department staffing strategies between Menomonee Falls and Wauwatosa, in this case the City's willingness to drop Menomonee Falls from its suggested list of appropriate comparables is sensible, understandable, and should be honored.

Five additional comparables are suggested by the Union, namely, North Shore, Franklin, Cudahy, Greendale and St. Francis. Each shares characteristics with the other comparable communities the Union nominates: each offers fire protection to its residents through professional, full-time firefighters who are municipal employees, but represented by collective bargaining agents. Each is in the Milwaukee metropolitan area and each can claim a certain geographical proximity to the City of Wauwatosa.

As to inclusion as an external comparable in this matter, however, each lacks the concurrence of the City, a fact that requires further investigation.

The North Shore Fire Department shows a combined equalized value of \$9.5 billion and serves a combined population of almost 67,000 persons. Created in 1995 pursuant to Wis. Stats. 61.65 and 61.30, it is a non-taxing governmental entity that relies for funding on the seven communities it serves. Six years ago, Arbitrator Stephen Bard used "the three W's" (Wauwatosa, Waukesha and West Allis) as primary comparables for the North Shore Fire Department, noting this had been an established practice of the parties in previous negotiations.²³ With that background and history, it appears North Shore should be included in the group of appropriate comparables for Wauwatosa.

The Franklin Fire Department, although having less than one-half the number of full-time firefighters as Wauwatosa serves a population of almost 34,000 and an equalized value slightly

²³ *North Shore Fire Dept.*, Dec. No. 30481A (Bard, 7/03). This appears is the most recent case involving fire department comparables in the Milwaukee metropolitan area cited by either of the parties..

more than half of Wauwatosa's. The median value of its owner-occupied homes (\$156,400) slightly exceeds that of Wauwatosa (\$138,600).²⁴ Franklin is a comparable community to Wauwatosa.

This leaves Cudahy, Greendale and St. Francis to be considered. Each of these three has a substantial variance from Wauwatosa as to equalized value, population, and/or number of full-time firefighters. Additional statistics indicate Cudahy reports a median home value of \$106,200; Greendale reports a median home value of \$147,100; St. Francis reports a median home value of \$95,400.²⁵ Some may suggest using these smaller communities only as secondary comparables.

The Union has offered no compelling reasons to include them in the comparability pool; yet, the City has articulated no compelling reason to exclude them. However a cursory review of their respective top firefighter wage scales and selected health benefits reveals that they are not markedly out of line with those of the other comparables, and the median home values in communities these respective fire departments protect are not insignificant.²⁶ Each of them, of course, are in the Milwaukee metropolitan area, have a geographical proximity to Wauwatosa, and a represented full-time fire fighting force.²⁷ Given Arbitrator Petrie's somewhat dated, general observation that "the record is quite clear that the parties have historically compared Wauwatosa firefighters with other municipalities in the Milwaukee metropolitan area," their inclusion as primary comparables may also have some bargaining history basis.

Thus, based on the information presented in this matter and the foregoing discussion the primary comparables shall be: Brookfield, Greenfield, Oak Creek, South Milwaukee, Waukesha, West Allis, North Shore, Franklin, Cudahy, Greendale, and St. Francis.

DISCUSSION

In making an award, the arbitrator is required to select the final offer of one of the parties without modification. Wis. Stats. 111.77(4)(b).

The arbitrator is further directed to "give weight" to an eight-point criteria contained in Wis. Stats, 111.77(6)(a) through (h).

Factor (a) inquires whether the offers are within the lawful authority of the employer to grant. This factor is not in dispute.

Factor (b) inquires as to any stipulations between the parties. The parties reached several stipulations in this matter, both in the course of their negotiations and during the arbitration hearing. Those reached during the arbitration are reported in an earlier section of this award. They are neither argued by the parties nor appear to have any appreciable impact on the

²⁴ City Ex. 4.

²⁵ Ibid.

²⁶ City Ex. 5.

²⁷ *City of Wauwatosa Fire Department*, Dec. No. 19760-A (Petrie, 1983). Arbitrator Petrie does not individually identify the "other municipalities" to which he refers..

arbitrator's selection of one offer or the other.

