

JUN 10 2013

STATE OF WISCONSIN
Before the Wisconsin Employment Relations Commission
RELATIONS COMMISSION

In the Matter of the Petition of

City of Oshkosh

Case 391 No. 71740 MIA-3045

For Final & Binding Arbitration Involving
Law Enforcement Personnel of

[Dec. No. 53976-A]

City of Oshkosh

Appearances:

Mr. William G. Bracken, Labor Relations Coordinator, Davis & Kuelthau, S.C., 219 Washington Ave., Oshkosh, WI 54903-1278, on behalf of the City.

Mr. Frederick Perillo, Esq., The Previant Law Firm, 1555 N. RiverCenter Drive, Suite 202, Milwaukee, WI 53212, on behalf of the Oshkosh Professional Police Association (OPPA).

Award

On September 4, 2012, the City filed the captioned petition. On September 27, 2012, WERC General Counsel Peter Davis met with the City (a municipal employer) and OPPA (a labor organization) in an effort to mediate a dispute between the parties concerning a successor to the 2010-11 contract, covering wages, hours and working conditions for the non-supervisory law enforcement personnel represented by OPPA and employed by the City. On the date, Davis was satisfied that an impasse within the meaning of Sec. 111.77(3) of MERA existed. Accordingly, Davis collected the parties' final offers and on October 25, 2012, Davis issued a Notice of Close of Investigation and Advice to Commission, which appended the parties' final offers. On November 1, 2012, the WERC furnished the parties with a panel of arbitrators. The parties selected Arbitrator Sharon A. Gallagher to hear and resolve the dispute and the Commission advised Arbitrator Gallagher of her selection by Order Appointing, dated November 1st and sent her the parties' certified final offers.

Thereafter, the parties agreed to hold the hearing in this case on March 7, 2013, in Oshkosh, Wisconsin. No stenographic transcript was taken. At the hearing, the parties had a full opportunity to present opening statements, testimonial and documentary evidence, and to make objections. The City submitted a binder with 21 Tabs of documents (many of multiple pages) and the Union also submitted a binder with 21 Tabs of documents (many of multiple pages). All proffered documents were admitted into this record. Both parties made opening statements and they explained their documents and asked questions regarding their opponent's documents. The parties waived closing arguments.

The parties agreed that the hearing would be considered closed on March 7, 2013, for the purposes of settlements/final offer certifications of comparables but they agreed that the record would remain open for the City to submit corrected Tabs 8 and 18A and for the receipt of post-hearing briefs. The parties agreed to submit their initial briefs by e-mail to the Arbitrator and directly to each other by close of business on April 11, 2013. The Arbitrator received reply briefs by May 23, 2013, as agreed by the parties, whereupon the record herein was closed.

Issues:

The parties' certified final offers are appended in this Award as Appendixes A and B. Although both offers list Wages, Vacation, Insurance Benefits, Pension and Duration as being disputed, the sole issue in dispute between the parties is Pension for the year 2013.

The City's offer on the disputed pension item reads as follows:

4. Article IX, Pension. Add:

Effective November 1, 2012, an employee shall contribute 3.0% of his/her gross wages toward the Wisconsin Retirement System (WRS).

Effective January 1, 2013, an employee shall contribute his/her portion of the Wisconsin Retirement System (WRS) on the same basis as general employees as determined by the Employee Trust Funds (ETF).

The Union's pension offer reads as follows:

4. Article IX, Pension. Add:

Effective **November 1, 2012**, an employee shall contribute **3%** of his/her gross wages toward the Wisconsin Retirement System (WRS).

Effective **January 1, 2013**, an employee shall contribute **4.5%** of his/her gross wages toward the Wisconsin Retirement System (WRS).

Effective **January 1, 2014**, an employee shall contribute **his/her portion of the Wisconsin Retirement System (WRS) on the same basis as general employees as determined by the Employee Trust Fund (ETF).**

Statutory Criteria:

The relevant portion of §111.77(6), Wis. Stats. reads as follows:

(am) In reaching a decision, the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to the factors under par. (bm). The arbitrator shall give an accounting of the consideration of this factor in the arbitrator's decision.

(bm) In reaching a decision, in addition to the factors under par. (am), the arbitrator shall give weight to the following factors:

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

Introduction:

The City of Oshkosh, a city of 66,080 inhabitants, is situated in northeastern Wisconsin on Lake Winnebago, about equidistant from Fond du Lac to the south and Appleton to the north. On February 25, 2013, the Oshkosh Chamber of Commerce published an article indicating that the Oshkosh-Neenah MSA (Metropolitan Statistical Area) was the "Best Performing Small City in Wisconsin and 43 out 179 communities across the country for 2012" (U. Tab 5, Financials). The Area Development Magazine has recently named the Oshkosh-Neenah MSA the "best area" in the state of Wisconsin for economic and job growth, ranking it 59th out of 360 MSAs throughout the U.S. in 2012 (U. Tab 5). Eau Claire was ranked 61st, Appleton ranked 88th, Green Bay ranked 142nd and Fond du Lac was ranked 229th by this magazine for the same period.

In 2012, employment grew in Oshkosh (a net job increase of 361), where the unemployment rate was 6.3%, 1.3% below the national rate of 7.6%. Commercial and industrial building permits increased in 2012: 981 permits were issued, totaling \$99 million, which total included \$31.5 million for U.W. – Oshkosh construction. One hundred Oshkosh executives were surveyed by the Oshkosh Chamber of Commerce. The Chamber reported that sales increased in 2012; that in 2012, 67.8 percent of area executives stated profits were up for 2012; that 38.5 percent of executives added to their

workforces and 70 percent of executives had increased wages. For 2013, 67.6 percent of Oshkosh executives believe sales will outperform 2012; 31.7 percent of executives described the 2013 business climate as better than 2012, and 35 percent of executives surveyed expected to hire additional employees in 2013 (U. Tab 5).

An October 9, 2012, Memo was issued by the City's Long Range Finance Committee (U. Tab 5, Financials), which showed the following:

1. The Committee compared Oshkosh to Appleton, Eau Claire, Waukesha, Janesville and West Allis, all communities of similar population.
2. Services provided by the City of Oshkosh are very much in line with the compared cities.
3. With the exception of 2006, when the City built Pollock Pool, Oshkosh
 - a. was last in General Fund Expenditures per capita and well below average thereon;
 - b. was at or near the bottom of taxes levied from 2005 through 2010;
 - c. was the lowest in equalized values (the sum of all property values) for 2001-2010; and
 - d. had a higher than average debt burden, spending 26.43% of its entire General Fund Budget on debt service.

In October, 2011, City Manager Mark Roloff submitted a proposed budget for 2012, the highlights of which he listed as follows:

- Begin 2013 by absorbing a projected 2012 operating deficit of \$800,000 due to unbudgeted costs of pay and benefits that occurred through the collective bargaining process.
- The 2013 budget is balanced, even after making up for the 2012 operating deficit.
- The 2013 budget includes a net reduction of 8.25 full-time positions and 0.4 (FTE) part-time positions in Public Works, Fire, Police, Administrative Services, Parks and Community Development. These reductions will result in the layoff of 4 current full-time and 2 current part-time employees. Furloughs are also proposed in the Library and Museum to avoid staff cuts in these areas.
- Although the budget assumes no across-the-board increases for employees in general and non-represented groups, step increases have been factored in, along with a \$200,000 allowance for pay-per-performance raises and equity adjustments for public safety personnel.
- The 2013 budget incorporates provisions that all employees (both represented and non-represented) will pay full employee contributions to the state pension system beginning January 1, 2013, and up to a 12% share for health insurance, effective January 1, 2013.
- The property tax rate is \$8.786 per \$1,000 of assessed valuation. This rate is slightly smaller than the \$8.796 in 2011, yet reflects increased funds for the city's increasing debt burden for street improvements.
- In accordance with recommendations from the Long Range Finance Committee, increased fees are proposed in Community Development, Fire, Public Works and Parks. These proposed fee increases will be brought before Council as separate items during October and November.
- Transfer \$325,000 in costs for hydrant rental from the Fire Department to the Water Utility.

- Allocate nearly \$1 million to equipment replacement to lessen the city's debt burden in accordance with recommendations from the Long Range Finance Committee and the city's bond rating agency (ER Tab 13A; U. Tab 6).

In this proposed budget, Roloff included 0% on wages for police, fire and transit employees and proposed that all City employees should pay twice as much toward their insurance premiums (from \$92 to \$190/mo. family) and 100% of the employee share of WRS as of January 1, 2012. But since labor contracts with police, fire and transit were then unsettled, these assumptions proved unrealistic and caused an \$800,000 shortfall for 2012. Thereafter, the City had to propose a budget that would decrease services (by \$1.1 million), raise the levy for 2012 (by 2.2%) and use 2.5% of the City's general fund balance to make the 2012 budget balance. Despite these difficulties, the Council approved a one-time 4% non-salary bonus to be paid to non-represented employees to help defray the cost of their paying 100% of the employee share of WRS and increased health insurance premiums (U. Tab 8).

Background:

The parties stipulated to the following relevant, general background facts concerning the City's bargaining units and its overall employee complement. As of December 31, 2012, the City employed 502 full-time, 69 part-time, 26 seasonal and 408 non-represented employees. Also, as of December 31, 2012, there were 76 officers, 16 supervisors (all represented) and 34 unrepresented employees in the Police department. There were 92 represented firefighters, 2 represented supervisors, and 8 non-represented employees in the Fire department. There were 22 represented Transit workers and 6 non-represented employees in that department.

As of March 27, 2013, the City employed 519 full-time, 67 part-time, 45 seasonal, and 433 non-represented employees. Roughly 127 employees lost collective bargaining rights under Act 10 and became a part of the City non-represented group of "general employees". Also, as of March 27, 2013, there were the following employees in the listed departments with increases over 2012 levels listed in parenthesis:

Police:

Officer unit = 78 (2)
 Supervisor unit = 16
 Total = 132 (4)

Fire:

Firefighter unit = 99 (7)
 Supervisor Unit = 5 (3)
 Total = 109 (6)

Transit:

Transit unit = 23 (1)
 Total = 29

There is no significant dispute over costing in this case. The base year is 2011. The City is using 2011 staff (78) cast forward and top patrol with 8 years' seniority for its costing and comparisons. The Union's documents are different. The Union uses 79¹ as the number of unit employees (the number employed as of January 1, 2013). The Union does not use a cast forward method. Rather, the Union has used straight wage increase percentages for comparisons and it has shown pay rates for each classification across the six years used by the contractual pay grid to show total unit wage costs. The Union's documents show the greatest number of officers (35) have 5+ years of seniority; and the second greatest number of officers have 4 years' seniority (U. Tab 4, Financials). The total of these two groups represents approximately 60% of the unit.

