

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RALEIGH JONES, ARBITRATOR

In the Matter of the Interest Arbitration Between

OUTAGAMIE COUNTY DEPUTY SHERIFF'S ASSOCIATION

Case 359.0010

Case Type: MIA

WERC Decision No 40268-B

and

OUTAGAMIE COUNTY

Appearances:

Chris MacGillis and Ryan MacGillis, Attorneys, MacGillis Wiemer LLC, 11040 W. Bluemound Rd., Suite 100, Milwaukee, WI, appearing for the Association.

James Macy, Attorney, von Briesen and Roper, S.C., 411 East Wisconsin Avenue, Suite 1000, Milwaukee, WI, appearing for the County.

ARBITRATION AWARD

Outagamie County (hereinafter County or Employer) and the Outagamie County Deputy Sheriff's Association (hereinafter Association) are parties to a 2020-2022 collective bargaining agreement (CBA) covering all regular full-time and regular part-time law enforcement employees having the power of arrest. The parties met several times in an attempt to resolve their differences but those meetings failed to produce a settlement. The County subsequently filed a petition to initiate arbitration pursuant to Section 111.77, Stats. An arbitration hearing before Arbitrator Raleigh Jones was held on July 18, 2024 in Appleton, Wisconsin. Following the hearing, the parties filed briefs and reply briefs, whereupon the record was closed on September 16, 2024. Based on all the evidence presented and arguments made, the Arbitrator renders the following Award.

Statutory Criteria to be Used by the Arbitrator

Section 111.77(6), Stats., contains the statutory criteria which an arbitrator is to use to decide interest arbitration awards for law enforcement and firefighting employees in Wisconsin. Paragraph (am) is the "greater weight" criteria and Paragraph (bm) is the "other factors" criteria. The statute provides 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.

Final Offers

The parties' respective final offers contain one proposal which is the same in both offers: improvements to the vacation accruals contained in Section 12.01 of the CBA. The parties' final offers also propose the same contract duration covering the years 2023 through 2025. Two issues remain in dispute in this proceeding: 1) the increase to be applied to wage rates in each year of the CBA; and 2)

the effective date of those wage increases. Here are the specific differences between the parties' offers, as follows:

2023. For 2023, both parties propose a 3% increase to wage rates but the County proposes to implement the 3% increase the first pay period in January, 2023, while the Association proposes to implement the 3% increase on January 1, 2023.

2024. For 2024, the County proposes a \$2.00 per hour increase effective the first pay period in January, while the Association proposes a \$2.50 per hour increase effective January 1.

2025. For 2025, the County proposes a 2% wage increase effective the first pay period in January and a 1% increase effective the first pay period in July while the Association proposes a 2% wage increase effective January 1 and a 2% increase effective July 1.

The cost difference between the parties' offers is approximately \$150,000 over the three years of the CBA, not including the costs of benefits such as health and dental insurance or the improved vacation benefit the employees will begin receiving upon commencement of the new 2023-25 CBA.

POSITIONS OF THE PARTIES

The parties filed extensive briefs and reply briefs herein. What follows is my summary of those arguments.

Association

The Association contends that after the Arbitrator examines the parties' final offers and applies the law to the facts presented, he should select the Association's offer. As the Association sees it, its final offer is more reasonable and consistent with the status quo and wage increases provided to other Sheriff's officers within the comparable group. Additionally, the Association believes that the data unequivocally demonstrates that the statutory factor to be given greater weight—the County's economic conditions—weighs heavily in favor of the Association's offer because the County "is in a strong position financially and the Association's final offer will not have a substantial impact on the County's finances." The Association characterizes the \$150,000 cost difference between the two offers as "rather minimal in light of the County's \$360 million budget for 2024." Finally, the Association avers that its final offer helps fix the "significant recruiting and retention issues" which the Department faces. With regard to the various statutory factors which the Arbitrator has to consider, it contends that these factors weigh in its favor: the interests and welfare of the public; comparisons to the public sector; the cost of living; changes during the pendency of this proceeding; and to other factors including comparisons to other municipalities and counties in the state. The Association maintains that the remaining statutory criteria relating to the County's lawful authority; to overall compensation; to the stipulations of the parties; and to comparisons to the private sector have no impact in this dispute. It elaborates on these contentions as follows.