Although the agreements reached by the parties during negotiations are not presented as formal stipulations, it is clear that on a number of important issues the respective proposals of the parties are identical matches and represent *de facto* stipulations of the parties.²⁸

Factor (c) directs the arbitrator's attention to "the interests and welfare of the public and the financial ability of the unit of government to meet these costs.

The primary issue in this case is retiree health insurance – an economic issue. It may be helpful to re-summarize the parties' positions and arguments.

The City's offer includes a reduction of its contribution to retiree health insurance premiums from the current "not to exceed 110%" of the previous year's premium cost to a 50% level of the premium. (The reduced City contribution to the retiree's health insurance premium would apply only to employees hired *after 1/1/08, and would not affect any retirement-eligible employees hired before 1/1/08.*) Based on actuarial projections and current retirement patterns within Local 1923 (that neither party disputes)²⁹ the impact of the proposed retiree premium reduction would not be felt by any firefighter hired *after 1/1/08* for some 26-years following the date of hire.

In an attempt to induce the Union to accept the reduction, the City also proposes: 1) annual conversion of 1/4th accumulated, unused sick leave up to 36-hours; 2) additional sick leave conversion at retirement for employees hired after 1/1/08; employees hired after 1/1/08 would also receive a one-time \$500 contribution to the RHCSA; those hired before 1/1/08, a one-time \$250 contribution to the RHCSA.

The Union is in agreement with the lump sum proposal to employees hired after 1/1/08 but opposes the \$250 lump sum contribution to employees hired before 1/1/08. Similarly, while the City offers an annual 1/4th accumulated unused sick leave conversion right to *all* bargaining unit members, *regardless of the date of hire*, the Union would limit the right to only new employees hired *after 1/1/08*. The Union claims these benefits to the current employees are unnecessary because they will continue to have, in effect, fully paid retiree health insurance when they retire. Eliminating the \$250 lump sum payments, alone, the Union argues, would result in immediate savings of \$23,000 to the City. Eliminating annual sick leave conversion

²⁸ The parties submitted matching proposals on matters that included a salary schedule, (partial) new health insurance provisions for employees (dealing with minimum "wellness" requirements as well as contributions to health insurance premiums), increased insurance eligibility for a spouse/dependent of member killed in the line of duty, increased dental insurance benefits, vacation time improvements, and provisions relating to military leave.

²⁹ The average age of newly hired firefighters in Local 1923 is 27 years. The average age of retirement of Local 1923 members has been 53-years. The parties project approximately a 5% annual retirement rate of bargaining unit personnel.

rights for employees hired before 1/1/08, the Union adds, would also result in additional savings.

Once the post-1/1/08 new hires begin to retire in 26 years, the City projects significant savings from the retiree health insurance premium contribution reduction it now proposes. The savings are projected to amount to \$10,000 per retiree in current day dollars.

The City agrees that it has the ability to meet the costs imposed by either final proposal, and that question is not in issue. Actually, the parties' respective final offers in this matter constitute an anomaly of sorts: on its face, the Union's final offer appears to generate more immediate savings for the City than does the City's final offer. Under the Union's offer, the City would not be obligated to pay one-time \$250 lump sums nor to grant any annual accumulated, unused sick leave conversion rights to employees hired before 1/1/08. Elimination of the former item (\$250 lump sum payment) would provide immediate savings to the City of \$23,000.

The City counters with the argument that the Union's final offer may provide an immediate short-range benefit of \$23,000 to the City, but by ridding itself of a long-term future unfunded liability the City's offer generates long-term City savings. The City further notes that every new employee hired after 1/1/08 decreases the City's exposure to unfunded, future liabilities, and that will have an immediate and continuing reflection in the City's GASB 45 state-mandated reports as to unfunded liability for post-employment benefits.³⁰ The City also suggests that its offer to grant accumulated, unused sick leave conversion rights to all employees may have a short-range cost-saving benefit of reducing sick leave usage by employees.

Local 1923 President Hank Wendt spoke to "the interests and welfare of the public" portion of Factor (c). President Wendt predicted that with the proposed reduction of City retiree health insurance premium contributions to only one-half the premium cost, firefighters would stay in active service longer – even to age 60 – which President Wendt believes is contrary to the best interests of the City, the firefighters, and the residents of the City – and probably is.³¹

The City just as firmly believes that constraining health insurance costs – in particular retiree health insurance benefits – is essential to the City's fiscal health and overall best interests, and thus promotes the interests and welfare of the public. It probably does.

