

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

**INTEREST ARBITRATION
AWARD**

**NEW BERLIN PROFESSIONAL
POLICE ASSOCIATION**

and

CITY OF NEW BERLIN

WERC: Case 112
No. [71596]
MIA-3035
DEC. NO. [34204-A]

Arbitrator: Paul Gordon

Appearances:

Benjamin M. Barth, Labor Consultant and **Doug Nelson**, Labor Consultant of Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, WI 53022 for the New Berlin Professional Police Association.

James R. Korom, Attorney, von Briesen & Roper, s.c., 411 E. Wisconsin Avenue, Suite 1000, Milwaukee, WI 53202 for the City of New Berlin.

INTEREST ARBITRATION AWARD

The City of New Berlin, herein the City or the Employer, and the New Berlin Professional Police Association, herein the Union or the Association, are parties to a collective bargaining agreement (CBA) for a term covering the period from January 1, 2009 through December 31, 2011. The parties were unsuccessful in their efforts to reach a voluntary successor agreement to the CBA.

The Association filed a petition dated April 3, 2012 with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Sec. 111.77, Wis. Stats., for the purpose of resolving the impasse existing between the parties as to wages, hours and conditions of employment of the law enforcement personnel. On July 10, 2012, William C. Houlihan, a member of the Commission's staff, conducted an informal investigation which reflected that the parties were at impasse.

On October 10, 2012 the City objected to a provision in the Association's Final Offer as being a prohibited subject of bargaining under Wisconsin statutes and WERC case law, as it is part of a health insurance plan designed by the City. The Association did not withdraw its provision, and the City then filed a Petition for a Declaratory Ruling in the Circuit Court for Waukesha County. The Association contested the Petition. The Circuit Court granted the City's Petition on June 25, 2013 finding the Association provision was a prohibited subject of

bargaining. The Association thereafter amended its Final Offer eliminating the offending provision and the City submitted a slightly revised Final Offer. Neither Final Offer was accepted by the other party.

On July 16, 2013 Investigator Houlihan advised the Commission that the parties were at an impasse, transmitted the parties' Final Offers along with the Advice to the Commission, and closed the investigation on that basis. On August 6, 2013 the Commission certified the Final Offers and Ordered compulsory final and binding interest arbitration be initiated pursuant to Sec. 111.778(4)(b), Stats.

The parties selected Paul Gordon to serve as the impartial arbitrator to issue a final and binding award and resolve the impasse. A hearing on the matter was held on November 8, 2013 in New Berlin, Wisconsin. The hearing was not transcribed. The parties agreed to submit written briefs and arguments by November 27, 2013 and that there would be no reply briefs or arguments. The briefs were filed by November 27, 2013 and the record was closed.

FINAL OFFERS

In summary, there are four primary issues to be resolved: 1) Wages, 2) Amount of employee contribution to health insurance premiums, 3) Wisconsin Retirement System (WRS) employee contributions, and 4) Term of the agreement. Additionally, the City proposed two language changes related to payment for health insurance after retirement; one for duty-related retirees and one for non-duty-related retirees – neither was accepted by the Association. The parties did agree to certain Tentative Agreements which will become part of either offer selected in this matter. A summary of the issues follows.

WAGE INCREASE

<u>Association Proposal</u>	<u>City Proposal</u>
1/1/12 – 0.0%:	12/31/12 - 1%
1/1/13 – 1.5%	12/31/13 - 1%
1/1/14 – 1.5%	

**EMPLOYEE HEALTH INSURANCE
PREMIUM CONTRIBUTION**

<u>Association Proposal</u>	<u>City Proposal</u>
1/1/13 – 12%	1/1/13 – 15%

EMPLOYEE WRS CONTRIBUTION

<u>Association Proposal*</u>	<u>City Proposal</u>
1/1/13 – 1.5%	later of 12/31/13
1/1/14 - 3.0%	or award, Officers pay all of employee's share

CONTACT TERM

<u>Association Proposal</u>	<u>City Proposal</u>
3 year	2 year
1/1/12 to 12/31/14	1/1/12 to 12/31/13

*For employees hired prior to July 1, 2011. Those hired

On or after July 1, 2011 shall pay the full employee's required contribution. The employer shall pay the balance according to State Statutes.

In addition, the City proposes that a duty-related retired employee will pay the same health insurance premium contribution as active employees, irrespective of the premium contribution level that existed on the day that employee retired. If employees retire on a non-duty-related disability, the employee would pay the difference between the amount paid by the health insurance trust fund established by the City and the full premium amount.

The Final Offer of the City in its entirety is annexed hereto as Exhibit A as if fully set forth herein.

The Final Offer of the Association in its entirety is annexed hereto as Exhibit B as if fully set forth herein.

The Tentative Agreements are annexed as Exhibit C

BACKGROUND

The City of New Berlin is in Waukesha County, Wisconsin and the Milwaukee metropolitan area is just to its east. The parties agree that comparable communities for this arbitration are: Brookfield, Franklin, Greenfield, Menomonee Falls, Muskego, Waukesha, Wauwatosa and, West Allis.

Exhibits admitted into evidence at the hearing show the general nature and economic conditions of the City.¹ The City provides yearly overviews of its financial condition. The 2012 overview contains financial, statistical, economic and other information. From the overview it is seen that:

- 36.7 square miles with a population of 39,770
- 9th highest property value in the State
- 2010 median household income as % of state: 151%
- 2010 per capita income as % of state: 140%
- 226 miles of streets
- 894 acres of parks & conservancy
- Named a "Tree City USA" by the National Arbor Day Foundation
- 165 miles of water mains

¹ New Berlin's population in the 2010 census is listed at 39,584. The average population of it and the comparables is 42,995. The approximate number of employees in the bargaining unit is 59. The average among all comparables is 71.5

The City has the highest possible bond rating by Moody's at AAA. According to Moody's Investment Services, Moody's "anticipates that the City's financial operations will likely remain sound given historically strong management, conservative budgeting, and stable reserve levels." New Berlin is one of only 5 municipalities in the State of Wisconsin that have achieved the highest rating.

City employment statistics from the U.S. Department of Labor – Bureau of Labor Statistics and the State of Wisconsin, Department of Workforce Development show unemployment rates as:

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>June 2012</u>
City of New Berlin	6.9%	7.1%	6.1%	6.7%
State of Wisconsin	8.5%	8.3%	7.5%	7.6%
United States	9.3%	9.6%	8.9%	8.4%

The City's 2011 operating spending per capita was \$702.03, which is the lowest among the Cities it compared itself to: Wauwatosa, West Allis, Beloit, Brookfield and, Waukesha.²

The City's recent levy rates have been:

<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
\$5.65	\$5.41	\$5.09	\$4.85	\$4.68	\$4.77	\$4.82	\$4.80	\$4.97	5.06

For the 2011 City property tax rates, of the 23 cities with populations of 30,000 to 150,000 the City of New Berlin is 23rd, that being the lowest rate. (Source: Wisconsin Taxpayer Alliance)

Per capita comparisons to Cities with populations of 30,000 to 150,000 show:

Basic spending per capita:

New Berlin - \$552.59, which is in the mid range and under the median.

Operating spending per capita:

New Berlin - \$702.03, which is the lowest.

Municipal property tax levies per capita:

New Berlin - \$552.59, which is in the mid range and below the median.

Debt per capita / Debt as a % of limit:

New Berlin - \$968.53 / 16.0%, which is below the mid range.

The City's number of full time employees in recent years are:

<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
206	204	203	199	210	209	206	195	191

² It is noted that four of the five other Cities are among the comparables agreed to by the parties.

New Berlin has 6.32 employees (excluding utilities and using FTE numbers) per thousand residents, which is the lowest among the Cities it compared itself to: Brookfield, Beloit, West Allis and, Wauwatosa. The 2011 City financial overview shows 43% of City spending going to public safety. The 2012 overview shows 42% of spending for public safety.

The 2011 adopted budget for the City was \$33,996,903.00. The adopted budget for 2012 was \$34,251,175.

In 2007 property taxes amounted to 67% of the City's revenues. In 2012 property taxes amounted to 70% of the City's revenues.

The City views its budget environment in terms of

- Stagnant state and national economy
- No increase in revenue from the State
- State levy limits
- Flat permit & interest income revenue
- Increasing infrastructure maintenance and related debt service costs

Other reporting concerning the City shows recent City budgeting efforts have striven to keep budgets low and avoid tax increases. The City has used unpaid furloughs for various City services when it ran into revenue shortfalls, particularly in 2009. The City is attempting to increase activity in its City Center area, which is a retail and residential area. One out lot remains to be developed and one vacancy filled there. The vacancy rate in the New Berlin business park is reportedly the lowest for industrial parks in southeastern Wisconsin. However, there are "stubborn" vacancies at other business locations in the City.