First, as already noted, the Association avers that its financial data and exhibits show that the County's financial position is strong and healthy and that selection of the Association's offer will not

adversely impact the County's economic condition. As the Association put it, "the County can pay the Association's final offer, but it is unwilling to do so." The Association also notes that the County failed to call any witnesses who could testify about the financial impact of the Association's offer or its inability to pay. Additionally, it points out that the County spent millions of dollars on dog parks, kayak launches, football fields, and children's farms. While those are "all nice thing for a community," the Association avers they fall behind public safety "in terms of level of importance to a community." As for the \$150,000 difference between the parties' final offers, the Association contends that this difference "looks particularly small when viewed in light of the County's \$360 million budget for 2024." Additionally, the Association points out that the County received over \$37 million in ARPA funds and shared revenue during the negotiating period, however, the County chose not to use any of these funds to offset the cost of the Association wage increases in 2024 or 2025. According to the Association, "the County failed to provide any testimony regarding why these funds could not have been used to help pay the Association's requested wage increases."

Second, the Association addresses what it calls the County's "recruiting and retention issues". To support that premise, the Association cites the testimony of Troy Janda, the current Association president, who has been employed with the OCSO for 23 years, who stated that he has noticed a trend in the last three years of deputies "spending a short time with the OCSO and then going to neighboring departments." He also testified that there has been an increase in the number of deputies that have failed to complete their probationary periods causing staffing vacancies to remain unfilled. Janda is a field training officer and is involved in training many of the new probationary officers. He also testified that he has noticed a reduction in the qualifications of applicants and deputies being hired compared to years past. He further testified that morale is poor because of their lower wages and amount they work. He further noted that County deputies regularly work side by side with Appleton police officers but get paid less. The Association avers that Janda's testimony regarding the recruiting and retention issues were confirmed by the retention data submitted by the Association and was not rebutted by the County. The Association also relies on its Ex. 25 which shows that eight deputies have left for other law enforcement positions in the last three years. The Association emphasizes that half of those deputies took jobs with the Appleton police department while another took a job with Green Bay. Noting that the department has 61 current full-time members, the Association avers that "this amounts to losing 13% of its full time police staff to other law enforcement jobs." The Association also relies on the testimony of Captain Borman (who was testifying on behalf of Sheriff Kriewaldt) that the Sheriff supports the Association's offer and believes that it will improve the OCSO's ability to recruit and retain deputies. The Association submits that this testimony supports the Association's view that its final offer will help with retention by paying competitive wages to employees—something it sees as clearly being in the public's interest.

Third, the Association addresses the matter of the comparables. It notes at the outset that the parties agree that the following seven counties constitute the appropriate external comparable group: Brown, Calumet, Fond du Lac, Manitowoc, Sheboygan, Waupaca, and Winnebago. Aside from those "primary" comparables though, the Association also included in its exhibits wage data for eight additional counties, eleven cities that are within commuting distance (particularly the City of Appleton),

and Wisconsin state troopers. The Association asks the Arbitrator to consider all that data in reaching a decision, citing Subsection 8 (the catch-all provision) as the basis to do so. It contends that if the Arbitrator does not consider the wages proffered by the Association for those departments “outside of the arbitration established comparable group” he will be ignoring the “operational realities” that those other municipal employers “located within the geographic vicinity of Outagamie County have an effect on recruiting, retention and the overall morale of the Outagamie County Sheriff’s Office.” Thus, as the Association sees it, it is not only appropriate for the Arbitrator to consider the wage rates of the eleven cities within commuting distance (including Appleton), the eight additional counties, and Wisconsin state troopers, but it is a “requirement.” The Association contends that all those wage rates favor the Association’s final offer.

Fourth, the Association asks that the Arbitrator not give significant weight to the wage increases given to unrepresented County employees because such internal wage comparisons have never been part of the parties’ bargaining history. It notes in this regard that the County failed to provide any evidence at the hearing, either through testimony or documentation, that supports the historical use of internal comparables during negotiations. That being so, it’s the Association’s view that internal comparables should not be given any weight in this matter.

Fifth, the Association contends that its wage offer is supported by its external comparables. For the purpose of context, the Association notes that the current CBA was signed by the parties in December 2020. After that contract was signed the Association moved into the second rank within its comparable group. According to the Association, this was the status quo when the Agreement was signed and how offers should be reviewed here. Building on that premise, the Association notes that in the last couple of years, several groups in the comparables have received large increases that moved them up in the comparable rankings. For example, in 2022, Winnebago County received a \$3.75 raise that launched them above the Association; in 2024, Fond Du Lac County received a \$4.86 raise that also put them above the Association and Calumet County recently received a \$2.53 raise that closed the gap with the Association. The Association notes that in 2022, Calumet County was almost \$2 behind Outagamie County. The Association avers that if the County’s offer is accepted, the Association would be only \$1.17 ahead of Calumet County whereas the Association’s offer keeps it \$2.09 ahead of Calumet County, which is more in line with the status quo of \$1.86. The Association further avers that the County’s wage offer would put the Association in fourth place in the comparable group. As the Association sees it, this is a deviation from the status quo and the Association received no quid pro quo for its drop in the comparable rankings. The Association avers that its final offer is more consistent with the raises that other groups have received in 2022 through 2025 and more accurately maintains the status quo. The Association contends that “the County’s final offer would put the Association last during this time period [2025] whereas the Association’s final offer is competitive with what other groups have received during this period.”