In the end, each of the economic predictions and projections the parties have exchanged appear rational and plausible – and each fully justifies Victorian Historian Thomas Carlyle's description of economics as "the dismal science." As an arbitrator, not an economist, I choose neither to derogate nor rebut any of them.

³⁰ GASB 45 is a standard that was created by the Government Account Standards Board (GASB), which sets the standards for governmental entities. GASB 45 introduces to public sector entities the requirement to calculate, record and report their costs associated with OPEB (Other Post Employment Benefits), to assess the long-term financial implications of OPER transactions. From *Wisconsin Professional Police Association/LEER Division and City of Franklin*, pp. 17-18, Dec. No. 32579-A (Dichter, 5/09).

³¹ President Wendt also expresses concern with the potential divisiveness and poor morale that may be created by a two-tier benefit system. That is a concern potentially affecting the interests and welfare of the public (in 26 years). But the concern exists regardless of which offer is selected, for each proposes a two-tier system.

On the record before me, however, I find Factor (c) equally supportive of each offer: the City has the financial ability to meet the costs of either offer; each offer promotes the interests and welfare of the public, albeit with a different focus.

Factor (d) is the “comparability” criterion in which the arbitrator is directed to compare the competing offers of the parties with the wages, hours, and conditions of employment of other employees performing similar services in comparable communities and with other employees generally:

- 1) In public employment in comparable communities.
- 2) In private employment in comparable communities.

External Comparables

Each party claims the external comparables support its final offer. The Union offers a preliminary caution, however, that the comparables would not offer guidance to the arbitrator as to the choice of competing offers.

As to the external comparables, I take the Union’s point. Such guidance as may be gleaned from the examples presented by the external comparables does not appear in sharp relief. One example is illustrative and helps explain how each party can truthfully claim support from the external comparables.

In this example, the Union argues that only one comparable (Waukesha) currently provides retiree health insurance premium contributions at the 50% level that the City proposes. Using its original proposed list of eleven comparables, the Union correctly claims that firefighter retirees in its eleven community list of comparables pay an average of 24.24% toward their health insurance premiums. The Union finds its own proposal for retirees to contribute 30% far closer to the comparables’ average of 24.24% than the City’s 50% proposal. On its face, the Union’s arithmetic is correct. Clearly, 30% *is* closer to 24.24% than 50%.

The City’s objects to this comparison, pointing out that the City’s offer also provides for a continuation of the *status quo* for employees hired prior to 1/1/08. (At present, this employee group is an overwhelming majority of the bargaining unit.) The City correctly notes that until bargaining unit employees hired after that date reach retirement eligibility, the City’s offer requires **no** health insurance premium contributions from retiring Wauwatosa firefighters and that situation will continue for an approximate 26 more years. Since literally all of the comparables require some health insurance premium contribution within a range of 5 to 50% of the premium cost, the City correctly infers this comparison denotes the Wauwatosa offer as *currently* more generous to an overwhelming majority of its retirees on this issue than any of the eleven comparables.

The Union responds that its comparison “is not to be viewed through the lens of the 110% retiree paid health insurance premium enjoyed by employees hired before 1/1/08, but rather to show what retirees who are hired after 1/1/08 would be required to pay for their health

insurance benefits, as compared to firefighter retirees in the comparable municipalities.”³²

But what the Union’s comparison fails to include is that *both* the City’s proposed contribution of 50% of the premium cost for retiree health insurance, and the Union’s proposed contribution of 30% are not projected to go into effect until *approximately 26 years later*.

The caveat to the City’s conclusion, of course, is that in the course of 26 years, as the current overwhelming majority of bargaining unit members who now benefit from the City’s current retiree premium contribution generosity retire and are replaced by new hires, the current majority will have dwindled to zero. At that point, all active employees will be under the City’s 50% contribution proposal – but conditions in the comparables (including their identity) can only be speculated.

Conceivably, comparing the competing offers with what each of the comparables will be paying in premium contribution 26 years or for that matter, even the municipalities in the pool of comparables might offer more insightful guidance. But that, of course, smacks of an Aesopian “belling the cat” suggestion – i.e., far easier said than done, for it requires a clear crystal ball or some other uncanny means of accurately predicting the future to which neither parties nor the arbitrator currently has access.