Data from the Wisconsin Department of Revenue indicates that the 2013 amount of new net construction in New Berlin was \$30,749,600, which is a percent change of 0.67% from the 2012 total equalized value of \$4,583,167,900. This compares to an average among the comparables of net new construction of \$26,588,950, with an average percent change of 0.75%.

In 2012 the City transferred its police and fire dispatching services to the Waukesha County Communications Center. According to the 2013 proposed Police Department operating budget as submitted in July, 2012, this change is expected to result in millions of dollars in tax savings to the City of New Berlin in future years, realized annually in personnel and equipment costs no longer necessary to maintain the local dispatch center. Some of the savings will be offset by the need to relocate and update security cameras and alarm systems to the records area. These costs and the proposed addition of eight Police Clerks to maintain 24/7 building staffing as reflected in the proposed budget of \$9,237,119.00, which is \$280,621.00 less than the 2012 adopted budget. That budget was apparently finally set by the City at \$9,233,919.00. In July of 2013 the Police Department submitted a proposed budget reflecting a 0.2% increase above the previous year's adopted budget; a budget \$200,000.00 less than the 2007 operating budget.

The Association's exhibits show the consumer price index as:

At the time the parties' offers were certified:
CPI-U - July, 2013 increase 0.2 percent seasonally adjusted. Over the last 12 months, the all items index increased 2.0 percent before seasonal adjustment.

At the time of the hearing herein:
CPI-U – September, 2013 increase 0.2 percent seasonally adjusted. Over the last 12 months, the all items index increased 1.2 percent before seasonal adjustment.

As additional background, the City maintains a health insurance plan applicable to all employees who contribute the full amount to the WRS. General employees and fire department employees pay 15% of the health insurance premium. The City reimburses all those employees 100% of their in-network deductible, resulting in a health insurance plan with no net out-of-pocket deductibles and only some minor out-of-pocket cost for office visits, emergency room co-pays, and some prescription drugs. Employees who do not pay the full amount toward the WRS, the police employees here, have been receiving a health insurance plan with higher deductibles which are not reimbursed by the City. The City indicated that if it was successful in this interest arbitration before the end of December, 2013, that the police department employees would be moved onto the health insurance plan applicable to all other City employees.

Further background and facts appear as are in the **DISCUSSION**.

RELEVANT STATUTORY AUTHORITY

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

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

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

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
4. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - a. In public employment in comparable communities.

- b. In private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living.
 6. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
 7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITIONS OF THE PARTIES

The positions of the parties are summarized here, with more details in the **DISCUSSION** section as needed. The parties filed initial briefs only, and did not file reply briefs.

The City

In summary, the City argues that it is important to understand and remember that Wisconsin interest arbitration is designed to help arbitrators determine the “market rate” of public service employers by using the statutory factors.

Some of those factors are not in dispute in this case. The City has the lawful authority to satisfy either Final Offer. The stipulations of the parties show a small handful of tentative agreements that do not favor either party.

While the City has the financial ability to pay the cost of either Offer, “financial ability” must be considered in conjunction with “the interests and welfare of the public.” This conjunction means something. The Union might argue that because the taxpayers in the City have not yet been taxed to the max, that they must pay more; if the taxpayer has an extra dollar, the City is obligated to give it to the employees in wages and benefits. But, that is not how this factor works. The City is daily taking into account the welfare of the community in an attempt to keep the total cost of government down. They combined their dispatch center with the County to reduce personnel costs. They took other steps to keep their tax rate and total levy below that of other municipalities. The City is allowed to make those political decisions that may be a reduction in the array of municipal services it offers. But the key question is whether the employer is unfairly keeping the tax rate down on the backs of the public employees. That is not the case here. The City is meeting and exceeding the market rate for police services. Merely

because the taxpayers have the ability to increase taxes to meet the demands of the Union does not make those demand more reasonable or even preferred.

The cost of living factor is not significant here. The CPI annualized rate dropped from 2% in July to 1.2% in September. Admittedly, when the wage increase is offset with the corresponding WRS contribution for either party's final offer, it will be below the CPI figures. However, Union costing data recognizes the step increases in salary available that make the total costs more attractive. The Union's costing for the total unit with its 1.5% increase between 2012 and 2013 is a 4.4% increase. Thus, when factoring in the value of the step increases that some employees in the bargaining unit are still receiving, the Union Final Offer increases the employer cost more than twice the CPI.

The factor of overall compensation does not control the outcome. City Exhibit 13 confirms the City does not lag behind the comparables. Comp-time-for-workout-time, pay for opting out of insurance, and full-paid uniforms show the City exceeds comparables. The Union did not propose any needed changes in these areas.

Concerning changes in any of the foregoing circumstances during the pendency of the arbitration proceedings, the parties really reached impasse in February, 2012. After mediation in July, 2012 rather than moving towards arbitration the Union included in its Final Offer health insurance plan design language, which already had been determined to be a prohibited subject of bargaining. This required the City to expend resources to get a County Court ruling, during the pendency of which the Court of Appeals decided the *Milwaukee Police* case on the point. Bu the Union did not back down. This delay gave the Union the WRS rates for 2014, which would not have been known had the case proceeded to hearing in a timely fashion. Both CPI calculations submitted by the Union had been embargoed and would not have been known. A number of settlements for external comparables would not have been available. This information is relevant when assessing whether a three-year contract, including 2014, is reasonable or appropriate. Had this case proceeded to hearing six months earlier, the financial picture of 2014 amongst comparables and the economy generally would have been murkier than now. The New Berlin Fire Union had none of this information available when they agreed to a two year contract. The passage of time due to the Union delay should not be allowed to help the Union in this case. The "changes in any of the foregoing" factor weighs in favor of the City.

But this case is fundamentally about internal and external comparability, the two factors traditionally amongst the more powerful.

On the factor of internal comparability the City's Final Offer is heavily favored. The fire unit became a Union in 2009, and then adopted a CBA nearly identical to that of the police Union. The settlements under the fire contract were virtually identical to the police Union (a lower wage increase ameliorated by an earlier top firefighter rate). Dozens of cases would explain the critical importance of internal comparability. Internal jealousy of employees is one reason. Arbitrator Michelstetter in 1988 told these parties that internal comparability is critical. That was where one bargaining unit settled voluntarily, and the impact it should have on the police unit at impasse:

"Since that unit chose not to pursue arbitration, it is strong evidence of what parties similarly situated would do under like circumstances. Interest arbitration equalizes the bargaining power of the parties and, to the extent it is predictable, it suggests likely terms of settlement. Nonetheless, collective bargaining is not a process of mathematics, but instead involves real people applying their best judgment to real circumstances. In many cases, when co-equal units bargain with the same employer, it is difficult for the various parties to achieve a settlement in any one of the units since there is no advantage in being the first labor organization to settle. For this reason, arbitrators have to be very careful to avoid frustrating the process of settlement."

At page 7 (see City Exhibit 10).

Arbitrator Michelstetter knew if one unit settled in good faith consistent with the statutory factors and a later bargaining unit convinced an arbitrator to give them more, the first would feel betrayed by the process, never settle again, be incentivized to wait for the other to settle first, and then go to interest arbitration to remedy the betrayal perpetrated on them in the first case. That is a very dangerous precedent. Michelstetter's award, admittedly for the Union, was based on a dramatic imbalance in external comparables, indicating the New Berlin police "have been among the lowest paid police officers in the Milwaukee area for many years." Thus, a dramatic disparity with the market rate might override an internal comparable, all things being equal, the internal comparable should be given significant weight by this Arbitrator.

Internal comparability also relates to the City's non-negotiable decisions concerning health insurance plan design. Setting a cyclical path of recrimination, if the police successfully resist the same package accepted by the fire Union, the City will need to recoup its financial cost and to respect the integrity of the Fire settlement through continuing the less attractive provisions of the police health insurance plan. This will make the police angrier, feel they are getting a worse deal than counterparts in other municipalities and lead to more division, conflict and degraded labor relations. If the Arbitrator awards the City's Final Offer, the onus will be on the City to provide the police the same health insurance plan provided to all other City employees as promised. While that decision is not negotiable, the City intends to do so, and asks the arbitrator to give it that opportunity, and rebuild a sense of trust and unity between it and all its employees. The Union asserts there is nothing legally requiring the City to live up to its word, but the best predictor is its past conduct when the City immediately placed the firefighters on the health insurance plan of the general employees. There is no reason to believe the City would behave differently here. Moreover, a safety valve for the police department if the City is successful and does not move then onto the general plan, there would be political "hell to pay." Both parties would be at the bargaining table for 2014 and the Union would cry foul, expecting the next arbitrator to punish the City for its bad behavior. Any City gains would be quickly remedied. The City asks the arbitrator to give it the chance to show that it will do the right thing for these employees.