Traditionally, five classifications have been covered by the parties' labor agreements: Police Officer, Police Specialist, Police Liaison Officer, Detective and Detective II. The 2010-11 contract contained a salary grid whereby OPPA employees received automatic increases in each of six years following hire. Of the 78 unit employees, 7 (or 9% of the unit) were hired after August 1, 2011. As such, these seven have been required to pay 100% of the employees' share of WRS since their hire (ER. Tab 8, amended). Also, 70 unit employees are covered by City health insurance (U. Tab 4, Health Ins.).

Regarding unit employee turnover, the City showed that from 2006 through 2012, 36 officers (or 7 per year) left City employment and 11 officers (31% of the unit) retired. There have been no layoffs from 2006 to 2012. From 2009 to 2012, the City has received 1,321 applications for 15 open positions. Fifteen total candidates were hired for those openings (ER. Tab 12B).²

Wage Tentative Agreement:

All officers employed prior to January 1, 1969, receive longevity pay depending on length of service and whether they have participated in the educational improvement program (Article XV).³ Under the tentative agreements herein, wages will rise

2% on 1/1/12
0.5% on 11/1/12
2.5% on 1/1/13
2.5% on 1/1/14.

¹ Because there is minimal overall effect on WRS and costing and wages are not in dispute, using 79 or 78 total employees is not a significant difference. The final offers herein can be properly compared. The Arbitrator will use the City's number, 78.

² The Union did not dispute this evidence.

³ City Tab 7B showed that longevity across the unit cost the City \$29,500 in 2011 and \$32,250 in 2012. These amounts are .066% and .071% of total unit employee salaries in the Police Department. In 2013 and 2014, longevity will be .071% and .074% of total salaries in the unit. As there is no wage dispute here, these figures are effective no matter which offer is selected.

Thus, total salaries (including longevity) would rise by \$440,548 over the term of the contract (ER. Tab 16). For 2011, the City's documents (ER. Tab 9) showed that top patrol (8 yr.) rates, including longevity, were

\$30.92/hour
+ \$20.92 benefits
\$51.84 total compensation

Under the parties' wage stipulation herein, top patrol wages will rise as follows:

\$31.55	2012
\$32.31	2013
\$33.10	2014

Under the City's offer, total City-paid benefits will decrease across this contract as follows:

- \$19.16	2012
- \$17.45	2013
- \$18.64	2014

Under the Union's offer, total City-paid benefits will decrease across the contract term as follows:

- \$19.16	2012
- \$18.14	2013
- \$18.64	2014

Therefore, under both offers, unit employees will experience decreases in total compensation in 2012 and 2013, according to the City's documents, as follows:

<u>City Offer:</u>	- 13¢/hr (-2.17%)	2012
	- 95¢/hr (-1.87%)	2013
	+ \$1.99/hr (3.99%)	2014

<u>Union Offer:</u>	- 13¢/hr (-2.17%)	2012
	- 26¢/hr (-0.52%)	2013
	+ \$2.04/hr (2.04%)	2014

Notably, in 2014, the City's offer on wages and longevity for top patrol only will equal 79¢/hour while the Union's offer (assuming top patrol + 5 years) will be 10¢/hour more, or 89¢/hour (ER. Tab 9).

At Tab 10A, the City compared Oshkosh police officer wages to the CPI for 1998-2012. The City showed that OPPA employees hired in 1998 and still employed in 2012 and moving through the salary schedule will be receiving 30%, or \$1176.02/month

more in wages in 2012 under the City's offer than the CPI Adjusted Salary from 1998 to 2012. From 1998 to 2012, the CPI-U increased by 41% (ER. Tab 10C).

Health Insurance Tentative Agreement:

The City has historically offered single, dual and family health insurance coverage to its employees. From 1999 through 2002, City employees paid nothing toward their health insurance premiums. Premiums rose 52 to 53% in 2001. In 2002, the City went to Preferred Provider (PPO) and Exclusive Provider (EPO) plans, to help control premiums. In 2002, premiums changed to from -3% to +13% and in 2003, premiums increased by 10%. In 2003, for the first time, City employees began paying a portion (3%) of health insurance premiums. In 2004, premiums for the EPO fell by from -7% to -16%, while PPO premiums remained almost flat, rising by 3% (Single), falling by -7% (Dual) and rising by 1% (Family).

In 2005, PPO premiums rose 20%, while EPO premiums remained the same, as in 2004, because there was a Health PPO (with or without HRA) to cover its employees. In 2012, premiums fell by -7% for the EPO and by -16% for the PPO. But for 2013, premiums are projected to drop by \$60,145, or -1.3%. For 2014, insurance premiums are projected to rise by only 2.2%, \$21,169 for this unit.

City Tab 11B showed the following:

1. The average premiums from 1999 through 2013 were
\$536/mo. Single
\$992/mo. Dual
\$1,346/mo. Family
2. On average, the City paid 95% of premiums and employees paid 5% of premiums for this period.
3. Premiums increased from 1999 through 2013 by
8% Single
6% Dual
7% Family

The Union's documentation regarding health insurance analyzed insurance premium increases to the 70 unit employees that they asserted were covered by City insurance in 2011 (U. Tab 4, Health Ins.), as follows:

<u>EPO</u>	Single	18
	Dual	9
	Family	<u>29</u>
		56
<u>PPO</u>	Single	5
	Dual	3
	Family	<u>6</u>
		14

As of February, 2013, unit employees were covered as follows (after the EPO was removed as an option:

<u>PPO</u>	Single	17
	Dual	14
	Family	<u>39</u>
		70

The Union showed that for 2011-12, unit employees covered by the EPO experienced 6% premium increases in all categories or total increases of 43.33% (Single), 42.48% (Dual), and 44.11% (Family). For 2011-12, although Single, Dual and Family PPO premiums decreased by -6.96%, -8.21% and -7.93%, respectively, the employees' share of premiums either remained at 7% or increased to 11%, and deductibles and OOPMs increased (U. Tab 4, Health Ins.). For 2012-13, Single, Dual and Family PPO-covered employees will experience 56.5% increases in premiums (all covered employees will pay 12% of premiums), although deductibles and OOPMs will remain the same as in 2011-12.

Finally, it is undisputed that City monthly premiums have traditionally been higher than the average of external comparables. City Tab 18D showed that City unit employees will pay more toward insurance premiums in 2013 than all external comparables used by the City except Sheboygan. At Tab 11, the City compared 2013 actual Police Health monthly premiums to the CPI-Adjusted, which showed that City of Oshkosh premiums were between 97.2% and 107% greater than 1998 premiums, adjusted by the CPI, from 1998 to 2013 (ER. Tab 11B).

Internal Comparables:

Wages:

The City currently has five internal bargaining units (not including its non-represented employees): Transit, Police, Fire, Police Supervisors and Fire Supervisors. Prior to Act 10, the City had four additional bargaining units (Library, Public Works, Clerical/Paraprofessional, Professional) that were represented by AFSCME, but post-Act 10, these four units lost their rights to collectively bargain and AFSCME chose not to recertify. The employees in these units then became "General Employees", and they are included in the "non-represented" employee group referred to by the parties herein (ER. Tab 15A). Transit represented employees were not represented before Act 10, but they are now covered by a 2012-14 collective bargaining agreement. The City Library had a non-union unit before Act 10, and the City continues to recognize that group as such.

An historical analysis of the various City units shows that in 2002, Fire and Fire Supervisor and the Police Supervisor employees received 3.75% ATB increases, while Police unit employees received 3.0% ATB increases. Notably, the Police unit was the only unit that went to Arbitration over a 2001-03 contract, and Arbitrator McAlpin selected the City's offer in an award dated November 4, 2002. The record shows that the

Police and Fire unit employees have otherwise had the same ATB increases from 2003 through the 2012-14 contract involved herein.⁴

The Fire employees' settled wages for 2012 are 2% on 1/1/12 and 0.5% on 11/1/12, the same as all other wage settlements for 2012 except Transit (ER. Tab 15B). The City executed its contract with the Firefighters on October 24, 2012. The Transit wage settlement for 2012-14 is different from both the City's offer to the Police and the Fire settlement, as follows:

1%	1/1/12
1%	11/1/12
2.5%	1/1/13
2.0%	1/1/14 (ER. Tab 15B)

Regarding City Transit employees, for 2012, the City and the Transit Union agreed to a work hours change for employees, which resulted in Transit unit employees working and being paid for 40 hours per week for the 2012-14 contract, rather than for 38.4 hours per week, as was previously the case (ER. Tab 16A).⁵

Health Insurance:

Regarding health insurance for internal units, it should be noted that City Tab 15B compared insurance settlements for its non-represented employees, Transit and Fire units to the Police bargaining unit. No settlements have been reached in the Police Supervisor and Fire Supervisor units. For non-represented employees, employee insurance contributions were frozen at 2012 levels through January 1, 2013 (at 11%) and contributions after January, 2013, and for 2014 for these employees were listed as "TBD". Also, no evidence was submitted to show how many employees of the totals in Transit, Fire and Non-Union units take insurance and of these, how many take Single, Dual and Family.

WRS:

Regarding the City internal units' WRS contributions, several background facts are important. In Wisconsin, municipalities have traditionally been required to pay more toward WRS for their Fire employees than they must pay for their Police employees because the former are not covered by Social Security. Also, for decades prior to 2010, municipal employers in Wisconsin paid both the full employee share of WRS and the full employer share of WRS for all of their unionized bargaining unit employees. For example, in 2011, the City paid 17% toward WRS for Fire employees, 14.7% toward WRS for Police employees, and 11.6% for all other union employees (ER. Tab 15C).

⁴ For 2007-09, Public Works, Library, Clerical/Paraprofessional, Professional and Fire unit employees went to arbitration. The City lost all of these cases except Fire, but the City's wage offer to the Fire unit matched its settlements with the Police and the Fire Supervisor and Police Supervisor units.

⁵ This schedule change resulted in Transit employees receiving an 8.7% increase. This total included a 4.2% increase for the schedule change, and added 1.6 hours per week of work.

With the passage of Act 10, municipal employers began to seek relief from the burden of these payments, but in the City of Oshkosh no changes were achieved by the City until the 2012-14 agreements were opened and some were settled. Thus, for 2012, Transit and Fire employees agreed to pay 3% toward the employees' share of WRS.⁶ In August, 2011, non-represented employees were required by the City to pay the full employee WRS share (then 5.8%), but they received a 4% lump sum bonus and annual movement on the salary grid with a satisfactory evaluation, to help defray the employees' WRS contribution costs. Also, in 2012, there was a City option to grant these employees up to a 20% bonus based on performance. For 2013, the year in dispute herein, Fire, Transit and non-represented employees will pay 6.65%, the full employees' share. (Police Supervisors and Fire Supervisors are not settled.)

External Comparables:

The City is using six eternal city comparables in this case: Appleton, Fond du Lac, Green Bay, Menasha, Neenah, and Sheboygan. The Union is using the same six city externals, but it adds a seventh eternal comparable, the Winnebago County Sheriff's Department. For Fire unit employees, the City will pay 14.2% in 2012, 12.35% in 2013, and 13% in 2014 and if the City's offer is selected here, the City will pay 11.9%, 9.75% and 10% toward Police unit employees' WRS for those years.