Similar frustration is experienced with other attempts to measure the competing offers against the comparables. The problem is not that either party is deliberately dissembling. Indeed, each is reasonably accurate in describing both its own offer and that of the other. The difficulty lies, instead, with the attempts of each to propose an insightful comparison where the changes in the *status quo* at least as to retiree health insurance premium contributions proposed by each will not take effect for at least a quarter of a century into the future.

Both parties compare their respective proposals with respect to accumulated unused sick leave conversion and lump-sum payments into either a retirement health care savings account of an RHCSA or post-employment benefit plan. These offers differ in some respects, but will take effect upon the issuance of the arbitrator’s award. These are new benefits for the Wauwatosa firefighters, and are presumably measurable against similar benefits provided (or not) by the comparables.

Yet, each of these proposals is an integral part of the entire retiree health care packages each party proposes, including premium contribution reductions and lump sum City contributions to employees’ Health Cost Savings Accounts. Any conclusions to be drawn from the current state of sick leave conversion in the comparables will show the City offering more than twice the amount of any sick leave conversion offered by the highest comparable, overlooking the obvious fact that that offer is made chiefly to persuade the Union to accept a proposed reduction in City retiree health insurance premium contributions *to be implemented in 26 years* – which is also when the benefit of the sick leave conversion proposals and City RHCSA contributions will first actually be reaped by firefighter retirees hired after 1/1/08 (by then an overwhelming majority of bargaining unit employees). Retiring firefighters hired prior

³² Union’s Reply Brief, p. 5.

to 1/1/08 will continue to receive the City payment of the full amount of the retiree health insurance premium, not to exceed 110%, throughout their retirement.

Accurately converting these facts into more complete comparisons with external comparables would require a good deal more detail and complexity (necessarily including economic assumptions) than those offered in this matter. The results might not differ greatly from the inconclusive ones offered by the parties in this matter.³³

The Union cites the two-tier benefit plan as a basis for its discomfort with the City's final offer. Neither party presents any data from the comparables on this point. Perhaps there is none. In any event, since each party's offer contains a two-tiered benefit based on the employees' dates of hire, that feature fails to distinguish each offer from the other and is immaterial.

Under all of the circumstances, I find justification for each party's claim that the external comparables supports its particular offer. But given the 26-year difference in perspectives from which the comparisons are offered, I find the results inconclusive, and equally supportive of each offer.

Internal Comparables

The internal comparables in this case consist of four other City of Wauwatosa employee unions, namely: Local 305, AFSCME (Parks, Forestry and DPW employees; Local 494, IBEW (911 Dispatchers); Local35, OPEIU (Clerical employees); Wauwatosa Peace Officers Association (police officers).

The City has reached voluntary settlements to successor agreements with each. The police officers were the first.

In late 2007, the City and police union reached a voluntary agreement to a three-year agreement, running from 2008 to 2010. The agreement includes new retirement health care provisions virtually identical to those the City proposes to the firefighters in this proceeding.

This is an internal comparable that provides undeniably strong guidance to the arbitrator. Firefighters and police officers continue to be justifiably linked as protective service groups, statutorily and in the mind of the public. The respective (though usually different) duties of each include physically exhausting, debilitating and at times personally dangerous activities, to which employees in non-protective or general service groups are not normally exposed. This is recognized, in part, by earlier retirement opportunities afforded them than to general service employee groups. Another consequence of this linkage is that a police officer bargaining unit and a firefighting bargaining unit employed by the same municipality usually constitute a close and accurate internal comparable for the other. That is no less true in this case.

³³ Presumably, they would also require a good deal more preparation time and expense the parties would understandably prefer to avoid. After all, though data driven, interest arbitration was not designed to provide full-time work for professional economists.

This is not to say that the agreements with other (non-protective service) internal bargaining units can be safely disregarded. As comparables they also should be accorded an appropriate weight as to matters or interests they may share both with each other and the protective service units. Clearly, a discernable, consistent and equitable benefit structure and pattern of bargaining treatment by the Employer of its internal bargaining units is entitled to greater arbitral weight than a more scattered, haphazard approach. This does not mean the pattern of treatment to all the internal units must be necessarily identical. Obviously, variances in response to individual, significant differences among internal bargaining units created by duties, work schedules, and legal rights may be made from time to time and still remain within the guidelines of a consistent and equitable policy pattern.