As to external comparables, The City contends it is paying well above the "market rate" and will continue to do so under its Final Offer. The Union Final Offer will actually expand New Berlin's leadership position among the comparables.

How to absorb increased WRS contributions requires an analysis of a trend as opposed to a snapshot. City Exhibit 6 captures that trend, demonstrating three subcategories of employer approach to WRS contributions. Some provide dollar for dollar wage increases within the same year. Muskego is the only one in that category. Others provide less than dollar for dollar in salary in the early part of the contract but “back-end load” additional salary in later years to make up the difference. Franklin is an example, giving 3% wages in 2014 in return for the employees going from 3% WRS contributions to “full”, a 4% increase (to 7%), but then giving them 2% more in wages the following year. Finally, some, such as Greenfield, provide less in salary than was demanded in the form of WRS contributions. Greenfield is in negotiations now, and wage increases may be forthcoming now that the employees are fully paying their WRS contributions. By 2014 most of the comparables are paying full WRS. City Exhibit 9 demonstrated that of the six settled for 2014, three pay full WRS, while Waukesha employees pay 4% WRS. Wauwatosa and West Allis are not settled. Brookfield settled in 2010 before the Acts 10 and 32 changes were known. Other than the premature Brookfield contract, the comparability pattern supports the City proposal to have employees pay full WRS. The Union proposal of only 3% would be the lowest of any others that have settled.

Another external comparable observation is to not focus just on the “delta” or amount of change in either party’s Final Offer. Relative rank at the beginning and end of the new contract must be examined. If one party’s Final Offer maintains the relative rank, while the other would leapfrog then further above comparables, the offer that most closely retains the status quo should normally be favored. City Exhibits 11 and 12 demonstrate this prefers the City Final Offer. Both Final Offers provide for a salary rate in 2012 that is higher than another municipality. If costs of WRS contributions by the communities that have agreed to pay them in 2012 is factored in, the City ranking is still number one and is even higher above the average. When the analysis is done, this changes the average of all the comparables excluding New Berlin (\$69,945) to \$64,757. This is a difference from New Berlin of \$5,188 or roughly 8% of salary. The City could have asked for the full WRS of 7% and not offered any wage increase and still have stayed above the average of the comparables. City Exhibit 12 takes the 2014 wage offers, reduced by the WRS payments (of a top patrol officer) and assesses relative rank and average among comparables. Thus, by January 1, 2014, the City and Union proposals both keep the City as the second highest paid municipality. Importantly, this is only surpassed by Brookfield, which has no offsetting WRS payment as it was settled before being aware of Acts 10 or 32. Eliminating Brookfield suggests both parties Final Offers retain the number one ranking. However, the distance between the parties’ offers and the averages net comparisons is dramatic. In 2012 both are \$3,459 above the average. By 2014 the City Final Offer would be in first place, and \$185 above average, while the Union Final Offer would increase to \$3,726 above the average. Eliminating Brookfield keeps the City Final Offer \$1,708 above the average, while the Union Final Offer vaults then to \$5,249 above the average.

A third aspect of external comparables is the result to City Exhibits 11 and 12 if the cost of insurance was added in, as challenged by the Union at the hearing. The City reminds the Arbitrator of its objection to the notion that insurance plan design decisions, as well as the “impact” of those decisions on negotiable topics, suggests that such an analysis is not even proper in this proceeding. Nevertheless, the City can meet the Union challenge.

Exhibit A (attached) attempts to quantify the wide variety of health insurance programs offered by the comparables. It merely incorporates data from City and Union Exhibits. The Union Exhibits (900, 901, 902) themselves are misleading in that they cite a single employee contribution rate. However, in most municipalities there are rates at one level for those not participating in a wellness program, and a lower rate for those that do. The far left-hand column of Exhibit A contains the correct information, from City Exhibit 6 and the CBAs. New Berlin has no wellness program. To get the lower wellness program of other municipalities, employees have to do health related things. Employees in New Berlin need do none of that. The City's rate should be compared to the non-wellness premium contributions. The City's 15% proposed premium contribution rate is equal to or better than the non-wellness rates of four of the eight comparables. The Union proposal of 10% and 12% in 2013 is below the non-wellness rates of six of the eight. And West Allis is currently in negotiations.

Exhibit A then adds to premiums the maximum family deductible for a total "worst case scenario" for employees who take family coverage. Under the City Final Offer of 15% premium contribution and, whereby the City would fully reimburse the out-of-pocket deductible, the New Berlin police employees would rank fifth among the 16 options available among the comparables. Under the Union Final Offer the employees would be 14th among the 16 options.

Two conclusions can be drawn from Exhibit A. First, if the City wins this case but keeps the police in their current plan, the City is not as competitive. Second, even at a 15% premium contribution, the new plan represents the only community other than West Allis that has no out-of-pocket in-network deductible costs for employees. The plan offered by the City is highly competitive and desirable. The City can now meet the Union challenge by recalculating the information contained in City Exhibit 12. Exhibit B, (attached), adds two additional columns; the first lists costs for municipalities that have settled. The other calculated a net total compensation by subtracting the "worst case scenario" from the net salary and WRS amounts. If the City is successful, employees pay 15% of the premiums but get full reimbursement of their deductible and their net compensation after WRS and health insurance will be \$62,792. The Union offer of 12% on their current plan has out-of-pocket cost of \$7,923 and total compensation of \$61,974. The average among the comparables under the same analysis is \$61,442. The difference between the City Final offer and that is \$1,330 above the average. The Union Final Offer yields \$555 above the average. When Brookfield is eliminated the City Final Offer is \$3,171 ahead of comparables and the Union's is only \$2,353 ahead of comparables. And, if the City and Union can negotiate a wage increase for 2014 rather than a 2014 settlement forced upon them by this Arbitrator, and they settle on a 2% wage increase, the employees gain even more.

Exhibit C conducts the same analysis but using the higher "non-wellness" rate for the comparables. The same conclusions can be drawn. The City Final Offer results in these employees exceeding the external comparables by nearly \$2,500 and without Brookfield by nearly \$2,800. If a 2% salary increase is negotiated for 2014, the gaps get larger.

The City's Final Offer is well supported by any fair analysis of the external comparables. New Berlin is and will continue to be in a leadership position among comparables.

The City also argues that it has unanswered challenges it posed to the Union at the hearing. Those are:

1. What is the rationale for having the police unit in the City of New Berlin get a better deal than the fire department employees in the same city, facing the same local economic conditions, analyzing the same external comparables, under the same bargaining laws, and having all other statutory factors be essentially the same?
2. What is the rationale for this unit to be one of the last among the comparables to pay the full WRS contribution? This question must be posed in light of the fact that all general municipal employees of the City (DPW, clerical, non-represented) are required to pay the full WRS, and do not even have the option of negotiating over it.
3. What is the rationale for taking the highest paid group among the agreed-upon comparables, letting them lag behind most of the others on WRS and premium share, while increasing the gap between what they are paid compared to the average salary among those comparables?

The Union has no good answer to those questions.

The City concludes by noting that the employees in the bargaining unit belong to a noble profession and perform those duties honorably. The City recognized this by moving them from nearly the lowest paid to the highest paid group since 1988. This is not personal. The Union leaders are simply trying to get as much for their members as they can, while giving up as little as possible. The City does not fault them for that. But, the City is responsible to look out for the best interests of the entire community. If able, the City should be able to do that without balancing the budget on the backs of the employees. Here, the City is meeting and exceeding the market rate for police services. Its proposed wage increase, with WRS offsets and slightly increased contributions toward health insurance premiums keeps it well above the average amongst external comparables. Once Menomonee Falls and Brookfield police departments negotiate new contracts, that will likely be more true if their Fire settlements are indicative. If given the opportunity to negotiate a wage increase for 2014, the parties here will have another opportunity to rebuild the kind of relationship between them that resulted in the move from nearly dead last in 1988 to their present leadership position in 2012. The City wished to compensate employees in a manner that respects the interests of the taxpayers while considering the market value for their services. These employees already lead the pack. They want to lead by even more. That is not what interest arbitration is supposed to be about.

The City requests the Arbitrator to select the Final Offer of the City.