Wages:

Looking first at the base year 2011, Appleton and Fond du Lac Police unit employees received 0% wage increases. In Green Bay, Police unit employees received a 2.5% increase on their wages in 2011. Oshkosh Police employees received a 2.0% wage increase in 2011. All other municipal comparables in the City's external comparables group received split increases on the dates listed and annual lifts, as follows:

	<u>Percentage</u>		<u>Lift</u>
Menasha	1/1	1%	3.0%
	7/1	1%	
	12/1	1%	
Neenah	1/1	1%	1.5%
	7/1	0.5%	
Sheboygan	1/1	1.5%	3.0%
	7/1	1.5%	
<u>Average Lift:</u>	1.71%		

⁶ Police unit employees have agreed herein to pay 3% of the employees' share of WRS for 2012.

For 2012 through 2013, Green Bay is unsettled and uncertified. The City's settled external comparables received the following wage increases on the dates listed and the listed annual lifts (ER. Tab 18B):

	2012			2013		
	<u>Percentage</u>		<u>Lift</u>	<u>Percentage</u>		<u>Lift</u>
Appleton	1/1	1%	4%	1/1	1%	4%
	12/31	3%		12/1	3%	
Fond du Lac		2%	2%		2%	2%
Menasha		3%	3%	1/1	2%	4%
				12/31	2%	
Neenah	1/1	2%	3%		3%	3%
	7/1	1%				
Sheboygan	1/1	1%	2.5%	1/1	1%	2.5%
	7/1	1.5%		7/1	1.5%	
Oshkosh	1/1	2%	2.5%		2.5%	2.5%
	11/1	0.5%				
<u>Average Lift:</u>			2.83%			3.0%

(ER. TAB 18B)

The City's analysis of monthly salaries across the external comparables revealed that in 2010, Oshkosh Police unit employees ranked 2nd at the minimum and maximum for officers and 1st among the comparables for officers at maximum pay with 25 years' service. In 2011, Oshkosh's ranking slipped to 3rd for officers paid at the minimum but remained the same (2nd and 1st) for officers at the maximum and those at the maximum with 25 years' service (ER. Tab 18C).

In 2012, even with Green Bay unsettled Oshkosh would maintain its 2011 3rd place ranking at the minimum and it would move up to 1st place, from 2nd in 2011, at the maximum and maintain its 1st place 2011 ranking at the maximum plus 25 years. However, for 2013, under the parties' wage stipulation, Oshkosh Police unit employees would move downward to 3rd place from 1st at the maximum and from 1st to 2nd place at the maximum plus 25 years (ER. Tab 18C).

The Union argued that the Winnebago County Sheriff's Department should be considered an external comparable herein. The Union submitted information regarding the wages, health insurance and WRS retirement benefits of these County employees. In 2012, wages increased by 1.5% on June 7, 2012, by 1.0% on September 27, 2012, and again by one percent on October 11, 2012. In 2013, wages will increase by 1.0% in January, and again by 1.0% in January, 2014; a further lift is to take place in July of 2014. In 2015 there will be a 2.5% wage increase, distributed in January and July. For

2012, employees are to pay 10% of premiums for the "Network 2" plan. Single coverage was \$69.14/mo.; Dual was \$136.21/mo.; and family was \$179.76/mo. WRS contributions for 2012 were 1% (with new hires paying the full portion); in 2013 employee payments for WRS will remain at 1%, but rise to 2% for 2014, and then to 3% for 2015.

The City's evidence showed that none of the external comparables' contracts required their police unit employees to pay anything toward WRS in 2010 and 2011. For 2012 through 2014, the City's external comparability evidence showed the following:

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Appleton	0%	0%	Not settled
Fond du Lac	0%/Full ⁷	0%/Full	Not settled
Green Bay	No certified offers and no settlement.		
Menasha	1.97% (1/3 share)	4.43% (2/3 share)	Full
Neenah	3%	6.65%	Full
Sheboygan	4%	5.90%	5.90% (ER. Tab 18A).

The City offered no evidence to show the total number of Fond du Lac police unit employees as of 2012, or how many Fond du Lac police unit employees have elected to pay their full employee share of WRS and how many have elected to pay none of their employee share of WRS.

Cost of Living:

The City submitted Tab 10C, which showed that the annual CPI-U rose as follows:

2009	-0.34%
2010	1.64%
2011	3.16%
2012	2.07%

⁷ In Fond du Lac, if police unit employees pay the full employee share of WRS in 2012 (5.9%) and in 2013 (6.65%) they would be covered by a \$500/\$1,000 deductible health plan rather than a \$1,500/\$3,000 deductible policy. Oshkosh police employees pay from 5.2% to 6.1% more than police employees in Fond du Lac on health premiums. Employee shares of premiums are from \$40 to \$159 per month higher in Oshkosh than in Fond du Lac, although Fond du Lac total premiums are \$131.73 to \$269.32 per month higher than Oshkosh total premiums.

City Tab 10B showed that an officer hired on 1998 experienced the following rate increases and lifts during the same period:

	Rate Increase	Lift
2009	2.75%	2.75%
2010	2.24%	2.23%
2011	2.00%	2.00%
2012	2.0%/0.5%	2.5%

The City's Tab 10B also showed that in five of the years since 1998, the CPI-U increased by more than Oshkosh rates and lifts and in five other years since 1998, Oshkosh rates and lifts were higher than the CPI-U. The Union's cost of living arguments concerned the impact of the CPI-U data for the years relevant to this dispute on the real wages of City officers.

Positions of the Parties:

The parties filed both initial briefs and reply briefs, a total of 113 pages.

Union:

The Union argued that the Arbitrator must account for local economic conditions, the “greater weight” factor under the statute. However, the Union urged that in its opinion this factor is not applicable as the weak economic conditions effective in Oshkosh are the same as those experienced by all of Oshkosh’s external comparables and, in general, by all other cities in the state. The Union noted that Oshkosh has historically maintained large untapped reserves, that it generally spends less on law enforcement than comparable communities and that it has had lower rates of taxation than comparable communities, which lessens the effect of a weak economy on the City.

The Union urged that many arbitrators have held that the best indication of local economic conditions is the contract settlement pattern among comparable communities. Citing several cases,⁸ the Union asserted that “economic conditions are not dispositive unless the employer makes an affirmative showing that its local economy is worse than the conditions prevailing in nearby and comparable communities” (U. Br., p. 5). The Union observed that because the City has failed to make such a showing, this statutory factor favors neither party in this case.

The Union contended that the City’s offer would make a major change in compensation—by requiring, for the first time, officers to pay the full employee share of WRS—without providing any *quid pro quo* therefor. In a post-Act 10 world, the Union asserted that showing a need for the change and providing a *quid pro quo* is essential. The absence thereof in the City’s offer makes the Union’s offer preferable.

⁸ Dodge County, Dec. No. 33914-A (Vernon, 2013); La Crosse County, Dec. No. 33888-A (Mawhinney, 2012); City of Oshkosh, Dec. No. 32148-A (Diehter, 2008); City of Menomonie, Dec. No. 32631-A (Greco, 2009); Lincoln County, Dec. No. 32414-A (Yaeger, 2008); Town of Rome, Dec. No. 33866-A (McAlpin, 2012).

Furthermore, the external comparables support the Union's offer. In this regard, the Union asserted that the external comparables (police units in similar communities) should be given more weight than other factors under Section 111.77(6)(bm), Stats. This is so because police officers cannot fairly be compared to other municipal units due to the unique nature of the work performed and because the statute specifically requires the comparison of wages, hours and conditions of employment "of other employees performing similar services," (Sec. 111.77(6)(bm)4, Stats.).

Even after the passage of Acts 10 and 32, arbitrators have relied on external comparables over internal comparables in evaluating the reasonableness of the parties' final offers. Here, the City's offer takes WRS away immediately, imposing a total immediate net wage cut of -0.5% to officers, and that cut is followed by an even deeper net cut of -1.65% on January 1, 2013. In contrast, the Union argued that its offer is overwhelmingly supported by the externals.

The Union further argued that its "Table 1" (if Winnebago County is included) demonstrated that the average net cumulative wages and WRS increases for the years 2012, 2013 and 2014 under both the Union and City offers, officers would experience a net loss of -0.5%, while the average of the "Table 1" group would experience a net increase of 0.83%. In 2013, the City's offer would mean a net loss to officers of -1.65%, while the "Table 1" comparables would average a net increase of 2.16%. In 2014, under the City and Union offers, officers would experience a net increase of 0.85%, while the "Table 1" settled comparables would average a 1.83% net increase.⁹

The Union also argued that post-Acts 10 and 32, Winnebago County should be included for comparisons, even though it has not traditionally been used as a comparable in the past because 1) the County contains a large percentage of the externals' population; 2) the County's economic situation is similar to the City's; and 3) County deputies perform similar services to City officers as required by Section 111.77(6)(bm), 4.

The Union anticipates that the City will argue that cities are never comparable to counties. But the Union cited two awards where the Oshkosh police unit was included as a comparable for Winnebago County deputies; one award where the County was used as a secondary comparable for a different city unit; and three awards in which county law enforcement units were used as comparables for city police units. In addition, the Union noted that Winnebago County is following the external pattern (reflected in the Union's offer) of phasing in WRS payments over years while ensuring that deputies do not experience wage losses that put them "under water" on wages (U. Br., p. 15).

In the past, regarding benefits, internal comparability was weighty. However, the Union argued, internal comparables must be given diminished weight post-Acts 10 and 32 because general City employees (who were formerly represented by other labor organizations) can no longer lawfully bargain over WRS, and their wages are capped at cost-of-living absent a local referendum. This makes general employees more similar to historically non-represented employees than to public safety employees, who continue to have statutory collective bargaining rights.

⁹ "Table 1" does not use Green Bay. The Table showed that in 2013, Oshkosh officers will receive 2.5% on wages only, while on wages only in 2013, for Appleton, Fond du Lac, Neenah, Menasha and Sheboygan, the average wage lift will be 2.7%, with the average in-pocket increase being 2.55%. Appleton and Fond du Lac are not settled for 2014.

In any event, the Union urged that the record facts in this case show there is no internal pattern, so that internal comparability cannot trump the lack of a *quid pro quo* and require selection of the Union's offer. The Union noted that before Act 10, the City had eleven separate employee groups (including one non-represented and two supervisor groups), five of which had collective bargaining rights and access to interest arbitration. Post-Act 10, there are five City employee groups, only three of which have collective bargaining rights and access to interest arbitration--Police, Fire and Transit. Therefore, the Union contended, only if both non-Police groups have accepted identical terms could a valid "pattern" emerge. The fact that the Transit unit is not a public safety unit and that the non-represented unit was redefined and reconstituted by Acts 10 and 32 should lessen the weight and applicability of the "settlements" in these two units.