In this case, the City also negotiated retirement health care changes with its non-protective or general service employee groups, and these examples, also, provide guidance. The City acknowledges the changes made with them are not identical to those negotiated with the police and now offered to the firefighters, but does claim they are equitable in their own right, as well as consistent with the structure the City and the police officers together initiated and the City now offers the firefighters.

The City points out that the general service employee groups have different eligibility requirements for City subsidized retiree health insurance than do the protective service groups. For the former, eligibility is based on age and years of service (age 55 and at least 15 years of service). In the latter group (in Wauwatosa) protective service employees become eligible at age 50, with no minimum service requirement. In general, protective service employees tend to retire earlier than the non-protective employees.

The eligibility for each group extends to the time the retiree becomes Medicare-eligible at age 65. Thus, City exposure to retiree health care costs for the retired protective service employees tends to be ten years (of City paid premiums), but for the general employees is only about six years

Thus, it appears to me the City negotiated the same retiree health care *structure* for changes with its general employees as it did with the police, even though there is some variation in the numbers. Put another way, I am satisfied these changes represent a rational, equitable and consistent continuation of the retiree health benefit structure that began with the settled police package that is now offered to the firefighters.

City premium contributions to retired non-protective service employees were reduced as they were with the police³⁴. Unlike the police package offered to the firefighters in this proceeding, premium contribution rates based on years of service were established for the non-protective service units.

More specifically, each of the City's collective bargaining contracts with its non-

³⁴ Retiring police officers hired *before* 1/1/08 will be entitled to receive the full amount of the retiree health insurance premium, not to exceed 110% of the previous year's premium. Police officers hired **after** 1/1/08 will receive the same 50% premium contribution offered to firefighters hired **after** 1/1/08.

protective employee internal units, including AFSCME (Council 48, Local 305), IBEW (Local 494), and OPEIU (Local 35) include provisions reducing City contributions to monthly retiree health insurance premiums for employees hired **after** 1/1/08 from the former “full amount but not to exceed 110% of the preceding premium” level to a uniform years of service approach under which the maximum City contribution (for 30 years of service) would be 50% of the premium.³⁵ Each agreement also contains sick leave conversion provisions identical to those accepted by the police officers and currently offered to the firefighters.

Finally, in the non-protective units RHCSA’s were established with City contributions, with IMCA retained as the administrator (vendor), just as agreed with the police officers and now offered to the firefighters.³⁶ Sick leave conversion (annual and at retirement) was also established on a two-tier basis, with the dividing line for individual employees the same test of whether the employee was hired before or after 1/1/08. One-time lump sum payments to the retiree’s RHCS account of \$250 or \$500, depending on the date of hire were also provided.

The internal comparables present three salient facts emerge: 1) the Wauwatosa Peace Officers Association – the internal group most closely comparable to the firefighters, are covered by virtually the same retiree health care provisions as the City offers the firefighters; 2) the remaining internal comparables are covered by retiree health care provisions similar in structure to those accepted by the police bargaining unit.³⁷

In my view, based on the foregoing discussion, the internal comparables examined under Factor (d) strongly favor the City’s Final Offer. Particularly persuasive, of course, is the example of the Wauwatosa Peace Officers Association, but the other three are also indicative of an internal structure that has been mutually established through collective bargaining.

In an interest arbitration involving these parties in 1994, Arbitrator Milo Flaten observed:

“It is important that municipalities, especially the size of the municipality at hand, should attempt to have consistency and equity in the treatment of its employees. Hard feelings are avoided when all city employees are treated alike. Deviations from a historically established pattern can be disruptive and have a

³⁵ City Ex. 1. Retiring non-protective employees hired **before** 1/1/08 will be entitled to receive the full amount of the retiree health insurance premium, not to exceed 110% of the previous year’s premium.

³⁶ The Union’s final offer names “Nationwide” as administrator for post-retirement health insurance benefits, while the City prefers IMCA as “vendor” for the RHCSA’s. Hearing testimony indicates that notwithstanding IAFF familiarity with Nationwide, IMCA not only offers lower employee fees, but due to its current status as RHCSA vendor for each of the other internal bargaining units, would provide greater administrative convenience to the City. Tr. 84-85. While not a deciding difference, it offers further support of the internal comparables for the City’s final offer.