The Association also asserts that its final offer is more consistent with the actual dollar amounts received by the comparables in 2024 and 2025. It further avers that “of the comparables settled through 2025, the County’s offer ranks dead last in terms of the total dollar amount of increases received.” The Association also maintains that its “final offer is consistent and comparable with the increases received

by the other groups, while the County's final offer is \$.30 behind the next lowest offer and less than half of what the top group received." Building on that premise, that Association avers that "excluding Outagamie County, the average increase for 2024 and 2025 has been \$4.67 [and] the County's final offer is \$1.47 behind the average."

The Association also contends that "the percentage increases received by external comparables also favor the Association's final offer [because] the County's offer ranks dead last in terms of the total percentages received by the comparable group from 2024 to 2025." As the Association sees it, its offer is "consistent and comparable with the percentage increases received by the other groups, while the County's final offer is .67% behind the next lowest offer." In sum, the Association asks the Arbitrator to select its final offer because it "is competitive and consistent with the offers received within the comparable group while the County's offer lags behind and is not consistent with the status quo."

With regard to the County's contention that there has been no settlement pattern established for 2025, the Association argues that the three units that have settled will likely push the settlements of the remaining groups higher. Right now, Brown and Manitowoc Counties remain unsettled for 2024, with Calumet and Waupaca unsettled for 2025. The Association avers that given the significant increases already received in 2024 and 2025, it is likely the unsettled groups are going to settle for wage increases in line with the existing settlements. The Association claims that Brown County in particular should receive a significant wage increase. Brown County started 2023 \$2.67 ahead of the next highest group. It would take large increases over the next two years to maintain this wage gap with its peers. According to the Association, it is unlikely that future settlements buck the current trend of higher increases.

Finally, the Association does not see the effective date matter as being that important. It notes in that regard that at the hearing, the Association stipulated "that the wage increases would become effective on the first full pay period in January. For reference, the first pay period in January 2024 began on January 6th. The offers differ by five (5) days."

In sum, the Association maintains that its final offer is more reasonable than the County's and should therefore be selected by the Arbitrator.

County

The County argues that its final offer is more reasonable than the Association's and should be selected by the Arbitrator. It elaborates as follows.

First, the County contends that the following seven counties are the appropriate external comparables: Brown, Sheboygan, Calumet, Waupaca, Fond du Lac, Winnebago and Manitowoc. It notes that those seven counties were selected by arbitrators in 1994 and 2006 in prior arbitrations involving the law enforcement group. Additionally, it notes that the parties have used that group of counties as comparables in their bargaining for the last 30 years. Finally, it notes that the Association's counsel stipulated in the hearing that the Association was not seeking a change to that established comparable pool.

The County points out that despite this history and agreement, the Association's exhibits include wage data for eleven city law enforcement agencies, eight additional counties and Wisconsin state troopers. The County argues that data should be given no weight here. It contends that the Arbitrator's analysis of external compensation levels should be limited to the data shown in Employer Exhibits 9-18 and Association Exhibit 18, which show wage and settlement data for the seven counties which comprise the established comparable pool.

As part of its argument on the comparables, the County objects to the Association's using the City of Appleton as a comparable. First, it notes that Appleton is not part of the arbitration established comparable group and that the city has never been used as a comparable. Second, it avers that the fact that some Outagamie County deputies have left to work for Appleton has been happening for years. Regarding the eight County officers who left to work for other entities over the past three years, the County submits that the Association did not show that this number represents a change from past years. Additionally, it maintains that Association President Janda's testimony that Appleton's wages are higher than Outagamie County's essentially proves nothing, because as Janda admitted, that pay difference has existed "forever". Third, the County disputes the accuracy of two statements that Association witness Captain Borman made during the hearing relative to the Appleton. First, it notes that he testified that Outagamie County deputies were leaving to work for Appleton due to a "\$10,000" signing bonus offered by the city. It contends that Borman's statement about the amount of the signing bonus is just plain wrong, citing the affidavit from Appleton's Human Resources Director Jay Ratchman that the amount of the bonus was \$5,000. Second, it notes that Borman also testified that officers in Appleton make "\$6, \$8, \$10 an hour more" than Outagamie County officers. The County contends that the Association's own exhibits show that statement is inaccurate and that the wage difference for 2024 and 2025 is actually less than \$4 an hour.