The Union asserted, none of the City "internal" groups have accepted the same package, so that no pattern of internal settlement exists here. In this regard, the Union observed that City non-represented employees received a 4% wage increase when they were required to pay 5.8% toward WRS. In addition, the non-represented employees' salary schedule grants up to 2.5% annual step increases with the additional potential for up to 20% in bonuses for employees at the end of the step progression. Non-represented employees also pay 1% less than police toward coinsurance (11% compared to 12%). Based on the above, the Union asserted that no pattern exists.

Regarding the Transit unit, the Union noted that transit workers received a *quid pro quo* for their agreement to pay the full WRS employee share. Transit workers received 6.5% on wages over the term of the contract and an additional 4.2% increase due to the increase in their work hours, or 10.7% over the life of their contract. The Union further contended that police unit employees will fall behind *vis-à-vis* WRS contribution compared to contractual wage increases (5% in increases vs. 6.65% in WRS contributions), but Transit workers will be ahead (8.7% in increases vs. 6.65% in WRS contributions). Again, no pattern can be proved here.

The Union contended that even the firefighter settlement does not, in fairness, create a pattern for the police unit. In this regard, the Union pointed out that City firefighters received special event overtime pay never offered to them before the current contract. Again, in the Union's view, no pattern was created. But even assuming the City police offer and its fire settlement are deemed identical, in the Union's opinion, one group does not a pattern make.

The Union argued that the City's argument that because 9% of City police officers—new hires—already pay the full WRS employee share, this is not a reason to select the City's offer, noting that this argument has been rejected by arbitrators in prior cases Town of Rome, Dec. No. 33866-A (McAlpin, 2012). The Union urged that just as non-represented employees and post-Act 10 general employees should not be compared to public safety employees who still have collective bargaining rights, statutorily disenfranchised public safety new hires cannot fairly be used to force employees with collective bargaining rights to accept lower benefits without a *quid pro quo*.

Finally, the Union contended that the cost-of-living factor favors the Union's offer. The Union's evidence showed that the CPI yielded an annualized percentage change of 2% in 2012, so that a 2% wage increase would only maintain the existing standard of living for City officers. Here, adoption of the City's offer and assuming a 0% increase in CPI for 2013, City police would suffer in excess of a 2% cut in compensation.

The Union's offer of an overall 5% wage increase, less the 4.5% WRS contribution, would still leave officers with a below-inflation wage adjustment, making the Union's offer preferred.

As the City has not argued or proved inability to pay, the welfare of the public factor is not at play here. Therefore, this factor favors neither offer. Also, there are other factors that are not at issue here—stipulations of the parties, traditional factors, changes during the pendency of the proceedings, etc.

Finally, the Union argued that the last factor, overall compensation, favors the Union's offer, as follows:

...The parties agree that the difference between the two offers is approximately \$101,000, or less than one-sixth of one percent of the City's \$66 million budget. On the other hand, it represents an enormous loss to each police officer, whose overall compensation will actually decline by \$180 over the life of the agreement. The officer will moreover be permanently responsible for the full cost of the WRS employee contribution, which is only expected to rise, and thus represents a permanent drain on the employee's income. In real terms, the officer will suffer an absolute and relative loss of earnings at the end of 2012, and a relative loss of earnings throughout all of 2013 when the effects of inflation are considered, even under the Union's proposal. Under the employer's proposal, the officer will suffer both an absolute and a relative loss of earnings for all of 2013, and will not recover even an apparent wage increase until 2014—although with the effect of the CPI, it will only be apparent (U. Br., p. 23).

In sum, the Union urged that its offer should be selected because it is supported by the external comparables, the key factor herein. And the remaining statutory factors either favor the Union's offer, are neutral or fail to favor the City's offer. The Union's offer is also a responsible one in the economic circumstances. Finally, selection of the City's offer would result in an average loss of more than \$1,284.00 per officer without any *quid pro quo*.

City:

The City argued that the role of the interest arbitrator is "to place the parties in the same position they would have achieved had the parties been able to reach a voluntary settlement" (ER. Br. I, p. 3). The sole dispute between the parties is how much employees should pay toward WRS in 2013. In the City's view, its offer is the "most" reasonable and should be preferred based on both internal comparability, employee morale and internal equity as well as external comparability and state public policy post-Acts 10 and 32. In contrast, the Union's offer, "by going against the internal settlement pattern, has submitted an unjustified offer" (ER. Br. I, p. 4).

The City observed that the parties agreed to increase wages by 2% (1-1-12) and 0.5% (11-1-12), by 2.5% (1-1-13) and by 2.5% (1-1-14). The parties agreed to increase employee insurance contributions (from 7% to 11% on 11-1-12 and to 12% on 1-1-13 with HRA; from 10% to 14% on 11-1-12 and to 15% without HRA). The City calculated the its offered wage increases at 2.4% in 2012, 3.0% in 2013, and 2.3% in 2014, for total package costs of 2.5%, -1.7% and 2.4% across the three-year contract. Because the Union's offer phases in WRS in 2013 (4.5% on 1-1-13) rather than going to the full

amount (6.65% on 1-1-13) as the City’s offer does, the City costed the total package cost of the Union’s offer as 2.5%, -0.2% and 0.9% across the three years of the contract (ER. Br. I, pp. 6-7; Chart 3).

The City asserted that two previous arbitrators have maintained the list of external comparables as proposed by the City herein, including Appleton, Fond du Lac, Neenah, Menasha, Sheboygan and Green Bay. Here, the Union has proffered no justification for adding Winnebago County to the parties’ list of externals other than that it favors the Union’s offer in this case. This is insufficient basis to disturb the predictability and stability of collective bargaining between these parties created by the set of historical external comparables. The City urged this Arbitrator to reject the addition of Winnebago County to the external comparables list as the Union failed to prove that prior arbitrators had made serious errors and/or that significant changes in the comparability group have occurred City of Marshfield (Firefighters), Dec. No. 29027-A (Grenig, 1997). In addition, the City argued that Winnebago County should not be added to the list of external comparables because 1) the City and County are fundamentally different governmental entities; 2) job duties at the City and County are radically different; 3) Winnebago County is not comparable to the City based on traditional arbitral assessments of size, geographic proximity, population, tax rates, state aid, income, number of employees, etc. The City therefore urged the Arbitrator to reject the Union’s “comparables shopping”.

The City contended that internal consistency and equity should take priority in this benefits case over the other statutory factors. The City noted that all other City employees have been contributing the full employee share of WRS since January 1, 2013. The City asserted that the Union’s offer is “unreasonable on its face by its failure to acknowledge that every other employee is paying their full share toward WRS in 2013” (ER. Br. I, p. 16). The City noted that it will still be contributing more to police officers’ WRS under ETF rules even if its offer is selected, as follows:

	<u>2012</u>	<u>2013</u>	<u>2014</u>
<u>Police</u>	January: 14.9% November: 11.9%	9.75% 11.9%	10.0%
<u>Firefighters</u>	January: 17.2% November: 14.2%	12.35%	13.0%
<u>Transit</u>	January: 11.8% November: 8.8%	6.65%	7.0%
<u>Non-represented</u>	11.8%	6.65%	7.0%

The City argued that there has been a long-standing practice, since 2001, to treat all City employees the same with respect to wages, WRS and insurance benefits, with “only a few justifiable exceptions...explained by the risks inherent in interest arbitration or unique factors (applicable) to a particular settlement” (ER. Br. I, pp. 18-19).¹⁰ The City

¹⁰ These exceptions appear to be the 1% less in insurance premiums paid by non-represented employees and the lump sum paid to these non-represented employees to offset their 2011 WRS contributions and the merit pay system applied to non-represented employees.

asserted that sound public policy as well as statutory directives demonstrate the appropriateness of treating all City employees the same regarding WRS contributions. The City noted that a two-tiered system was created by law in public safety units requiring the seven police officers hired after July 1, 2011 (nine percent of the unit), to pay the full employee WRS share since their hire. The City found it ironic that it has essentially adopted the traditional Union response to such two-tiered systems, finding the two-tiered system in violation of the principle that all unit employees should be treated the same and detrimental to morale, while the Union's arguments would preserve an internal inequality normally sought by employers. The City contended:

Imagine being any other employee in the City contributing 6.65% of your salary to retirement while other police officers contribute 4.5%. What does that do for the esprit de corps? What does it do for productivity? What does it do for morale? Why should one group of employees be exempt from the sacrifices that all other employees of the Employer are making?

One can imagine the outcry from the Union if the Employer had proposed a two-tiered benefit system where current employees received one level of benefits and new hires received a substandard set of benefits. The Union would vehemently protest such a move by the Employer because of the inequity involved.

Normally, one would expect the Union to seek equity by having all employees treated the same as soon as possible. In this case, the Employer proposes equal treatment in 2013 and not wait until 2014 as the Union proposed. The "grandfathered" public safety employees must be brought into the realm of fair treatment with one fringe benefit policy affecting all employees of the City. This is the critical issue in this case that the Union's offer ignores (ER. Br. I, p. 21).

The City then cited several cases (pre-Acts 10 and 32)¹¹, in which arbitrators rejected final offers which contained either union-offered or employer-offered two-tiered systems, where those systems concerned benefits.

The City further argued that the three prior interest arbitration awards between these parties are relevant and support the City's offer. In this regard, the City noted that Arbitrator Stern's 1977 award affirmed the notion that health insurance benefits among City units should be identical unless there is a good reason for a difference; and that both Arbitrator Oestreicher (in his 1993 award) and Arbitrator McAlpin (in his 2002 award) recognized the importance and value of maintaining pay and benefits equality for City police and fire employees. The City asserted that if this Arbitrator selects the Union's offer, she will remove the incentive for future voluntary settlements by allowing the Union to achieve a better settlement in arbitration than Transit employees and firefighters voluntarily agreed to. The City argued, therefore, that no *quid pro quo* is necessary here because the Transit and Firefighter settlements establish the internal settlement pattern, making a *quid pro quo* unnecessary and allowing this Arbitrator to give greater weight to the internal comparable settlements than to settlements among the external comparables.

Regarding the external settlements for 2013, the City noted that three of six externals require full employee contribution and one requires 89%, another 67% and the

¹¹ ER. Br. I, pp. 22-27. The City also relied heavily on Arbitrator Stryker's 2013 award in Village of Greendale, Dec. No. 33924-A on this point.

6th requires no employee WRS contribution.¹² Regarding a *quid pro quo*, the City observed that police will receive generous wage increases in 2012 and 2013—that 5% on wages was granted to Fire, 5%, stipulated for Police, and 4.5% was granted to Transit for those years, while non-represented employees received no wage increase in 2012 and are unsettled (along with two supervisory units) for 2013 and 2014.