³⁷ Non-represented employees are not usually regarded as a persuasive internal comparable because their wages, hours and conditions of employment are usually not bargained, but imposed. In this case, however, it may be worth noting that the non-reps also received the same retiree health care benefits as those negotiated with the internal general service employee bargaining units, thus presenting an overall pattern of internal consistency..

negative effect on employee morale.”³⁸

Factor (e) directs the arbitrator to consider the average consumer prices for goods and services known as the cost of living.

The parties have agreed on employee wages, including annual wage increments on January 1 of each year of their three-year successor agreement, beginning with 2008. Cost of living data is not at issue.

Factor (f) directs the arbitrator to give weight to the overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

No issues were raised by the parties in connection with this factor.

Factor (g) directs the arbitrator to give weight to changes in any of the foregoing during the pendency of the arbitration action.

The parties did not indicate any changes in the foregoing had taken place during the pendency of this arbitration action.

Factor (h) instructs the arbitrator to consider and give weight to 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 public service or in private employment.

Two such issues have been raised.

Tentative Agreement

The City continues to insist that its Final Offer first took form as a “Tentative Agreement” (TA) between the City and the Union. The City explains that TA was reached after the parties had engaged in several days of lengthy, exhausting mediation sessions conducted by WERC Mediator Marshall Gratz, only to be derailed by the refusal of the Union membership to ratify.

Emphasizing that knowledgeable and experienced negotiators represented the Union when the TA was reached and citing arbitral precedent, the City argues that under those circumstances the TA contained a certain degree of reasonableness to which the arbitrator in this proceeding should give “great deference.”³⁹

³⁸ *Wauwatosa Professional Firefighters Association, Local 1923, and the City of Wauwatosa*, Dec. No. 27869-A (Flaten, 9/94).

³⁹ CIB, p. 13.

In the past, there has been some arbitral recognition that even though a negotiated tentative agreement was ultimately rejected for ratification by either party, the TA must have contained a degree of reasonableness or the parties never would have agreed to it. *Milwaukee Metropolitan Sewage District*, Dec. 24813, (Kerkman, 5/88); *City of Oshkosh (Public Library)*, Dec. No. 24800 (Kerkman, 2/88).

Eight years earlier, Arbitrator Kerkman had tempered this recognition with the caution that “(i)f arbitrators accepted the principle that once a tentative agreement were entered into that agreement should be enforced, the result would undoubtedly have a chilling effect on collective bargaining.” *Kenosha Unified School District No. 1*, Dec. No. 17368-A (Kerkman, 4/80).

That caution was also reflected more recently by this arbitrator: “The legal authority to ratify a tentative agreement necessarily implies the legal authority to reject it, subject, of course, to long established parameters of good faith bargaining. This is a fundamental cornerstone of union democracy.” *Human Services Board of Forest, Oneida and Vilas Counties*, Dec. No. 30718-A (Hempe, 5/04).

In this proceeding, however, the parties cannot agree on whether or not there actually was a “tentative agreement” between them. The significance lies in the general duty of each party’s negotiators to support any tentative agreements reached in negotiations with its respective principals and to urge ratification. Even if ratification by one party ultimately fails, the fact that a tentative agreement had been reached is typically cited by the other party as a further indication that the TA was reasonable, particularly where, as here, the alleged TA is subsequently presented as a final offer..

However, Local President Hank Wendt (an experienced member of the Union negotiating team) would not acknowledge that a tentative agreement had been reached.⁴⁰ He later added that in taking the proposal back to the membership, he was “trying to inform our members and trying to take emotion out of the issues.”⁴¹

Other than its bare assertion that there was a tentative agreement to a successor agreement, the City presents no firm evidence in support of its claim. Although tentative agreements are usually evidenced by each party’s initialing a written document containing the agreement, the City offered no evidence of this kind. I also note it is not unusual for parties engaged in lengthy, exhausting collective bargaining without reaching a voluntary settlement to agree that the union take the employer’s last best offer back to the membership without endorsement by the union negotiators. Finally, the City in this case does not emphasize the Union’s rejection of the tentative agreement as evidence of bad faith (bargaining),⁴² and apparently has neither sought nor intends to seek in a separate forum any sanctions against the Union for alleged bad faith bargaining.