Finally, as part of its argument on the comparables, the County disputes the Association's claim that the County has a recruitment and retention problem. With regard to recruitment, it notes that Employer Ex. 33 shows that since January 1, 2022, the County has received 248 applications for full-time Patrol Officer positions, 53 applications for part-time Patrol Officer positions, and 3 applications for the Law Enforcement Specialist (LES) position. According to the County, these numbers support the County's assertion that it receives many applications for open positions and does not have a hiring problem. With regard to retention, the County notes that the Association cites the testimony of Association president Janda who testified that there has been an increase in the number of deputies who have failed to complete their probationary period. The County avers that the Association presented no statistics or other credible concrete evidence to back up Janda's claim. It argues that simply saying that the County has a retention problem does not make it so.

Next, the County notes that its final offer provides wage increases which far outpace the wage increases received by the County's other internal employee groups. It sees that as significant. Building on that, it submits there is no justification for the even higher wage increases sought under the Association's final offer.

The County also contends that its wage proposal is supported by the external comparables. At the outset, the County asks the Arbitrator to not consider the years 2024 and 2025 in a vacuum. That's because the County believes the following bargaining history is very important. It notes that in 2020, the County's Patrol Officer maximum wage rates had fallen considerably behind the external comparables, ranking 7th out of 8 and trailing the comparables' average by almost \$1.00. Recognizing that this low wage ranking needed to be addressed, the parties agreed in the 2020-2022 CBA that officers would get above average wage increases in an effort to improve employee rankings. Specifically, in 2020, officers received an across-the-board 4% increase. In 2021 they received another 4% increase, this time in the form of a 2%/2% split increase, as well as the addition of a new maximum step on the wage grid which resulted in an 8.8% total wage increase to the maximum Patrol Officer wage rate. This generated a \$2.84 boost to maximum Patrol Officer wage rates, as compared to an average cents-per-hour increase among the comparables of 89¢. In 2022 officers received another 4% wage increase, which provided a boost of an additional \$1.40 to the maximum Patrol Officer wage rate. The result of these three above average increases (i.e., catch-up) was a boost in 2021 wage rankings from 7th to 2nd and an increase as compared to the comparables' average from 97¢ below the average to 98¢ above the average. In 2022 the wage ranking dropped slightly from 2nd to 3rd, but the County's position as compared to the average improved, from 98¢ above the comparables to \$1.03 above. The reason the County emphasizes this bargaining history is because the Association ignores it, and wants the Arbitrator to focus exclusively on just the years 2024 and 2025.

The County contends that its offer for 2023 and 2024 maintains this 3rd place ranking and further improves its positioning as compared to the comparables' average. According to the County, its offer "results in a maximum Patrol Officer wage rate that exceeds the average by \$1.12 in 2023 and by \$1.09 in 2024". By contrast, the County avers that the Association's final offer will boost wage rates even further, so that by 2024, the Association's offer generates a 2nd place ranking and a maximum Patrol Officer wage rate that exceeds the average by \$1.59.

The County also submits that a review of wage rates for the County's Law Enforcement Specialist (LES) position yields results similar to those summarized above for the Patrol Officer position. It notes that the LES position equates to the Sergeant position among the external comparable communities. It notes that in 2020, the maximum wage rate for the County's LES position ranked 2nd among the comparables but was \$1.20 below the average. By 2022 though, the wage increases implemented in the parties' 2020-2022 bargain resulted in wage rates that maintained the County's 2nd place ranking but exceeded the average by 60¢. According to the County, its offer for 2023 and 2024 maintains that 2nd place ranking and exceeds the comparables' average by an even greater amount (73¢ in 2023 and \$1.40 in 2024). By contrast, the Association's final offer will boost wage rates still further, so that by 2024, the Association's offer generates a maximum LES wage rate that exceeds the average by \$1.90.