In any event, the City argued that its 2013 WRS offer is in line with the majority of the external comparables—that only two of six (Appleton and Menasha) support the Union’s offer, while the other four comparables support the City’s offer when net gain/loss for WRS and wages are compared (ER. Br I, p. 36, attached hereto). Furthermore, the City noted that past wage settlements among the external comparables should be taken into account as well as when each external unit began contributing to WRS, which information, the City urged, demonstrates that the City’s offer is in the mainstream and is preferable, while the Union’s offer is on the high side of the external settlement pattern. Thus, for 2012, the employees in three external comparables paid between 4.43% and 6.65% toward WRS for the entire year, while Oshkosh officers will begin paying 3% only effective November 1, 2012. Also, the City noted that its offer is above the CPI, and that officers’ wages have, since 1998, exceeded the CPI-U by a total of 30%.

The City contended that its offer is strongly supported by the “overall compensation” factor. In this regard the City noted that its settlement with the firefighters for 2012-14 amounted to \$86,656, while the City’s offer to the Police amounted to \$432,379 for 2012-14.¹³ In addition, an itemized breakdown of wages and benefits for the typical police officer shows the City’s offer is generous, and provides the increases over each prior year listed in parentheses:

BASE			
<u>2011</u>	\$30.92	wages	
	\$51.84	benefits	
<u>2012</u>	\$31.55	wages	
	\$50.71	benefits	(-2.17%)
<u>2013</u>	City: \$32.31	wages	
	\$49.76	benefits	(-1.87%)
	Union: \$32.31	wages	
	\$50.45	benefits	(-0.52%)
<u>2014</u>	City: \$33.10	wages	
	\$51.75	benefits	(+4%)

¹² The Green Bay Police contract was neither certified nor settled as of the date of hearing in this case.

¹³ ER. Br. I, p. 42 showed that Transit received 1.6%/8.7%/2.0%, (6.7% total compensation), while Fire employees received 2.2%/3.1%/1.9% (1.4% total compensation). Non-represented employees received 0% in 2012 and are “unsettled” for 2013 and 2014. Under both the City and Union offers, officers will receive 7.7% on wages in 2013-14 (3.2% total compensation), according to the City.

Union: \$33.10 wages
\$51.75 benefits (+2%)

The City urged that the above information is important because it shows that a police officer with the average amount of experience (8 years') will receive a positive wage increase under the Employer's final offer "and about break-even with respect to total compensation" (ER. Br. I, p. 44).

The City urged that the Union is seeking more benefits for its members than every other City employee and this alone makes the Union's offer unreasonable. If the Arbitrator selects the Union's offer, this will negatively impact morale among City employees and continue existing negative morale among newly hired police officers *vis-à-vis* their tenured counterparts. Therefore, the interest and welfare of the public favors the City's offer. Also, post-Acts 10 and 32, all newly hired officers, all general employees and all non-represented employees must pay the employee share of WRS. This is the public policy sentiment in Wisconsin. The City's offer fairly phases in Police WRS contributions and is in line with clear state public policy.

Finally, the City urged that the "local economic conditions" factor favors neither offer and is not controlling in this case. The City noted that the more important arguments are preserving internal equity and the integrity of the collective bargaining process. The City admitted that it put in very little evidence of local economic conditions because "there simply was nothing that stood out in the City that was significantly different than the other comparable municipalities" (ER. Br. I, p. 49). And the Union's evidence on this point, in the City's view, did not clearly support the Union's offer. For all these reasons, the City urged the Arbitrator to select its offer as the most reasonable.

Reply Briefs:

Union:

The Union argued that the Wisconsin legislature totally changed the playing field of public sector collective bargaining when it essentially eliminated internal comparability by abrogating collective bargaining rights for non-public safety/non-transit employees, while leaving collective bargaining rights in place for public safety and transit employees. In these circumstances, the Union urged that the City's "clinging to an old set of [external] comparables in this radically changed environment", and its citation and reliance on pre-Act 10 precedents are misplaced (U. Reply, p. 1).

In this regard, the Union noted that the City of Greendale case does not stand for the proposition that comparable pools are set in stone. Also in Greendale, unlike here, the union made an unprecedented attempt to add several much larger fire departments to its comparability pool. In contrast, the Winnebago County Sheriffs' unit is similar in size to the Oshkosh unit, the officers work in the same geographic area, doing the same kind of law enforcement work, and Arbitrators Weisberger and Petrie used the Oshkosh unit as a comparable in their Winnebago County cases. The Union noted that Winnebago County is 2.5 times the size of the City of Oshkosh. But Oshkosh is four times larger than comparable Menasha, and comparable Green Bay is 1.6 times larger than Oshkosh. Although Oshkosh employs 79 officers, the Union noted that Winnebago employs 56

detectives, corporals and sergeants—“police officer” positions—making the County closer in relevant employee complement to Oshkosh. Also, Winnebago County is squarely in the middle of the agreed-upon comparables. Even if Winnebago County is excluded, the average of the comparables is only slightly different.

The Union urged that the City’s arguments in its initial brief essentially ask the Arbitrator to give exclusive weight to only one of the statutory factors—the catchall “other” factor—so that internal patterns on the WRS benefit trump external comparables. Post-Acts 10 and 32, such a move would be not only tenuous but ill-advised because Acts 10 and 32 destroyed the historical force and value of internal benefit “patterns”. The Union noted that Arbitrators Hempe, Vernon and Mawhinney found that, post-Acts 10 and 32, internal comparables must be given less weight. The Union noted that the two-tiered system was created by the legislature, not by collective bargaining or by the Union’s offer. Therefore, the cases cited by the City, all pre-Acts 10 and 32, showing that two-tiered systems are undesirable are inapposite. And the Arbitrator should not substitute her choice for that of the legislature.

The Union reiterated its initial argument that the City broke its own pattern by giving non-represented employees different health insurance, a complex benefit. Regarding WRS, the Union asserted this benefit is not “complex” and therefore, the City has no need of consistency.

The Union urged that Arbitrator Strycker’s Village of Greendale award is not only a “minority opinion” on the weight of internal comparables, it is also factually distinguishable from this case, and it “ignores the general rule that a single settlement does not create a pattern” (U. Reply, p. 7). The Union noted that all other post-Acts 10 and 32 decisions disagree with Strycker’s conclusions.

In any event, the Union contended that the City’s declaration that a pattern exists does not make it so. Here, the Union observed, non-represented employees were given a 4% wage increase despite the fact that the law required them to pay the full 2011 contribution of 5.8%. The Union reiterated its initial argument that non-represented employees also have better health insurance, and they can receive up to 2.5% step increases at each new step; and that the City has treated Transit workers better than police—granting them an additional 4.2% increase (for additional work hours) on top of the “pattern” increase to Transit and Fire.

The Union repeated its initial arguments that this difference means that Transit employees will stay ahead of WRS contributions, while police officers will slip substantially behind. Also, Firefighters received special event overtime pay not given to the Police. Even assuming the Firefighter contract were identical to the City’s offer to the police, the Fire unit alone cannot constitute a “pattern”.

The Union argued that the City’s “discussion of external comparables contains serious errors” (U. Reply, p. 10). In this regard, the Union pointed the following flaws in the City’s arguments:

1. The City’s offer imposes the full WRS contribution over two months, faster than any comparable has done;
2. The City uses the City of Green Bay’s uncertified offer as if it were a settled comparable;

3. The City misstates Fond du Lac as requiring a 5.9% WRS contribution in 2012, when it could be argued that it is 0%;
4. The City fails to recognize that two comparables have required no WRS contribution *and* have granted wage increases; and
5. The City fails to recognize the value of the cap on WRS contributions in Sheboygan.

The Union observed that for 2012, the average of four out of five settled comparables shows a net increase greater than the -0.5% agreed to by the parties here, although Sheboygan has officers going “under water”. For 2013, two of five comparables have no WRS contribution and grant wage increases (Appleton and Fond du Lac); Neenah officers have a net decrease of -0.65%, and Sheboygan officers catch up a bit from 2012, getting up to a -0.9% net decrease, but with a cap on WRS at 5.9%. The Union’s offer (+0.5%) is in the middle of the pack, slightly worse off than Menasha. The City’s offer of -1.65% would put Oshkosh officers last, behind even Sheboygan. In 2014, only Neenah, Menasha and Sheboygan are settled. All of these communities will give their officers greater net average increases (1.35%, 3.35% and 1.6%, respectively) than Oshkosh officers will receive (0.85%). In these circumstances, even if one excludes Winnebago County, it is clear that the external pattern favors the Union’s offer. If the City’s offer were to be selected, Oshkosh officers would rank as follows:

2012	5 of 6
2013	last
2014	last

In contrast, if the Union’s offer is selected, 2012 and 2014 rankings will be the same as the City’s offer, but for 2013, the Union’s offer (virtually identical to Menasha’s) puts City officers in the middle of the comparables.

The Union argued that the City’s cost-of-living arguments unfairly look at wage increases in isolation over time under the CPI and, in this case, without recognizing the loss officers will experience due to increased WRS contributions. If looked at properly, the Union contended, the cost-of-living/CPI factor is strongly in its favor, as officers will lose ground *vis-à-vis* the CPI from 2012 through 2014. Under its offer, less dramatically than under the City’s offer.

The City’s argument regarding the overall cost of Fire, Police and Transit offers fails to account for differing unit sizes and different average wages/cost of services. The small difference between the parties’ offers and the lower cost of policing in Oshkosh than in other comparable communities shows this factor, although relatively unimportant, favors the Union’s offer.

Finally, the Union urged that the City’s morale argument is unsupported by any evidence and must be rejected. In addition, the notion that the Arbitrator can fix a perceived morale problem among non-represented employees “by hurting police officers reflects something seriously wrong in the management perspective” (U. Reply, p. 16). It is the Wisconsin legislature that has condoned, created and/or promoted the morale problem by abrogating some but not other employees’ collective bargaining rights. The Union urged that it is not the Arbitrator’s place to interfere with legislative intent and

actions and the City's arguments on this point should be rejected. Therefore, the Union asked the Arbitrator to select its offer as the most reasonable.

City Reply:

The City noted that the parties agreed in their initial briefs that the "local economic conditions" factor favors neither party. Here, the City asserted that the Union's offer should be rejected because the Union submitted "a better deal" for police officers (ER. Exh. 15A-C), different from the historical internal pattern. The City urged that the need for a "*quid pro quo*" is decreased by the fact that "the external settlement pattern is decisively in favor" of its offer (ER. Reply, p. 2). To the extent that a "*quid pro quo*" is necessary for the shift of WRS contributions to officers, the City argued it is demonstrated by the collectively bargained Transit and Fire settlements which, the City noted, require full WRS employee contributions at the same time. The City contended that the 2.5% wage increase in each of the three years of the contract and the detective wage rate increase (which the City asserted is worth \$5,000 per year) represent the "*quid pro quo*" for retirement and health and insurance changes.

The City reiterated its arguments that the internal comparables should receive "decisive weight" in this case. The City again emphasized pre-Acts 10 and 32 arbitration awards, which held that internal comparables must control benefits, making external comparables of secondary importance. Here, the City has historically provided general and non-represented WRS on the same basis as its unionized employees. The City noted that the former two groups began paying the full WRS employee share earlier than unionized employees, and they have paid more in health insurance as well. The City repeated its arguments regarding Arbitrators Strycker and Hempe's more recent awards, noting that the avoidance of internal inequities was the basis for Hempe's award in the employer's favor (City of Mequon, Dec. No. 33818-A (11/12)).