The Association

In summary, the Association argues that one of the controlling factors in this case is whether the City has offered an adequate and meaningful quid pro quo in return for the

significant modifications it seeks in WRS employee contributions and employee percentage contribution increase for health insurance premiums. The Association contends the City has not offered a meaningful and adequate quid pro quo for the significant changes the City proposed, and the proposed changes are with a wage offer substantially below the external comparables.

The Association asserts that the City has the lawful authority to accept and abide by the Association Final Offer, the City has not argued a contrary position, and this factor is therefore not in dispute.

The parties reached four stipulations to the 2009-2011 CBA and both parties testified the four tentative agreements are housekeeping changes without economic impact. They are not in dispute.

The City has affirmed it can afford the Association's Final offer and thus the interest and welfare of the public will not be adversely affected. The City has not put forth an inability to pay argument. Therefore, this is not an issue. The interest and welfare of the public is well served if the citizens and taxpayers of New Berlin are provided with public servants who are well paid and of high spirits and morale. This is supported by arbitral authority:

If the exacting requirements of police work are to be met in the near future and more distant future, at least two conditions must be recognized: the level of pay must be high enough to attract able and promising young people who will be able to withstand the lure of higher wages at less dangerous work in plants and the compensation system should be one that will maintain the highest possible morale and esprit de corps in the present force. CITY OF PROVIDENCE, RHODE ISLAND, 47 LA, 1036-1039, (SEITZ, 1966).

This view on the importance of the department morale is still timely. Police Officers within the comparable communities are well aware of the wage increases and benefits received by their counterparts. They interact daily and depend on each other for mutual aid and backup, train together and see each other processing arrests. New Berlin officers are part of a joint tactical team with Muskego and Brookfield. During all these interactions there are discussions about wages, hours and conditions of employment. The Association Final Offer will have a more positive impact on morale of the employees, which in turn has a positive effect on the interest and well being of the citizens they serve.

Wis. Stats. 111.77(6)(bm)(4)(a) does not direct the arbitrator to specifically take into consideration the wages, hours and conditions of employment of employees within the same community. The statute states: "...other employees performing similar services." The drafters recognized the need to distinguish the special characteristics and needs of law enforcement when compared to other employees. This distinction has been recognized for years, citing arbitral authority (PORTAGE CITY, CASE 16, NO. 51978, INT/ARB-7488, FLEISCHLI). The Association has consistently argued here that its Final Offer was supported by settlements received by other law enforcement employees within the comparable communities. This argument is consistent with the statutory criteria.

Both Final Offers are well below the average cost of living during the period in which they were certified as well as the time of the hearing. At certification the CPI was at 2.0%. The Association Final Offer is 1.5% effective January 1, 2013. The City Final Offer has a wage freeze the first 364 days of 2013 and a 1.0% raise effective December 31, 2013. The most recent CPI is 1.2%. Clearly, the Association's Final Offer is closer to the CPI and far more reasonable than the City Final Offer. The City Final Offer on wages is without comparability and well below the CPI.

The overall compensation of the Association members is average compared to other employees. Association Exhibits 1200-1210 account for all the benefits receive by members as required by statute. The benefits of the New Berlin police are average when compared to the comparables (Association Exhibit 600) and should not support an award to the Employer.

The Association takes the position that the factor of changes in the foregoing circumstances during the pendency of the Arbitration is a non-issue.

The Association takes the position that the other factors normally taken into consideration are a non-issue.

The Association argues that the City's reliance on internal settlements should be given no weight. The Association is aware that Arbitrators are loath to award settlements that are greater than those voluntarily agreed to by other bargaining units within the same municipality. The only other represented employees of the City settled for the same wage, WRS and health insurance the City offered in the instant case. The Association is cognizant that good CBAs must be fought for and defended. The City did not engage in collective bargaining with the Police Association. As seen in Association Exhibits 906 and 907 for health insurance, the police have total out-of pocket cost (not including premiums) annually of \$10,400 family and \$5,200 single. Member of the Fire Association have no out-of-pocket costs, other than their premium share. Based on the Association's Final Offer, the Police Association will pay \$8,758.97 more per family and \$4,603.33 more per single plan than any other City employee, including the Fire Association. Based on the City's Final Offer, the Police Association will pay \$9,239.81 more per family and \$4,778.17 more per single plan than any other City employees including the Fire Association. Once the Fire Association agreed to the City offer, the City refused to bargain on any other economic issues with the Police Association and the police were told repeatedly to take the Fire Association settlement or proceed to arbitration. The City did not acknowledge the Police Association was losing ground with comparable law enforcement agencies. The City inflexibility to negotiate in good faith is irresponsible and resulted in this arbitration. An award for the City would impede the give and take of collective bargaining and have a severe financial and morale impact on law enforcement employees. If the City is successful what is to stop them from reducing benefits in future negotiations? Different bargaining units have different levels of power and have different sets of concerns. Each unit must be allowed to determine what is or is not worth fighting for, as arbitrators have recognized.

The other units in the City are independent of each other and of the Sheriffs unit and to say all must conform to a given wage rate is inconsistent with the independent process inherent in each separate unit, and defeats the purpose of

good labor relations. CITY OF GOODHUE, MINN., CASE NO. 81-PN-955-A (KAPSCH, 8/81).

The cogent conclusions being each bargaining unit is vested with the right to elect the combination of wages, hours and terms and conditions it perceives as satisfactory for a specific time period, given its unique set of perceived needs and assorted priorities. CITY OF RIVER FALLS, CASE NO. 32487 (BAYER, 10/84).
emphasis supplied

The Association does not disparage other groups of employees who reached an agreement that they felt was fair, but for the City to not deviate from that settlement and address the specific concerns of the Police Association is bargaining in bad faith.

The Association also argues that the City has failed to provide a quid pro quo in return for the modifications it seeks in WRS contributions and health insurance premium contributions, and the City Final Offer on wages is substantially below the external comparables. Interest Arbitrators are reluctant to award changes in the status quo without a compelling need, an offer that addresses that need and a quid pro quo to offset the change, citing arbitral authority. WASHINGTON COUNTY SOCIAL WORKERS, DEC. NO. 29363-A (TOROSIAN 12/11/98); PRENTICE SCHOOL DISTRICT, DEC. NO. 25814-A (FLATEN 7/3/89). The City asks for significant changes without any type of quid pro quo. The City proposes the members of the Association pay 100% of the WRS and require an additional 5% of the monthly insurance premiums.

The Association is currently not paying WRS contributions (except for those hires after July 1, 2011). Its Final Offer showed a willingness to contribute to WRS and asks to be offset in wages for the contribution. This is 1.5% to WRS on 1/1/13 with a 1.5% wage increase on 1/1/13 and an additional 1.5%, for a total of 3% into WRS on 1/1/14, with a 1.5% wage increase on 1/1/14. This is to not take a wage decrease by paying into the WRS. The external comparables have started paying into WRS (Association Exhibit 801) but many, if not all, received offsetting wage contributions or even wage increases exceeding the WRS contribution. (See attached chart) The City proposal is that members pay 100% effective 12/31/13 (or upon receipt of award) for a 1.0% wage increase on 12/31/12 and a 1.0% wage increase effective 12/31/13, which is the last day of their proposed contract duration and has little or no cost impact to the City. WRS employee rates are 6.65% for 2013 and 7.0% effective 1/1/14. While the employee share increases, the Employer's share decreases from 16.35% in 2013 to 11.06% in 2014 (Association Exhibit 802). For January 1, 2014, the City requests 7% towards WRS for a total 2.0% increase over two years. This has the employees take a 5.0% wage reduction while the total cost of WRS is decreasing, and is not a quid pro quo.

Secondly, the City requests the Association increase health insurance premium contribution from the current 10% to 15%. The Association has always been the leader among comparables in what employees pay towards premiums. From 2006 to 2011 they paid the highest percentage of the comparables. In 2012 they were two out of nine. The Association proposes a 12% contribution, even though the City is paying the same monthly rates for insurance in 2014 as in 2013.

The City is requesting a 5% increase in health insurance premium contributions even though since 2011 the City has saved over \$1,113,985.04 (Association Exhibit 911). In 2011 members of the Association had the same insurance as the rest of the City employees and the monthly premium was \$1,980.85/family and \$719.95/single. In 2012 the City forced the Association into a health insurance plan with deductibles of \$5,200.00/family and \$2,600.00/single. The premiums decreased to \$1,335.61/family and \$485.61/single. The deductibles increased to \$6,000.00/family and \$3,000.00/single in 2013. The City can legally do this regarding health insurance. The City is now requesting an additional 5.0% towards the premium and based on the City offer the Association members will pay \$7,218.59 more for family insurance and \$3,708.23 more for single than the nine comparables.(Association Exhibit 904-A)

The City has not offered a quid pro quo for the major changes it requests in health insurance and retirement contribution. The Association proposed to pay into WRS and pay more in insurance, but would like to limit the wage decrease that each member will feel in take home pay with either the Association or City Final Offer. Where a party proposes a major change in the status quo that party must propose a meaningful quid pro quo, citing SALEM JOINT SCHOOL DISTRICT NO. 7, DEC. NO. 27479-A (KRINSKY, 5/93). The City offer is the employees pay 100% employee share towards WRS and an additional 5.0% towards insurance premiums, for 1.0% wage increases effective 12/31/12 and 12/21/13, the last day of the City contract offer. This by no means has any type of quid pro quo attached to it. It is a mammoth change and the City has the burden of proof that a change is needed and that it include a meaningful and adequate quid pro quo. The City has met neither burden.