⁴⁰ The Local President testified: “I would hesitate to call it a tentative agreement . . . more of an impasse, where we could not agree on a final offer.” Tr. 60.

⁴¹ Tr. 67.

⁴² CIB, p. 2.

President Wendt’s testimony that he was trying to inform members and take emotions out of the issues, the absence of any independent evidence of a tentative agreement, and the City’s apparent forbearance in making any accusations of “bad faith bargaining” against the Union, lead me to conclude the parties simply did not have a “meeting of the minds” as to whether there was a tentative agreement. Thus, I accord no more deference to the City’s final offer in this proceeding on the basis of an alleged tentative agreement than its provisions otherwise merit under the criteria of Wis. Stats. 111.77(6) (a) through (h).

Quid Pro Quo

The Union faults the City for failing to provide a *quid pro quo* in connection with its proposal to reduce retiree health insurance benefits newly hired firefighters. Translated to English, the Latin phrase literally means “what for what.”

Arbitrator Petrie offered a more enhanced definition:

“When unilateral demands for significant modification of or elimination of previously negotiated wages, hours or terms and conditions of employment arise at the bargaining table, the proponent of change is normally faced with the need to provide an adequate *quid pro quo* in support of proposals, and falls well within the scope of Wis. Stats. 111.70 (6) (h).”⁴³

In addition to a sufficient *quid pro quo*, the proponent must also demonstrate a compelling need for the change and that the proposed change reasonably addresses the need for change.⁴⁴

The City insists that its offer includes a reasonable *quid pro quo*. The City first recites its rapidly escalating retiree health insurance costs as constituting the basis for its retiree premium contribution offer. Notwithstanding the Union’s argument that the City’s proposed change will produce only a sliver of savings – and no savings for the next 26 years – the City points to both long term and short-term savings, both direct and indirect, it hopes to garner through its proposal. In short, the City’s offer seeks to compensate its proposed reduction of its contribution to retiree health insurance premiums with new benefits the City calculates as worth \$133,000 (over a ten-year period), and estimates cost savings to the City of \$10,000 per retiree.⁴⁵

The Union counters by pointing to the earlier bargaining concessions it has already made.⁴⁶ The Union claims the City has already spent the *quid pro quo* it now offers for its disputed proposal to reduce City contributions to retiree health insurance premiums for newly

⁴³ *City of Marinette (Firefighters) and Marinette Firefighters, Local 226, IAFF*, Dec. No. 30771-A, (Petrie, 12/04).

⁴⁴ *Washington County (Social Services)*, Dec. No. 29363-A (Torosian, 1998).

⁴⁵ The City calculates the average of single and family health insurance costs over a ten-year period in current dollars as \$144,000.

⁴⁶ These concessions include the Union’s agreement to increase current employees’ contributions towards health care premium costs from zero to \$480 per year, as well as agreement to “wellness” provisions that will also impact employees, raising costs for some, lowering costs for others.

hired employees in exchange for the earlier bargaining concessions to which the Union has already agreed.

The City vigorously dissents. It agrees that the earlier agreement not only includes the union concessions to small health insurance premium increases and “wellness” provisions, but also asserts it provides increased dental benefits, generous wage increases over a three-year period, an increased insurance eligibility for spouse/dependents of members killed in the line of duty, and accelerated vacation enhancement eligibility. The City points out that the “concessions” to which the Union points applied only to current employees without regard to date of hire, and the benefits the City describes apply to the same group.

It is clear that in their earlier negotiations, the parties agreed to make changes in health insurance benefits. Those changes did not affect *retirement* health care issues, but only health insurance issues pertaining to current employees (which would necessarily include the relatively few, if any, hired since 1/1/08.) The changes were a two-way street. While the Union conceded premium health insurance cost sharing and “wellness” provisions, it also obtained significant benefits described in the preceding paragraph, and no stretch is required to define them as a *quid pro quo* for the concessions.

In contrast, the health insurance benefits in dispute in this proceeding affect only retirement health care. In my opinion, the sick leave conversion proposals and lump sum contributions the City proposes with respect to its retiree health premium contribution also qualify as a *quid pro quo* even though part of it adds new benefits for current employees who, by the Union’s admission, are not being asked to give up anything. There is no rule or precedent of which I am aware that disqualifies a proposed *quid pro quo* because it is more generous than it need be.