Regarding the external comparables, the City urged again that these strongly support its offer. The City asserted that, because the Union's chart (U. Br., p. 12) fails to include the time value of implementing wage increases and WRS contributions at different times, and because the 2014 WRS rate is not yet determined, valuation of the Union's offer is questionable. The City argued that the record actually shows that external employees actually made the following 2012 WRS contributions:

	<u>2012</u>
Menasha	4.43%
Neenah	6.65%
Sheboygan	5.9%
Green Bay	
City offer	6.65%
Union offer	3.25%
Fond du Lac	0% or 6.65%
Appleton	0%
Oshkosh	0.5%

The above supports the City's offer as the most reasonable.

The City urged that Winnebago County, a different political organization, has never been a comparable of Oshkosh, and that, based on its different laws, rules, duties, and emphasis, it should not be made a comparable now. The City noted that the Union has failed to demonstrate why three prior arbitration awards should not continue to provide controlling precedent.

The City repeated many of its initial arguments that the Fire and Transit union settlements define the internal settlement pattern. The City did note on reply that the police and fire supervisory units are unsettled and it asserted that these units "will 'piggy back' on the outcome of the police and fire settlements" (ER. Reply, p. 11).¹⁴ The City observed that non-represented employees paid full WRS (5.9%) for calendar 2012, while the police officers will pay only 0.5% for 2012; that police officers received a split wage increase of 2% and 0.5% in 2011 and 2.5% in 2012, while non-represented employees did not receive wage or step increases in 2011 and 2012; that 2013 and 2014 increases for non-represented employees have not been decided, but police officers will receive 2.5% increases in both years.¹⁵ The City also pointed out that although non-represented employees now pay 11%, while police officers pay 12% toward health premiums, non-represented employees paid 11% as of 1/1/12, forward, while officers paid only 7% toward premiums until 11/1/12, when their payments went to 11%.

Regarding the Transit unit's 4.2% increase for the unit-wide schedule change in 2012-14, the City observed that employees must work 1.6 hours more per week to receive this increase. Concerning the Fire unit special event pay, the City stated for the first time on reply, that it will pass this increase on as a fee to those who require this service. In sum, the City urged that it is "undeniable" that its offer to the Police unit matches the Transit and Fire settlements on the amount and timing of the WRS increased contributions, that the police will receive the "same or better" than Fire and Transit unit employees and that health insurance contributions are exactly the same for all three organized units (ER. Reply, p. 14). The City urged that the settlement in the Fire unit alone makes a binding pattern. On this point, the City cited Arbitrator Zel Rice's 1989 award in MATC, Dec. No. 19183-A.

The City repeated its initial arguments that "equity demands" that this Arbitrator resolve the morale issues for the parties; that morale issues will be prolonged and exacerbated by the Union's offer, by its continuations of a two-tiered WRS system until 1/1/14. Finally, the City argued, as initially, that other factors, such as the cost-of-living, interest and welfare of the public, internal equity (one of the "other traditional factors") and overall compensation (based on internal comparability) favor the City's offer.

The City urged that because its offer "treats all employees the same" it is more in accord with the interest and welfare of the public factor. In all the circumstances, the City argued that, although internal comparables should be decisive here, the City's offer is preferable under both the internal and external comparables, and the other applicable statutory factors and the Arbitrator should select it as the "most reasonable" under Section 111.77, Stats.

¹⁴ The City presented no evidence to support this claim.

¹⁵ The City admitted that the non-represented pay plan is merit-based and its new "control point"/market rate plan has not yet been fully developed or implemented (ER. Reply, p. 12).

Discussion:

The parties have stipulated and agreed that the following Subsection (bm) factors are not in dispute in this case: the lawful authority of the employer, stipulations of the parties, comparisons to employees in private employment in comparable communities, and changes during the pendency of the arbitration proceedings. In addition, no evidence was presented on the above factors. Also, in their briefs, the parties agreed that 111.77(6)(cm), Stats., the “greater weight” factor, is not at issue here because the parties agreed that the City of Oshkosh has been affected by economic conditions in the same manner as all other municipal employers in the jurisdiction.

This Arbitrator has nonetheless evaluated the record evidence of economic conditions submitted by the parties, as required by the statute. The Arbitrator finds that this evidence showed that in 2012, Oshkosh was in relatively good economic shape among Wisconsin cities of the same population. In this regard I note that Oshkosh was in the top 25% of 179 “Best Performing Small Cities” in Wisconsin; that Oshkosh’s unemployment rate is 1.3% below the national rate of 7.6%; that, in 2012, Oshkosh building permits increased (\$99 million); and that 100 Oshkosh executives surveyed by the Chamber of Commerce reported increased hiring and higher sales and profits for 2012. These executives also indicated that they expected that 2013 sales would outperform 2012 levels. Furthermore, City budget and long range documents showed that among cities with similar populations (Appleton, Eau Claire, Waukesha, Janesville, and West Allis), Oshkosh was last in general fund expenditures per capita, it was at or near the bottom of the group on taxes levied from 2005 through 2010, and it had the lowest equalized values (sum of all property values), although Oshkosh had a higher than average debt burden (24.63%), due to construction of a City pool in 2006.

The evidence also showed that the City continued to hire new employees after December 31, 2012, in all three bargaining units. It has had no trouble finding suitable applicants for its open represented and non-represented positions. Furthermore, Oshkosh-Neenah ranked 59th, far ahead of Appleton, Green Bay and Fond du Lac, as one of the best areas in Wisconsin for economic and job growth. This ranking was further supported and confirmed by the Chamber’s Oshkosh executives survey. The City’s Long Range Finance Committee found that Oshkosh has low equalized property values, low tax levies and low General Fund expenditures among Wisconsin communities with similar populations for the period 2005 through 2010. Given this evidence and the parties’ agreement that the Subsection (am) “greater weight” factor favors neither party, the Arbitrator finds this factor is not in issue and is not determinative here.

Regarding the Union’s request to include Winnebago County Sheriff’s Department as an external comparable, I find that the Union failed to present sufficient evidence to support granting such a request. In this regard, I note that the Union proffered no evidence of significant changes in comparability or of serious errors made by arbitrators in prior cases. Rather, the Union essentially asserted that because Oshkosh is within Winnebago County, because other accepted comparables are a different geographic size than Oshkosh and because some County deputies perform work similar to City police work, this Arbitrator should reject the consistent findings of three prior arbitrators in City Police/Union cases (the last award issued as recently as 2002), and include Winnebago County. The Union’s arguments are rejected. I note that in 2011, the

legislature failed to make any changes to Sec. 11.77, Stats., which would have supported the Union's argument on this point. Therefore, the external comparables shall remain Appleton, Fond du Lac, Green Bay, Menasha, Neenah, and Sheboygan.

Turning to the Subsection (6)(bm) factors, I note that the City has not made an inability to pay argument in this case. Therefore, Subsection (6)(bm) 3 has not been disputed in the traditional manner. Rather, the City has argued that the “interests and welfare of the public” support its offer because the City’s offer provides stability and equity, and preserves morale among all the City’s groups. The City has made these same arguments under Subsection (6)(bm) 8, regarding “other factors”, which includes internal comparability. The City’s arguments on this point should more properly be addressed under Subsection (6)(bm) 8 and they will be in this Award, *infra*. I believe the Union has made as compelling an argument that the “interests and welfare of the public” are supported by its offer, that its offer which phases in WRS contributions, would keep City officers from going “under water” on wages and potentially distracting them from the dangerous work they must perform on a daily basis, due to worry over how they will provide for their families in this challenging economy. In these circumstances, Sub. 3 favors neither party.

Concerning Sub. 5, cost-of-living, I find the City’s arguments are somewhat misleading. In this regard, I note that the CPI-U is a general measure, not specific to law enforcement employees. As such, the City’s comparison of the total rise in CPI-U Adjusted Salary from 1998 to 2012 with City officers’ pay increases over the same period is an unfair comparison since law enforcement personnel have historically been better paid than the average wage earner measured by the CPI-U Adjusted Salary. Here, the evidence showed the following:

<u>Year</u>	<u>CPI-U</u>	<u>Pay Received (Oshkosh)</u>
2009	-0.34%	2.75%
2010	1.64%	2.24%
2011	3.16%	2.0%
2012	2.07%	2.0%
	6.53%	8.99%

This shows that Oshkosh officers received 2.46% more than the CPI-U from 2009 to January 1, 2013 (ER. Tab 10B). However, this 2.46% advantage will be swept away by City officers paying 3% toward WRS (by the parties’ agreement) as of November 1, 2012. Even if the CPI-U is 0% for 2013, if the City’s offer is selected for 2013, City officers’ overall compensation will be -3.65%. Even under the Union’s offer, City officers’ overall compensation will be -1.5%. In these circumstances, it is hard to envision a scenario under which City officers’ overall compensation will not fall below the CPI-U.¹⁶ In this Arbitrator’s view, the cost-of-living factor favors the Union’s offer.

To set the stage for discussion of the remaining arguments in this case, it is significant that the parties agreed to all changes made in years 2012 and 2014 of the

¹⁶ The City’s Chart 2 (Exhibit “1” herein) does not appear to account for City officers’ increased insurance premium payments, from 7% to 12% (with HRA), and from 10% to 15% (without HRA).

agreement, including the timing of and contribution levels to WRS by City officers and the timing and amount of wage increases. In addition, the parties agreed to all changes in the health insurance across the entire 2012-14 contract. I note that 2012 premiums fell by -7% and -16% for the two types of coverage offered. And yet the Union responsibly agreed to pay more in premiums in both 2012 and 2013, going up 5% by January 1, 2013. In 2013, City officers will pay from \$83.01/month to \$259.40/month (ER. Tab 18D), after paying from \$57.00/month to \$144.00/month in 2012 (ER. Tab 15B). This represents employee-paid increases of from \$26.01/month to \$115.40/month or from \$312.12 to \$1,384.00 per year, plus \$250/\$500 or \$300/\$600 deductibles.

Comparing the City to the external comparables, I note that the City of Oshkosh monthly premiums are \$143 (Single) and \$285 (Family), higher than the average of the City's external comparables; only Sheboygan's monthly premiums are higher than those in Oshkosh; City of Oshkosh contributions to monthly premiums are tied with Sheboygan for the lowest employer contributions; and Oshkosh employees pay the second highest premium shares--\$38 to \$49/mo. higher than the average toward Single premiums and \$98 to \$126 higher than the average toward Family premiums—only Sheboygan employees pay more toward premiums.