The Association argues that the City claimed they were blindsided by the Association modified duration proposal after mediation because they did not have time to discuss a three year contract. But the testimony shows the Association had made a three-year proposal during mediation on July 10, 2013. During mediation the City had offered a three-year contract. The City claim of being blindsided is a subterfuge to distract from the relevant issues. Once the offers were certified in July of 2013 the City had more than enough time to discuss and cost the three-year offer of the Association.

The Association requests the Arbitrator accept its Final Offer.

DISCUSSION

The parties' certified Final Offers set out four main issues in dispute: wages, employee health insurance premium contribution, employee WRS contributions, term of contract. There are two minor retiree insurance provisions in the City Final Offer which have not been argued by the Association and those matters will not be determinative. It is the responsibility of an interest arbitrator to select one of the certified Final Offers. The City argues that its Final Offer best reflects the market rate among the comparables for police services and is in alignment with its Fire bargaining unit as an internal comparable. It argues that the Association Final Offer would greatly and unreasonable increase the leading position the Association already enjoys relative to the external comparables. The Association argues that the combination of wages, WRS contributions and health insurance premium contributions in its Final Offer is closer to the CPI,

is supported by the external comparables, and best maintains bargained for benefits in view of now making some WRS contributions and increased health insurance premium contributions. The Association argues that the City Final Offer would take away income to the bargaining unit members because of WRS contributions and increased health insurance premium contributions, and does so without a demonstrated need or a quid pro quo.

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

Sec. 111.77(6)(am) provides that 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 paragraph (bm) and give an accounting of the consideration of this factor.

Much of this accounting of the consideration of this factor has been presaged in the Background portion of this award, and will be summarized here. Some of the information is from 2010, 2011 and 2012 data, which is from the evidence presented at the hearing. The arbitrator notes that the City of New Berlin is in relatively good financial condition both as a municipality and in the jurisdiction generally, especially compared to the comparable municipalities. The City has an AAA bond rating from Moody's, the highest available, and the City is one of only five in the State to have such a high rating. The City has the 9th highest property value in the State. The median household income and per capita income as a % of State is 151% and 140% respectively. The unemployment rate in the City has been under the State and United States levels since at least 2009. In June of 2012 was at 6.7% for the City, 7.6% for the State, and 8.4% for the United States. The City's spending per capita has been the lowest among the Cities it compared itself to in its annual report, four of which are in the agreed upon comparables in this action. Among the comparables, the tax rate has been consistently below the average and among the lowest. The City levy rate has generally gone down since 2002. Its property tax rate is the lowest of the 23 City in the State with populations of 30,000 to 150,000. It has a stable industrial park and there has been increased new net construction in 2013 above the dollar amount average, but less on a percentage basis, than the comparable communities. The City is concerned about the general nature of the economy, but no economic hardships special to the City have been presented on this record. The City made a strategic move to combine dispatch with the County, resulting in a substantial net savings in the police department budget that is expected to continue for years into the future. The City has used furloughs in 2009 to meet city budget goals. The economic conditions in the City of New Berlin are sound, stable and well managed. While not entirely, on balance they favor the Association. These economic conditions are given greater weight than the other statutory factors and are in favor of the Association Final Offer.

The statutory factors in subs. (6) (bm) will assist in determining this award.

1. The lawful authority of the employer.

The parties agree that the City has the lawful authority to satisfy either Final Offer. This factor does not favor either party.

2. Stipulations of the parties.

The parties did reach some tentative agreements in their negotiations and these will be incorporated into an award for either party. They do not favor either party in determining this award.

3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

The parties agree that the City has the financial ability to meet their costs and meet the Final Offer of either party. However, the parties differ on the conditioning of the financial ability in conjunction with the interests and welfare of the public.

Noting that the City has taken many steps to keep the tax rate, as well as their total levy, below that of other municipalities, the City points out that the cost of those decisions might be the reduction on the array of municipal services it offers and further points out that that is a political decision the elected leaders are allowed to make. The City feels the key question under this factor is whether the employer is unfairly keeping the tax rate down on the backs of the public employees, which it argues is not the case here because the Association employees do quite well compared to counterparts in comparable communities. The Association counters that the public interest and welfare is well served if citizens and taxpayers are provided with public servants who are well paid and of high spirits and morale. The Association members have various professional contacts with their counterparts in the comparable communities and are aware of wage increases and benefits the others receive. It argues that the Association Final Offer will have a positive effect on the interests and well-being of the citizens they serve.

The Association's Final Offer would have its members beginning to pay into the WRS at the rate of 1.5% effective January 1, 2013 and 3.0% effective January 1, 2014. The members would increase their health insurance premium contributions by 2.0% to 12.0% effective January 1, 2013. It proposed a wage increase for the 2012 year of 0.0% and a 1.5% increase effective January 1, 2013 and January 1, 2014. The City proposal would have the members pay the full employee's share of WRS, effective December 31, 2013 at 6.65% for 2013 and 7.0% for 2014 (or receipt of award), increase health insurance premium contributions by 5.0% effective January 1, 2013, and proffer a wage increase effective December 31, 2013 of 1.0% and December 31, 2013 of 1.0%. The City Final Offer on wages would have the employees receiving no pay increase for the first 364 days of 2013 after going with a 0% increase for 2012. The offsets in the Association Final Offer results in members paying more in WRS and health insurance premiums than they would receive in wage increases. This mitigates any increase in financial burden the City might feel and on its face does not appear to put much upward pressure of the City budget over what it has been able to provide in the past several years. The Association proposal maintains employee morale as it is their proposal. The City Final Offer would have no wage increase for the practical equivalent of two years and a wage increase that does not make up as much of the WRS and health insurance contributions its suggests. Overall, the interests and welfare of the public do not seem to be challenged or threatened by the Association Final Offer, while the City Final Offer would seem to take more away from the Association members without apparent need. The Association does not seek to tax the taxpayers to the max. It does take a responsible position in proposing the members start contributing to the WRS and increase

their health insurance premium contributions, both while going with a 0.0% wage increase for 2012. On balance the Association Final Offer is slightly favorable over the City Final Offer under this factor.

4. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - a. In public employment in comparable communities.
 - b. In private employment in comparable communities.

In addressing this factor the parties focused their arguments on police employees in the comparable municipalities and primarily on the Fire employees in New Berlin. Private employment was not addressed by either.

The City placed great emphasis on the internal comparable of its Fire employees, and its Final Offer in material respect is similar to what it settled for with the Fire employees. It argues that this internal comparable greatly favors its Final Offer here, and is good for overall employee morale to be treated similarly. The City is interested in having all its employees be on the same health insurance plan that the Fire and general employees have, and that also involves having those employees pay the full employee share of WRS contributions. If the City Offer is accepted it represents that it would put the Association members on that health insurance plan. The Association argues that an internal comparable is not strictly what the statutes require because the Fire employee do not perform similar services as the police, and they are independent bargaining units with different interests and goals.

Interest arbitrators do look at internal comparables, even if they are not of the same type or discipline of employees. Here, both police and fire are public safety employees. It is appropriate to consider the Fire settlement as an internal comparable. That settlement is favorable to the City under this factor

There is a matter of how much weight should be given to this. The police and fire are separate bargaining units. They are autonomous from each other. Some interests may be similar, but each is independent of the other. Effective, productive collective bargaining between one group and the City would be undermined if one bargaining unit's settlement were to be determinative of what the other bargaining unit must or will get. That could have negative morale repercussions and fail to take into account other priorities in the other unit. While the internal comparable with the Fire settlement in this case does favor the City, it does so slightly.

The external comparables show that the New Berlin police officers have made large gains since 1988 and are have recently been at or near the top rank among the comparables as to wages, health insurance premium contributions and now WRS con through 2011, with Brookfield paying the same percent. For 2012 and 2013 their proposal would have then paying a higher percentage than five (5) and six (6) of the comparables respectively. The City has been able to make the wage improvements for these employees and keep a low tax rate. Current reductions in State shared revenue have not yet made their full impact on the City's ranking among the comparables. All the comparables face the same reductions in State revenues. Both

parties Final Offers keep the Association members at or near the top in most areas of wages and benefits.