I do not find determinative the Union’s concern that the City’s proposed new benefits will not cover entirely the cost of the existing benefit it proposes to alter. In this case, the City values ten-years of the average cost of a single and family health insurance at \$144,400 and proposes replacement benefits it calculates to have a value of \$133,079.95.

But as Arbitrator Torosian pointed out:

“There is no set answer as to what constitutes a sufficient *quid pro quo*. It is, in the opinion of the Arbitrator, directly related, inversely, to the need for change. Thus, the *quid pro quo* need not be of equivalent value or generate an equivalent cost savings in the change sought. Generally, the greater the need, the lesser the *quid pro quo* (required).⁴⁷

In my view the City has persuasively indicated a need for the proposed change. Few arbitrators would deny that rapidly escalating health insurance costs on behalf of municipal employees have become at least a matter of serious concern in many municipalities and an actual

⁴⁷ *Oconto Unified School District (Clerical and Professional)*, Dec. No. 30295-A (Torosian, 2002).

crisis in others.⁴⁸

In this case, the City also faces a high number of potential employee retirements in the next five years, and projects not only an annual retirement rate of 10.3%, but increased health care costs for pre-65 retirees that by 2012 will be \$1,580,000. At present, matters have not reached the level of an immediate crisis from which the City requires drastic, immediate relief. Still, the situation is a serious enough concern to have engaged the full attention of policy makers and contract negotiators from each of the parties, which if unresolved, will present crisis level problems to each.

Under these circumstances, the *quid pro quo* the City offers for the concession it seeks is not unreasonable. The change the City proposes will have no out-of-pocket financial impact on bargaining unit retirees for more than a quarter century (which provides abundant time for the parties to negotiate changes or adjustments should there be a significant change in circumstances and a perceived need to do so). Significantly, the same bargain proposed here has already been offered to and accepted by the firefighters' closest comparable internal bargaining unit, the police officers' union. The three other internal bargaining units of general service employees have also accepted similarly constructed City labor contract proposals.

SUMMARY

Both parties have struggled diligently to devise a reasonable solution for their mutual recognition of the need to remediate their mutual problem of rapidly escalating health insurance costs and a high number of anticipated retirements within the next five years. They are to be congratulated for not only the health insurance cost savings measures to which agreement was reached in negotiations, but agreement to contractual improvements of direct benefit to the employees as well. Also encouraging is the parties' agreement to create a joint labor/management health insurance standing committee to meet on at least a quarterly basis. Fortunately for both the Union and the City, the situation they currently face it is not yet of dire crisis proportions. But the evidence also suggests that the situation may still be troublesome in the future and require further attention by the parties, regardless of which final offer is selected in this proceeding.

The respective remedies each party proposes are not far apart. The remedy proposed by the City in this matter is neither radical nor drastic. The remedy proposed by the Union is not merely a token. Coupled with the changes to which the parties agreed in their earlier negotiations, either offer provides a basis for remediation of a mutual problem.

The law requires me to select one offer or the other, in its entirety.

In this case I am selecting the City's Final Offer as the most reasonable, under the circumstances. My decision is based primarily on the strong support the City's offer is provided by the Internal Comparables. They demonstrate a discernable and equitable consistency between

⁴⁸ See *Mondovi School District (Support)*, Dec. No. 30633-A (Knutson, 2004); *Buffalo County (Human Services)*, Dec. No. 1625-A (Hempe, 2006)..

the City's Final Offer in this matter and the contract settlements reached with the four other City bargaining units. The example of the police union is of particular note for the reasons earlier described.

AWARD

Based on the evidence and testimony adduced at hearing, my consideration and assessment of the issues, the briefs and arguments of counsel, my weighing and application of the criteria factors contained in Wis. Stats. 111.77 (6) (a) through (h), and the entire record herein, I direct the City's Final Offer, together with all items to which previous agreements have been reached by the parties as set forth in their respective offers as well as their on-the-record stipulation to prescription co-pay, be included in the parties' successor 2008-2010 contract.

Dated this 25th day of August 2009, in Madison, Wisconsin.

A. Henry Hempe, Arbitrator