The evidence also showed that the City's health premiums fell by -16% in 2012, but rose by 12% in 2013 (ER. Tab 11A). The City will pay between -4.4% and -6.3% less in premiums for officers in 2013 than the average of the external comparables, while officers will pay between \$38/month and \$126/month more in premiums than the average of the comparables (ER. Tab 18D). The City projected that 2013 and 2014 premiums would rise by 0.9% over the two years although the City figured a 10% increase in premiums into agreed-upon costing for 2014. To this Arbitrator, this evidence showed that, to its credit, the Union has shown a real willingness to shoulder responsibility for its members' insurance costs, which the City has taken advantage of.

Subsections (6)(bm) 4 and 8 are the hot issues in this case—external comparability and “other factors”, including internal comparability, equity and morale. The City has argued that the internal comparables must control this case. The City argued that this is so because evidence showed the City has a pattern of settlements with its other workers which, if the Union's offer is selected, would be destroyed along with morale and stability, and the City would be set up to be whipsawed by its other groups on WRS in the future. As such, the City argued, no *quid pro quo* should be required for its offer on WRS. In contrast, the Union has argued that post-Acts 10 and 32, the City should not be allowed to use its non-represented/general employees to prove a pattern; and that in any event the City has failed to prove a pattern among its organized units. As such, the Union argued that the City must pay a *quid pro quo* for the WRS changes, because the external comparables strongly favor the Union.

This Arbitrator has read the prior interest arbitration cases cited by the parties in support of their complex arguments. In my view, this case is different on its facts from Village of Greendale and City of Mequon (primarily relied on by the City herein). In both of those cases, the unions offered three-year contracts, while the employers offered two-year agreements. In Greendale, the union sought an additional named holiday (Martin Luther King, Jr. Day) and a “new” benefit, Hazmat pay. In both Greendale and Mequon, the unions' offered a three-year contracts included additional wages (2/2 and 1.25/1.25, respectively) to defray the cost and phase in WRS payments. In Mequon, the union also

phased in increased insurance premium payments. In Mequon, there were no bargaining units remaining after Acts 10 and 32. In Greendale, no remaining internals were settled for 2013. These differences are significant and were largely not present in this case, where the Union and the City have both proposed three-year contracts and the Union has been very responsible because it has agreed to all economic provisions contained in the first and last years of the agreement. Therefore, here, no matter what the outcome of this case, City officers will end up in the same place as all other settled City units on WRS contributions and insurance premium payments. This was not true in Greendale or Mequon.

I turn now to the question whether the internals or externals should control in this case. I note that the legislature has never stated that internal comparability is a factor in these cases. Rather, internal comparability has been used by arbitrators over decades to assure internal equity, stability and morale, which have at times been threatened by a party's proposal of a two-tiered system, among other things. With the 2011 changes in the law, the Wisconsin legislature rejected the idea that all employees should be treated the same when it created a two-tiered system in public safety units so that new hires after the law's effective date would be required to pay the full WRS employee share without regard to bargaining or to the provisions of any effective collective bargaining agreement. The City has asked this Arbitrator, by her award, to cure this legislatively-created inequity. But the legislature has rejected the City's argument in this case by passing Acts 10 and 32. Whatever one thinks of Acts 10 and 32, the legislature found it necessary and advisable to create this two-tiered system, and it failed to detail how, if at all, interest arbitrators should deal with this system and its impact on other unit employees. In these circumstances, I find that it is not my province to interfere with the legislature's scheme. Therefore, in these circumstances, the City's arguments regarding morale, equity and stability have been rejected.

The City has also urged me to use all settled internal City groups to demonstrate its internal pattern in this case and to decide that no *quid pro quo* is necessary on this benefit item because the pattern exists. Setting aside how ironic it is that an employer would argue that its non-represented and unrepresented employees should be compared to its unionized employees, I find that in this case no true internal pattern exists and therefore, a *quid pro quo* is necessary.

In this regard, I note that non-represented/general employees are "unsettled" on wages and WRS for 2013 and 2014, and their insurance premiums are frozen at 11% and 14% for 2012 and 2013, and 2014 premiums for this group are "unsettled". The City has virtually complete control over when and what terms and conditions of employment it will impose on these employees. It is also significant that when the traditionally non-represented City employees began paying the full (5.8%) employee share of WRS in 2011, the City gave them a 4% lump sum payment and on top of this, these employees were able to receive merit pay. In these circumstances, the fact that non-represented and general employees have been required to pay full employee WRS cannot fairly be used to set a "pattern" because the remainder of their conditions of employment are either unsettled across 2012-14 or are inconsistent with the City's proffered "pattern".

The settlement in the Transit unit is also too different from the City's other "settlements" and the City's offer herein to be called part of any "pattern". In this regard, I note that the Transit unit is brand-new, so that the weight of internal equity and parity

arguments are greatly decreased. Looking at the Transit settlement, it is different from the City's "pattern" in that Transit ATBs are significantly less than those in the Fire settlement and those in the City offer to the Police. Also, Transit workers will receive an additional 4.2% in 2013 for the addition of 1.6 hours to their workdays. On this point, I am not persuaded by the City's argument that because Transit workers have to work an extra 1.6 hours per day to receive this additional pay, somehow it is less valuable. This schedule change is permanent. It is something the Union could not have insisted upon to impasse and 1.6 hours added to the workday is very unlikely to disrupt the lives of Transit workers. In these circumstances, this 4.2% increase is quite valuable. And in this Arbitrator's view, it makes the Transit settlement too different from the City's asserted "pattern" to be a part thereof.

Regarding the Fire unit settlement, although closer to the City's offer in this case, this settlement is insufficient, standing alone, to constitute a true "pattern". In reaching this conclusion, I note that the Fire unit also received a new benefit in its 2012-14 contract, "special event pay".¹⁷ The Police unit was not offered this new benefit for 2012-14. This new benefit is also inconsistent with the City's asserted "pattern".

I am aware that the City Fire and Police units have generally received the same ATBs from 2003 (after the Police lost in interest arbitration) to 2011. Usually, when a parity argument is made, it covers more than a seven-year period. Nevertheless, should the Police Union prevail herein, Firefighters will be, at the very least, disappointed, and morale and "esprit de corps" between the Police and Fire units will suffer briefly. But the fact that the Union has agreed to the same wages, WRS payment rates and health premium payments for 2012 and 2014 will lessen the impact and duration of this problem.¹⁸ Thus, although the Fire settlement is not significantly different from the City's offer, it is insufficient, standing alone, to constitute a pattern.¹⁹ In these circumstances, the City should have offered a *quid pro quo* for the WRS changes it offered unless the external comparables herein support its position.

The City has used Green Bay even though Green Bay was neither settled nor certified for arbitration at the time of the instant hearing. The parties have stipulated that any changes in the comparables prior to the issuance of this Award should not be considered herein. Therefore, I find that it would be unfair to use Green Bay for comparisons in this case. Therefore, the five remaining traditional external comparables shall be used in this case—Appleton, Fond du Lac, Menasha, Neenah, and Sheboygan.

I turn now to the external comparability factor which I find is the weightiest and most persuasive factor in this case. As shown above, Oshkosh Police received a 0.29%

¹⁷ The City asserted on Reply that it planned to pass the cost of this benefit on to the public. The Union was unable to respond to this assertion. Therefore, there is no way for me to evaluate this assertion on this record.

¹⁸ This situation created if the Union prevails here is similar to that which must have occurred in 2002 when the Police lost in interest arbitration over their 2001-03 contract and the Firefighters, by settling voluntarily, ended up receiving 0.75% more in wages than the Police for 2001-03. Of course, this 2001 difference in wages has continued to this day, unlike the difference in 2013 WRS rates if the Union's offer is chosen here.

¹⁹ The City cited Arbitrator Zel Rice's award in MATC, Dec. No. 19183-A (1982) for the proposition that an internal pattern should not be broken by the arbitrator. I find Arbitrator Rice's award factually distinguishable. There, MATC had proven an identical wage pattern across three other internal bargaining units, which pattern he held he should brake "in a free collective bargaining atmosphere".

wage lift in 2011, greater than the average lift of the comparables, but in 2012, they received a -0.33% wage decrease and for 2013 they will receive a -0.5% wage decrease, below the average of the comparables. In addition, although Oshkosh Police would maintain their ranking among the comparables at the minimum in 2013, the City's rankings at the maximum would slip from 1st to 3rd and at the maximum plus 25 years, the City's ranking would slip from 1st to 2nd place under the City's offer.

When we consider WRS, I note that none of the comparables went to full employee share payment as of January 1, 2013, unless Fond du Lac is counted. But it is not known on this record how many Fond du Lac officers have opted to pay 0% toward WRS and take a high deductible (\$1,500/\$3,000), and how many Fond du Lac officers have opted to pay the full employee share of WRS and pay a low deductible (\$500/\$1,000). Thus, the real value of the Fond du Lac provision is hard to quantify because employee insurance use cannot be measured accurately. Also, although it looks like Fond du Lac officers will have to pay a substantial amount no matter which option they choose, I note that in 2013, Fond du Lac officers will pay from 6.8% to 8.9% of premiums on much lower premium rates of from \$560.00 (Single) to \$1,460.00 (Family, or from \$44.80 to \$100.00 per month. Not only will Oshkosh officers pay either 12% or 15% of their premiums in 2013, but also, the Oshkosh premiums are substantially higher than Fond du Lac premiums, from 88% to 150% higher than Fond du Lac officers pay (ER. Tab 18D).

Looking at this a different way, if we average the employee-paid WRS for the settled comparables, the result is that for 2012, the average is 2.97%; for 2013, assuming all Fond du Lac officers pay 0% WRS, the average is 3.4%, and with Fond du Lac officers paying 5.9% toward WRS, the 2013 average is 4.73%. For 2014, the average paid by external employees will be 6.4% on the settled comparables. Clearly, the Union's offer is in the mainstream of these averages, while the City's offer is significantly over the averages. In these circumstances, on WRS, the Union's offer is "most reasonable" when compared to the external comparables.

The last factor is overall compensation. This factor clearly favors the Union's offer. Looking at 2012, officers will have a -2.17% decrease in their total compensation and in 2013, under the City's offer, officers will have a -1.87% decrease in total compensation, a total of -4.04% over the two years. While the officers' total compensation will rebound in 2014 by 3.99%, this means that across the three years of the contract, officers will have only a 0.5% increase in total compensation under the City's offer.

In contrast, the Union's offer would result in a 2013 decrease in total compensation of -0.52%. Given the parties' stipulation to a -2.17% decrease in 2012 compensation and a 2.04% increase in compensation in 2014, Oshkosh officers would see a total increase in compensation over the three years of the agreement of 0.65%. According to the City's Chart 2 (attached as Exhibit "1"), the average net loss of the comparables in 2012 was -3.75%. Under the parties' stipulation for 2012, the 2012 net gain for Oshkosh officers was 1.6%. For 2013, the average net gain of the comparables will be 4.3%, while under the City's offer, City officers will have a net loss of -3.55%, and under the Union's offer the net loss will be -1.5%. Therefore, for 2012 and 2013, the comparables will see an average net gain of 0.55%, while under the City's offer, the net loss over the two years will be -2.05%. Under the Union's offer, there will be a slight net

gain of 0.1% over the two years but this figure is still under the average of the comparables. Therefore, Union's offer is preferred on overall compensation.