The City has an argument about the additional gap between the comparables and what members get now with what they would get if the Association Final Offer is accepted. The City makes the argument that if the City Offer is accepted, and the Association members are placed on the health insurance plan the other New Berlin employees have, then they benefit by having the City pick up 100% of the out-of-pocket expenses. This is \$6,000 in a worst case scenario. It argues that this should strongly favor the City Final Offer.

The calculations of the City's argument seem favorable to the Association employees on that score, indicating the City Offer is preferable. However, there are several matters that reduce, if not eliminate, any favorability for the City here. The First is the City's objection to having the "impact" of health insurance plan design be negotiated or used to select a Final Offer. The plan design and its impact are prohibited subjects of bargaining after Acts 10 and 32. If the City's objection is sustained, then it loses the value of this argument because the impact of having the City reimburse members for out-of-pockets is not to be considered. Yet the City made its arguments as to the value of those out-of-pocket reimbursements. Health insurance premiums were negotiated here as usual. Recent case law indicates that payment of deductibles, apart from plan design, are negotiable. *WISCONSIN PROFESSIONAL POLICE ASSOCIATION VS. WISCONSIN EMPLOYMENT RELATIONS COMMISSION AND EAU CLAIRE COUNTY, 2012AP2701 (CT. APP. IV 12/27 2013)*. Even if the City calculations are considered, two things reduce the weight of the City arguments. The first is that not all of the Association members take the health insurance. The second is that the City used a worst case scenario in factoring in their value of this benefit, \$6,000/family. It has not been demonstrated that all of the members who do or would take such insurance would face the maximum out of pocket expenses. Thus, the financial argument is speculative. Moreover, it is the responsibility of the arbitrator to select one or the other of the certified Final Offers of the parties. The City Final Offer does not provide for the health insurance plan now used by the Fire and general employees. The undersigned does not doubt the City's word that it would put the Association members on that plan as a result of selecting its Final Offer that proposes a two year term expiring December 31, 2013. But that is not contained in its certified Final Offer. Selection of the City Final Offer would of necessity bring some uncertainty into the relationship between the parties with the City having a free hand to design the plan under the law as it negotiates a new agreement. The certainty of knowing what the wages, benefits and working conditions are provides a more stable environment for the parties to negotiate. These matters make the City offer less preferable.

The actual cost of the health insurance premiums is less under the Association Final Offer. For 2013 under the Association Final Offer the total annual cost is \$12,283.24/family and \$5,899.24/single. The City Final Offer would be \$12,840.08/family and \$6,074.08/single. When a 12% employee contribution to the premium is subtracted from the Association Final Offer, the remaining cost to the City is \$10,844.45/family and \$5,191.31/single. When a 15% employee contribution is subtracted for the City Final Offer the remaining cost to the City is \$10,883.46/family and \$5,162.96/single. These costs are very close to each other, and they do not account for any expense the City would have to pay reimburse for out-of-pockets under its

proposal. That is how the argument can be made that the Association offer would be less expensive.

The external comparables also reveal an overall preference for the Association Final Offer when looking at WRS contributions combined with wage increases when employees pay into the WRS. For 2013 only two comparables are at the full employee share of WRS contributions. Four are less than the maximum and Menomonee Falls is not settled. Also, Brookfield was set before Acts 10 and 32 were passed. A similar pattern, or relative ranking, appears for 2014, while the contributions from New Berlin Association members would double to 3.0%. When compared to wage increases, the Association Final Offer of 1.5% for 2013 and 2014 is below the comparables over 2013 and 2014. The City Final Offer on wages is below that. Thus, the City Final Offer is in an average range for WRS contributions and is significantly below in wages over the two years. For 2013 only Greenfield has a lower wage, at 0.0%. But Greenfield then goes to 4.5% for 2014. The other yearly wage increases for 2013 range from 2.0% to 3.5%. A similar wage increase pattern appears for 2014 among the comparables that have 2014 information. The Association Final Offer has relatively low wage increase and WRS contributions in the middle of the comparables. That makes it preferable to the City Offer.

The parties have also differed on how they view other benefits of employees in the comparable municipalities. The City points out several enhanced benefits that New Berlin police officers have over some comparables, such as comp-time-for-workout-time, pay of opting out of insurance and full paid uniforms rather than a uniform allowance. The Association counters with other benefits that are better in some or most of the comparables than in New Berlin, such as tuition reimbursement, dental insurance, maximum sick leave accumulation, vacations, paid holidays and longevity pay. These additional benefits tend to balance each other out and in aggregate do not favor either party.

5. The average consumer prices for goods and services, commonly known as the cost of living.

The CPI for July 2013 is 2.0%. For September 2013 it is 1.2%. The City argues that this information should not weigh in favor of the Association because it was the Association's forcing the City to litigate a prohibited subject of bargaining that delayed the interest arbitration proceedings. If not for that delay, the information would not have become available. The City argues the CPI does not appear to play a significant role here. The City makes a similar argument for the WRS contribution rates. However, the fact does remain that these are the CPI rates. They could have gone in different directions. Recognizing these rates is appropriate not only because they are actually available, but also because the statutory factors allow consideration of changes in the facts underlying those factors in Wis. Stats. 111.77, as noted again below.

The wage proposal in the Association Final Offer is closer to the CPI. Of particular note is the City proposal which would have a 0.0% wage increase for 364 days of 2013. The City argues that using costing data of the Association, when step increases in the salary schedule are figured in, the wage package in the Association Final Offer would go to 4.4% between 2012 and 2013, more than twice the CPI. However, a step increase on a salary schedule is designed to retain and reward employees for longevity and commitment to the community, as well as recognizing the value of experience. It is not strictly a wage increase. Stated otherwise, to

calculate a step increase in a salary progression to compare it to the CPI would either erode the value of the step increase itself or artificially discount the CPI itself. Besides the cost of living reflected in the CPI itself, both Final Offers have the members making contributions to WRS and paying increased health insurance premiums, making both parties' offers below the CPI as the City points out. Overall, the CPI factor does favor the Association Final Offer.

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.

As seen in the discussion concerning external comparables, the Association members have an overall high ranking in terms of wages and benefits. There is some variance in some benefits that balances out, while still leaving New Berlin among the highest in overall compensation. Neither party's Final Offer would alter that to any large extent. While the City would like the members to be making an immediate full contribution of their share to WRS, the members have offered to begin making those payments in a lesser amount. The effect, when combined with the Association wage offer, is to maintain their economic position rather than have it erode. It is at this point that the Association argument of quid pro quo becomes relevant.

The Association argues that by asking for a full WRS contribution from members all at once, the City is taking away the net income of the members without a need to do so and without a quid pro quo. The combination of wage increase, WRS contributions and increased health insurance contributions offered by the City is, according to the Association, not reasonably needed and takes away previously bargained for wages and benefits without a meaningful quid pro quo. The City has not made a quid pro quo argument. It has not pointed to a compelling need to combine its WRS employee contributions, health insurance premium contributions and wage increases in such a manner that the employees net less. The City is financially strong. Association members have not contributed to the WRS before this. The new contributions are a net take way. Normally in these situations a meaningful quid pro quo is called for. The City does not point to one. The City suggestion that it would be reimbursing out-of-pocket expenses if the members were moved to the other health insurance plan is not among the options in the certified Final Offers, even if it were available over the City "impact" objection. For much the same reasons as discussed about comparables, the undersigned declines to consider those potential reimbursements a quid pro quo.

The presence or absence of a quid pro quo when asked to make significant increases to WRS and health insurance premiums has been considered in other post Acts 10 and 32 interest arbitrations concerning public safety employees. In CITY OF MEQUON, DEC. NO. 33818-A (HEMPE, 11/15/2012) the City there did offer a quid pro quo in the form of reduced WRS and health insurance contributions for 2012 that increased to full WRS contributions and later insurance premium increases to that paid by general employees along with split wage increases for 2012 and 2013. The interest arbitration there found this to be a quid pro quo that was at least adequate in the overall assessment of the statutory factors in his award of the City offer there. Conversely, there is CITY OF OSHKOSH, DEC. NO. 53976-A (GALLAGHER, 6/6/2013), where the City there did not offer a quid pro quo for the WRS changes it offered unless external

comparables supported its position therein. In that case the award was for the Union in consideration of the statutory factors. The quid pro quo in CITY OF MEQUON was actually similar to the Association proposal here to start WRS contributions by the police employees at something less than the full share. A similar approach was presented by the police union in the OSHKOSH case where a phased in employee WRS contribution was favored in the final selection. The absence here of a quid pro quo where external comparables of overall compensation do not support a need for full WRS employee share contributions, or other compelling economic needs of the City, lends support to the Association Final Offer.

7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

This factor was discussed above in retain to the CPI. There are no other changes of record that effect either party's Final Offer.

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.

This factor takes into account the recognition of the internal comparable of the Fire bargaining unit. It also recognized the need for a quid pro quo as discussed above. The parties do not make arguments under this factor.

However, there still remains the issue of the length of the CBA. The City proposes a two year contract. That would expire right away and the parties would begin bargaining, presumably very soon. The City is critical of the Association's including what amounted to a prohibited subject of bargaining in its initial proposals. That required the City to bring a Declaratory Judgment action in Circuit Court resulting in the delay of these interest arbitration proceedings. Both parties agree that there is nothing wrong with frequent bargaining. The City indicated it would bargain a wage increase and its brief used a 2% example in its wage arguments. The City also could reasonably be expected to place the Association members in the health insurance plan it has for fire and general employees. But such arguments are no substitute for actual bargaining between the parties. The Association proposed a three year contract. It points out that a three year contract was mentioned during the mediation session and that the City itself had offered a three year contract to the Association. The Association points out the City was not blindsided by the Association placing a three year term in its Final Offer, and there has been time since then for the City to discuss a three year term.

The parties have had three year terms in their previous contracts. The most recent one has a three year term. Three year terms are not particularly uncommon in police bargaining units. Of note is that even with a three year term, two of those years have already elapsed under the Association proposal. The term of the Final Offers is not as weighty as the other statutory factors. A shorter term would be more helpful to the City because of the retroactivity of the different wage increase and benefit contributions. The opposite is true for the Association. The term does not significantly favor either party's Final Offer.

The internal comparables do slightly favor the City. This is particularly true for the Fire employees, who are in a bargaining unit of public safety employees. Little weight is given to the non-represented employee wages and benefits in that they have no bargaining leverage and the City can unilaterally change their compensation packages and working conditions, including WRS contributions. The Association does take a responsible approach in phasing in its Final Offer making contributions to WRS at the same time it proposes increasing its contributions to health insurance premiums. Both parties Final Offers keep the Association at or near the top in most areas in view of the external comparables. The City has not offered a meaningful quid pro quo for what would otherwise be a net take away, particularly with its proposal for full WRS contributions by the employees without phasing that in in some fashion, as some of the other external comparables do. This is particularly noted where the wage proposals of both parties is lower than the external comparables over the lengths of their contracts.

Wis. Stats. 111.77(6)(am) requires the arbitrator give greater weight to the economic conditions in the jurisdiction of the municipal employer that the arbitrator gives to the factor under paragraph (6)(bm). The undersigned has accounted for this in the above Discussion. Those economic factors present a municipality that has the ability to meet both offers without difficulty. This greater weight favors the Association Final Offer. The City has not pointed out any economic needs, emergencies or other reasons why it cannot meet the Association proposals or why the interest and welfare of the public would be harmed by the Association offer. The external comparables favor the Association. Even the Association proposal on wages is the lowest among the comparables – the City proposal aside, and recognizing that the wages would still be among the highest. The lack of a quid pro quo from the City for the WRS contributions favors the Association. While some of the statutory factors favor the City Final Offer, more of them and to a greater extent favor the Association Final Offer, as does the (6)(am) greater weight factor and making it the more reasonable of the two.

Together, all the factors provide greater weight for the Association Final Offer.

AWARD

Based on the testimony, exhibits, briefs, arguments of the parties, the statutory criteria and the foregoing Discussion, I conclude the Final Offer of the Association is the most reasonable and direct that it be incorporated into the successor Agreement of the parties for the term specified in said Final Offer.

Dated at Racine, Wisconsin, this 26th day of December, 2013.

Paul Gordon, Arbitrator

**Final Offer of the City of New Berlin to
New Berlin Professional Police Association, Inc.**

July 11, 2013

1. Section 3.01 -- Compensation and Salaries

Change "Effective January 1, 2011" to read "Effective January 1, 2012"
Effective December 31, 2012 adjust ranges by 1%
Effective December 31, 2013 adjust ranges by 1%

2. Section 4.01 -- Retirement Contributions page 6

Modify section to read:

Effective December 31, 2013, or upon receipt of the Arbitrator's award, whichever is later, Officers shall pay the employee's share of the retirement contributions as established by the Department of Employee Trust Funds.

3. Section 5.02 -- Health Insurance page 6

Rewrite as follows:

"Employees may select single or family health insurance coverage. Employees shall contribute ten percent (10%) of the monthly premium, through the Section 125 program with the balance to be paid by the City: Effective January 1, 2013, employees shall contribute fifteen percent (15%) of the monthly premium, through the Section 125 program with the balance to be paid by the City." In the event an employee has a spouse that is also a City employee, that employee and the employee's spouse will be entitled to only one family health insurance contract or two single contracts between them from the City.

4. Section 5.03 -- Insurance for Duty Related Disability Retirees page 7

Modify section to read:

Employees who retire under the provisions of Wisconsin Statutes Section 40.65 shall be covered by the same health insurance plan as active employees and contribute the same percentage of the monthly premium as is required of active employees under the current and successor agreements with the balance to be paid by the City. This benefit shall cover eligible spouse and dependents at the time of retirement. The retiree will remain eligible for this benefit until:

- a) the retiree becomes eligible for Medicare, OR

Exhibit A p.2

- b) the retiree is eligible for fully paid insurance through another employer or through his/her spouse's employer.

5. Section 5.04 – Insurance for Non-Duty Related disability Retirees page 8

Modify section to read:

Employees retiring under the provisions of Wisconsin Statutes Section 40.63 will be covered under the retiree health insurance fund program provided for in Section 5.06 and have all or part of their health insurance premiums paid from the retiree health insurance fund pursuant to the terms and conditions therein. Any portion of the premium not covered by the trust shall be paid by the employee. This benefit shall cover eligible spouse and dependents at the time of retirement. The retiree will remain eligible for this benefit until:

- a) the retiree becomes eligible for Medicare, OR
- b) the retiree is eligible for fully paid insurance through another employer or through his/her spouse's employer.

6. Change all necessary dates to reflect a two-year contract commencing on January 1, 2012 through December 31, 2013.

7. Tentative Agreements dated July 17, 2012

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Exhibit B p.1.

FINAL OFFER

Of the

LABOR ASSOCIATION OF WISCONSIN, INC.

For and On Behalf of The

NEW BERLIN PROFESSIONAL POLICE ASSOCIATION

LOCAL 219A

June 27, 2013

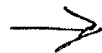


Exhibit B p.2

1. TENTATIVE AGREEMENTS DATED JULY 17, 2012
2. **ARTICLE III - COMPENSATION**
Page 1, Section 3.01. Increase the wages by the following:
 - Effective 1/1/12 – 0.0%
 - Effective 1/1/13 – 1.5%
 - Effective 1/1/14 – 1.5%
3. **ARTICLE IV – RETIREMENT CONTRIBUTION**
Page 6, Section 4.01. Add the following: “Effective January 1, 2013, employees hired prior to July 1, 2011, shall contribute one and one-half percent (1.5%) of earnings to the WRS and the Employer shall pay the balance according to State Statutes. Effective January 1, 2014, employees hired prior to July 1, 2011, shall contribute three percent (3.0%) of each payment of earnings in to the WRS.

Employees hired on or after July 1, 2011, shall pay the full employee’s required contribution. The Employer shall pay the balance according to State Statutes.”
4. **ARTICLE V – INSURANCE**
Page 6, Section 5.02. Rewrite as follows: “Employees may select single or family health insurance coverage. Employees shall contribute ten percent (10%) of the monthly premium, through the Section 125 program with the balance to be paid by the City. Effective January 1, 2013, employees shall contribute twelve percent (12%) of the monthly premium, through the Section 125 program with the balance to be paid by the City
~~Effective January 1, 2009 the standard health insurance program provided to Employees will be the United Healthcare Choice Plus Plan 7EO-Modified. The City will reimburse employees and retirees one hundred percent (100%) of any incurred expenses in network equal to the deductible. The City has the right to change carriers for its standard health insurance plan provided the coverage is fundamentally equivalent to the health insurance in effect on January 1, 2004 and there is no lapse in coverage. In addition to the standard health insurance program (UHC Plan 7EO-Modified) provided to Employees, the City may offer to Employees an alternative health insurance plan or plans. The Employee shall have the option of selecting either the provided standard plan or one of the other offered alternative plan(s). In the event an employee has a spouse that is also a City employee, that employee and the employee's spouse will be entitled to only one family health insurance contract or two single contracts between them from the City.”~~
5. **ARTICLE XX - TERM**
Page 21, Section 20.01. Change the dates to reflect a three-year contract commencing on January 1, 2012 through December 31, 2014.