It is clear on this record that the City has provided no *quid pro quo* for increased WRS contributions in 2013. In my view, given the one year/one issue difference between these parties, the Union's responsible attitude toward the costs of its members' wages and benefits, the fact that City officers will be in the same position as all settled City groups in 2014 and the heavy weight of the settled external comparables, there is insufficient reasonable basis on which to award the City's offer. Therefore, the Union's offer, which phases in WRS in 2013 and is closer on several levels to the average of the external comparables is the "most reasonable" offer and it is selected.

Based on the record evidence, the analysis thereof and the application of the statutory criteria, I issue the following

AWARD

The Union's final offer shall be incorporated into the 2012-14 labor agreement.

Dated and Signed this Sixth Day of June, 2013, at Oshkosh, Wisconsin,

A handwritten signature in blue ink that reads "Sharon A. Gallagher". The signature is fluid and cursive, with a long horizontal flourish at the end.

Sharon A. Gallagher

APPENDIX A

CITY OF OSHKOSH
FINAL OFFER
TO THE
OSHKOSH PROFESSIONAL POLICE ASSOCIATION
BEFORE
PETER DAVIS, WERC MEDIATOR

October 12, 2012

Note: All provisions of the previous Contract shall continue except for the following changes:

1. Schedule A, Wages.

- a. January 1, 2012 - 2.0% across-the-board increase.
- b. November 1, 2012 - 0.5% across-the-board increase.
- c. January 1, 2013 - 2.5% across-the-board increase.
- d. January 1, 2014 - 2.5% across-the-board increase.
- e. In addition to the above, effective January 1, 2013, Detective and Detective II pay shall be increased in column "F" by \$25.00 each in the BIW line.
- f. In addition to the above, effective January 1, 2014, Detective and Detective II pay shall be increased in column "F" by \$30.00 each in the BIW line.

2. Article VI - B. Vacation Leave. First paragraph. Add:

"Effective January 1, 2014 the vacation schedule shall be modified to provide 15 working days of vacation after 5 years of service and 20 working days of vacation after 10 years of service. The other categories shall remain unchanged."

3. Article VIII, Insurance Benefits. Update this section as shown below:

A. Insurance Medical Benefits Plan.

The Employer shall provide health coverage.

Health Risk Assessment (HRA): Employee participation in the City's Health Risk Assessment (HRA) program is voluntary. To receive the preferred premium contribution rate, the employee must participate in the HRA. Participation by the employee's spouse in the HRA is encouraged but not required. Participation in

APPENDIX A

the follow-up coaching program is recommended and is offered on a voluntary basis.

The City reserves the right to offer an HRA and select the HRA administrator in its sole discretion. The City shall pay for the costs to provide the HRA. In the event the City elects to discontinue the HRA program, employees shall contribute the preferred employee health insurance rates.

1. Employee Contributions With Health Risk Assessment (HRA).

Effective January 1, 2011, employees will contribute up to 7% up to a maximum of \$57 per month towards single; \$104 per month towards dual and \$144 per month towards the family premium equivalents.

Effective November 1, 2012, employees will contribute up to 11% up to a maximum of \$76.10 per month towards single; \$136.96 per month towards dual and \$190.22 per month towards the family premium equivalents.

Effective January 1, 2013, employees will contribute up to 12% up to a maximum of \$90.00 per month towards single; \$161.00 per month towards dual and \$224.00 per month towards the family premium equivalents.

Effective January 1, 2014, employees will contribute up to 12% up to a maximum of \$97.00 per month towards single; \$174.00 per month towards dual and \$242.00 per month towards the family premium equivalents.

2. Employee Contributions Without Health Risk Assessment (HRA).

Effective January 1, 2011, employees will contribute up to 10% up to a maximum of \$82 per month towards single \$148 towards dual and \$205 towards the family premium equivalents.

Effective November 1, 2012, employees will contribute up to 14% up to a maximum of \$96.85 per month towards single; \$174.32 per month towards dual and \$242.10 towards the family premium equivalents.

Effective January 1, 2013, employees will contribute up to 15% up to a maximum of \$112.00 per month towards single; \$202.00 per month towards dual and \$280.00 towards the family premium equivalents.

Effective January 1, 2014, employees will contribute up to 15% up to a maximum of \$121.00 per month towards single; \$218.00 per month towards dual and \$302.00 towards the family premium equivalents.

APPENDIX A

Note: Health insurance premium contributions are actually made one month prior to the effective dates shown.

4. Article IX, Pension. Add:

Effective November 1, 2012, an employee shall contribute 3.0% of his/her gross wages toward the Wisconsin Retirement System (WRS).

Effective January 1, 2013, an employee shall contribute his/her portion of the Wisconsin Retirement System (WRS) on the same basis as general employees as determined by the Employee Trust Funds (ETF).

5. Duration. Change the duration clause to read:

"THIS AGREEMENT shall become effective January 1, 2012 and will remain in full force and effect to and including December 31, 2014."

Note: The City reserves the right to modify this offer pending review of the Union's final offer.

APPENDIX B

FINAL OFFER
Oshkosh Professional Police Association
TO
City of Oshkosh
October 19, 2012

Note: All provisions of the previous Contract shall continue except for the following changes:

1. Schedule A, Wages.

- a. January 1, 2012 - 2.0% across-the-board increase.
- b. November 1, 2012 - 0.5% across-the-board increase.
- c. January 1, 2013 - 2.5% across-the-board increase.
- d. January 1, 2014 - 2.5% across-the-board increase.
- e. In addition to the above, effective January 1, 2013, Detective and Detective II pay shall be increased in column "F" by \$25.00 each in the BIW line.
- f. In addition to the above, effective January 1, 2014, Detective and Detective II pay shall be increased in column "F" by \$30.00 each in the BIW line.

2. Article VI - B. Vacation Leave. First paragraph. Add:

"Effective January 1, 2014 the vacation schedule shall be modified to provide 15 working days of vacation after 5 years of service and 20 working days of vacation after 10 years of service. The other categories shall remain unchanged."

3. Article VIII, Insurance Benefits. Update this section as shown below:

A. Insurance Medical Benefits Plan.

The Employer shall provide health coverage.

Health Risk Assessment (HRA): Employee participation in the City's Health Risk Assessment (HRA) program is voluntary. To receive the preferred premium contribution rate, the employee must participate in the HRA. Participation by the employee's spouse in the HRA is encouraged but not required. Participation in the follow-up coaching program is recommended and is offered on a voluntary basis.

APPENDIX B

APPENDIX B

The City reserves the right to offer an HRA and select the HRA administrator in its sole discretion. The City shall pay for the costs to provide the HRA. In the event the City elects to discontinue the HRA program, employees shall contribute the preferred employee health insurance rates.

1. Employee Contributions With Health Risk Assessment (HRA).

Effective January 1, 2011, employees will contribute up to 7% up to a maximum of \$57 per month towards single; \$104 per month towards dual and \$144 per month towards the family premium equivalents.

Effective November 1, 2012, employees will contribute up to 11% up to a maximum of \$76.10 per month towards single; \$136.96 per month towards dual and \$190.22 per month towards the family premium equivalents.

Effective January 1, 2013, employees will contribute up to 12% up to a maximum of \$90.00 per month towards single; \$161.00 per month towards dual and \$224.00 per month towards the family premium equivalents.

Effective January 1, 2014, employees will contribute up to 12% up to a maximum of \$97.00 per month towards single; \$174.00 per month towards dual and \$242.00 per month towards the family premium equivalents.

2. Employee Contributions Without Health Risk Assessment (HRA).

Effective January 1, 2011, employees will contribute up to 10% up to a maximum of \$82 per month towards single \$148 towards dual and \$205 towards the family premium equivalents.

Effective November 1, 2012, employees will contribute up to 14% up to a maximum of \$96.85 per month towards single; \$174.32 per month towards dual and \$242.10 towards the family premium equivalents.

Effective January 1, 2013, employees will contribute up to 15% up to a maximum of \$112.00 per month towards single; \$202.00 per month towards dual and \$280.00 towards the family premium equivalents.

Effective January 1, 2014, employees will contribute up to 15% up to a maximum of \$121.00 per month towards single; \$218.00 per month towards dual and \$302.00 towards the family premium equivalents.

APPENDIX B

Note: Health insurance premium contributions are actually made one month prior to the effective dates shown.

4. Article IX, Pension. Add:

Effective **November 1, 2012**, an employee shall contribute **3%** of his/her gross wages toward the Wisconsin Retirement System (WRS).

Effective **January 1, 2013**, an employee shall contribute **4.5%** of his/her gross wages toward the Wisconsin Retirement System (WRS).

Effective **January 1, 2014**, an employee shall contribute **his/her portion of the Wisconsin Retirement System (WRS) on the same basis as general employees as determined by the Employee Trust Funds (ETF).**

5. Duration. Change the duration clause to read:

"THIS AGREEMENT shall become effective January 1, 2012 and will remain in full force and effect to and including December 31, 2014."

Chart 2
City of Oshkosh
Net Gain/(Loss) of Difference Between
Actual Wage Increase Less Employee WRS Contribution
2012 - 2013

	2012				2013			
	<u>Wage Increase</u>	Less	<u>WRS Contribution</u>	= <u>Gain/Loss</u>	<u>Wage Increase</u>	Less	<u>WRS Contribution</u>	= <u>Gain/Loss</u>
1. Appleton	1.0%	-	0.0%	= 1.0%	4.25%	-	0.0%	= 4.25%
2. Fond du Lac	2.0%	-	5.9%	= (3.0%)	2.0%	-	.75%	= 1.25%
3. Green Bay (c)	0.0%	-	0.0%	= 0.0%	0.0%	-	6.65%	= (6.65%)
Green Bay (u)	1.61%	-	1.61%	= 0.0%	3.1%	-	6.3%	= (3.2%)
4. Menasha	3.0%	-	2.0%	= 1.0%	2.0%	-	2.4%	= (0.4%)
5. Neenah	2.5%	-	3.0%	= (0.5%)	3.0%	-	3.65%	= (.65%)
6. Sheboygan	1.75%	-	4.0%	= (2.25%)	1.75%	-	1.9%	= (.15%)
7. Oshkosh (c)	2.1%	-	.5%	= 1.6%	2.5%	-	6.15%	= (3.65%)
Oshkosh (u)	2.1%	-	.5%	= 1.6%	2.5%	-	4.0%	= (1.5%)

- Notes: 1. Er. Exs. 18-A, 18-B
2. "Actual" wage increase takes into account any wage "splits" and their effective dates.
3. WRS difference in 2013 represents only the net increase in WRS contributions from the prior year. (For example, if the employee WRS contribution was 2.0% in 2012 and 6.65% in 2013, the appropriate WRS figure in 2013 would be 4.65%.)
4. (c) = City final offer.
(u) = Union final offer.

EXHIBIT "1"