Exhibit C p.1.

TENTATIVE AGREEMENTS

Between

THE CITY OF NEW BERLIN

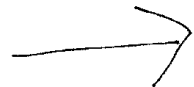
And The

LABOR ASSOCIATION OF WISCONSIN, INC.

For and On Behalf of The

*NEW BERLIN PROFESSIONAL POLICE ASSOCIATION
LOCAL 219A*

July 17, 2012



1. **ARTICLE V – INSURANCE**

Page 7-8, Section 5.06, Lines 30-5. Rewrite as follows: 2) Retirees shall be eligible to participate in the Trust until the earliest of the following occurs.

- a) The employee retiree becomes eligible for Medicare; or
- b) The employee dies retiree's death; or
- c) The employee chooses not to receive benefits hereunder commencing as of his retirement, or he chooses to terminate benefits hereunder at any time thereafter; or The retiree obtains other employment AND receives health insurance from the other employer; or
- d) The employee retiree fails to does not make timely payments no later than the 15th of each month of his/her portion of the insurance premium to the City or such other health insurer to which the subsidy is applied of their out-of-pocket costs for health insurance premiums due the City.

2. **ARTICLE V – INSURANCE**

Page 7, Section 5.06(1), Lines 25-29. Rewrite as follows: “~~On December 31st 2008, the City shall pay to the Trust a bonus of \$1,000. On January 1, 2009, the City shall pay to the Trust a bonus of \$1,000. On January 2nd, 20122009, the City shall pay to the Trust \$73,19870,000, as the general contribution. On January 1st of each year after 20122009, the City shall pay to the Trust the same amount as the previous year, plus an additional one and one half percent (1.5%).~~”

3. **ARTICLE VII – VACATIONS**

Page 10, Section 7.01, Lines 13-16. Rewrite as follows: “At least one (1) three-day increment of three (3) consecutive workdays must be taken for each week of vacation granted on or before February 1st. The remainder of the vacation allowance may be taken at random, providing the force available meets the existing shift requirements as posted by the Chief. Five (5) working days shall constitute one vacation week as referred to above.

4. **ARTICLE XV – HOURS OF WORK**

Page 18, Section 15.01, Lines 2-8. Rewrite as follows: “Officers, regardless of rank, assigned to the Investigation or the Administrative Division, or any position classified as “specialist” shall work a schedule based upon a cycle of five (5) days on - two (2) days off. This schedule shall be repeated throughout the year irrespective of the day of the week and whether a Saturday, Sunday or holiday for an average of 41.25 hours a week. Each Officer involved in the five (5) days on - two (2) days off group works an additional 2.65 hours per week and will receive 2.65 hours of compensatory time per week which shall be included in the accumulation referred to in Section 3.02. This time shall be used to take off all holidays specified in Section 8.01 if scheduled to work those holidays: New Year’s Day, Labor Day, Thanksgiving Day, Christmas Eve Day and Christmas Day. The remaining five (5) holidays may be taken off at the sole discretion of the officer.”

City Brief

Exhibit A

INSURANCE COSTS
(Association Exhibits 900,901, 902 and City Exhibit 6)

	<u>Family Annual Premium</u>	<u>Rank</u>	<u>Family Deductible</u>	<u>Total</u>	<u>Rank</u>
New Berlin	3564	12 (Tie)	0	3564	5
(15%) (new plan)					
(12%) (Existing Plan)	1923	5	6000	7923	14
Brookfield					
15%	3052	11	1500	4552	9
10%	2035	6	1500	3535	4
Franklin					
20%	4092	15	1500	5592	10
12.5%	2558	8	1500	4058	7
Greenfield					
12.6%	2766	10	400	3166	3
Men. Falls					
10%	1777	2	4000	5777	12
Muskego					
13%	3564	12 (Tie)	6000	9564	16
10%	2741	9	6000	8741	15
Waukesha (PP02)					
20%	4284	16	2000	6284	13
10%	2142	7	2000	4142	8
Wauwatosa					
20%	3646	14	2000	5646	11
10%	1823	3	2000	3823	6
West Allis					
7.5%	1849	4	0	1849	2
5%	1232	1	0	1232	1

City Brief

Exhibit B

**Annual Wages (Top Patrol Officer)
(Effective 1/1/14 – less WRS payments)**

	<u>Wage</u>	<u>WRS</u>	<u>Net</u>	<u>Wellness Rate</u>	<u>Total</u>
New Berlin – CITY ¹	71,351 ³	4,995	66,356	3,564	62,792
New Berlin – UNION	72,059	2,162	69,897	7,923	61,974
Brookfield ²	72,263	-----	72,263	3,535	68,728
Franklin	67,267	4,709	62,558	4,058	58,500
Greenfield	69,838	4,889	64,949	3,166	61,783
Menomonee Falls	N/A	N/A	N/A	-----	-----
Muskego (TA)	70,148	4,910	65,238	8,741	56,497
Waukesha	68,590	2,744	65,846	4,142	61,704
Wauwatosa	N/A	N/A	N/A	-----	-----
West Allis (Ave)	N/A	N/A	N/A	-----	-----
			<u>\$66,171</u>		<u>61,442</u>
	Average of Available Difference				
		City	185		1,350
		Union	3,726		555
	Average without Brookfield Difference		<u>\$64,648</u>		<u>59,621</u>
		City	1,708		3,171
		Union	5,249		2,353

¹Does not include any 2014 wage increase still to be negotiated.

²Pre-Act 10 Settlement

³Note: If the parties agree on a 2% increase for 2014, this figure becomes \$72,778, and spreads the gap by \$1,427 more.

Exhibit C

**Annual Wages (Top Patrol Officer)
(Effective 1/1/14 – less WRS payments)**

	<u>Wage</u>	<u>WRS</u>	<u>Net</u>	<u>Non-Wellness Rate</u>	<u>Total</u>
New Berlin – CITY ¹	71,351 ³	4,995	66,356	3,564	62,792
New Berlin – UNION	72,059	2,162	69,897	7,923	61,974
Brookfield ²	72,263	-----	72,263	4,552	67,711
Franklin	67,267	4,709	62,558	5,592	56,966
Greenfield	69,838	4,889	64,949	3,166	61,783
Menomonee Falls	N/A	N/A	N/A	-----	-----
Muskego (TA)	70,148	4,910	65,238	9,564	55,674
Waukesha	68,590	2,744	65,846	6,284	59,562
Wauwatosa	N/A	N/A	N/A	-----	-----
West Allis (Ave)	N/A	N/A	N/A	-----	-----
			<u>\$66,171</u>		<u>60,339</u>
	Average of Available Difference		City 185		2,453
			Union 3,726		1,635
	Average without Brookfield		<u>\$64,648</u>		<u>59,996</u>
	Difference		City 1,708		2,796
			Union 5,249		1,978

¹Does not include any 2014 wage increase still to be negotiated.

²Pre-Act 10 Settlement

³Note: If the parties agree on a 2% increase for 2014, this figure becomes \$72,778, and spreads the gap by \$1,427 more.

Association Brief Chart

Community	WRS	Wage Increase when Employees Agreed To Pay Into the WRS
New Berlin - Association	2013: 1.5% 2014: 3.0%	1/1/13 - 1.5% 1/1/14 - 1.5%
New Berlin - City Offer	2013: 6.65% 2014: 7.0%	12/31/12 - 1.0% 12/31/13 - 1.0%
Brookfield	2013: 0.0% 2014: 0.0%	2013 - 2.5% 2014 - 2.5%
Franklin	2013: 3.0% 2014: 7.0%	2013 - 3.0% 2014 - 3.0% 2015 - 3.0%
Greenfield	2013: 6.65% 2014: 7.0%	2013 - 0.0% 2014 - 4.5%
Menomonee Falls	Not Settled	
Muskego	2013: 6.65% 2014: 7.0%	2013 - 3.5% 2014 - 3.5%
Waukesha	2013: 2.0% 2014: 4.0% 2015: *Rates for 2015 will not be known until mid-2014, but employees have agreed to pay 100% of the Employees contribution.	2013 - 2.0% 2014 - 3.5% 2015 - 3.5%
Wauwatosa	2013: 3.32%	2013 - 3.0%
West Allis	2013: 0.0%	2013 - 2.0%

JH