The County argues that its "final offer continues, and even enhances, the improved rankings and relationship to the comparables' average that resulted from the parties' 2020-2022 bargain which directly preceded the instant negotiations." The County argues that "on the heels of those negotiations, there is no justification for the [Association's] higher wage demand . . ." As the County sees it, what the Association is proposing here is additional catch-up pay on top of the significant catch-up that was already achieved through voluntary negotiations in the prior bargain. The County asserts that the

Association bears the burden of proving the need for this excessive catch-up. It notes that arbitrators are in widespread agreement that the party proposing catch-up bears the burden of justifying that its catch-up proposal is so compelling that it must be awarded through arbitration.

The County admits that the three comparable settlements that exist for 2025 are trending on the higher side. However, the County asserts that three settlements out of seven counties falls far short of establishing a pattern. The County opines that “the four remaining comparable counties could settle for terms that completely change the trajectory of whatever final settlement pattern emerges for 2025.” It also submits that “the fact that the County’s offer for 2024 provides a lower cents-per-hour increase than the comparables’ average (\$2.00 vs. the comparables’ average of \$2.37) is tempered by the fact that 30¢ of Sheboygan County’s increase was due to rolling the cost of its annual uniform allowance into base wage rates.” The County also points out that there are two comparables who remain unsettled for 2024—one with higher 2023 wage rates than Outagamie County (Brown) and one with lower wage rates (Manitowoc). According to the County, its final offer “will very likely maintain the positioning shown in Employer Exhibits 11 and 12—that is, a 3rd place ranking for Patrol Officers (2nd place for the LES position) and maximum wage rates that continue to exceed the average of the comparables for both positions.”

The County summarizes its argument on wages by acknowledging that with the comparable settlement information that is available for 2024 and 2025, “the County’s final offer does appear to provide wage increases for 2024 and 2025 that are not as high as the settled comparables.” That said, it’s the County’s position that “the evidence shows that this will not result in wage rates that are in any way “lagging,” since the County’s final offer will very likely maintain above-average wage rates once those settlements occur”.

The County also contends that its final offer also makes no change to the existing status quo regarding the effective dates on which wage increases are to be implemented. It notes in this regard that the County has historically implemented wage increases for all of its employees, both represented and non-represented, on dates coinciding with the start of the payroll period in which the pay adjustments are effective. The County avers that its final offer continues this historical system of implementation dates. In contrast, the Association’s final offer clearly states that wage increases are to be effective on January 1 and July 1. The County argues that this constitutes a change in the status quo for which the Association has not met its burden of proof to change through arbitration. While at the hearing the Association dismissed their own proposal by suggesting they would agree to the County’s position, the County notes that is not how the process works. That’s because there is language in the statute regarding changing offers. Under that language, one party simply cannot unilaterally change its offer at hearing (as the Association proposed). Second, the County asserts that the change being sought by the Association is significant. The County avers that a change in pay application to January 1 from a payroll cycle requires a recalculation of every single employee in the unit for all three years covered by the CBA. Thus, the County submits it would take considerable time and effort to re-adjust as demanded by the Association.

Finally, the County contends that its final offer remains preferable when the interest and welfare of the public and greater weight statutory criteria are considered. It notes in this regard that in its exhibits the Association includes reams of pages addressing the County’s current and previous budgets, the County’s ARPA and shared revenue distributions, and external population and median

household income comparisons - all in an effort to buttress the Association's misplaced contention that since the County has the ability to pay the Association's higher wage demand, the County should pay the Association's higher wage demand through the Arbitrator's award. The County notes that while it takes issue with the Association's opinions regarding the County's "strong" economic position, the County notes that it is not asserting an inability to pay argument. However, the County maintains it should not be penalized for being fiscally responsible, achieving fiscal restraint and having a strong bond rating. These two statutory criteria do not require the County to pay whatever the Association asks, simply because the County may be able to afford it. The County argues that in the instant matter, these two statutory factors are best met by the County's final offer.

DISCUSSION

The External Comparables

Under the statutory criteria set forth in Section 111.77(6), Stats., the Arbitrator is directed to address the issue of external comparability.

Based on the rationale which follows, I find that the appropriate external comparables which will be used in the determination of this dispute are the seven counties that have been established and accepted as appropriate in the two most recent arbitrations involving the County's law enforcement employees, and have been relied upon by the parties in negotiations. In those two arbitrations, both Arbitrator Richard Bilder and Arbitrator William Petrie accepted the following seven counties as the appropriate external comparable grouping: Brown, Sheboygan, Calumet, Waupaca, Fond du Lac, Winnebago, and Manitowoc. See Outagamie County (Sheriff's Department Deputies), Dec. No. 27849-A (6/7/1994), Arbitrator Richard B. Bilder and Outagamie County, Dec. No. 31400-A (2/7/2006), Arbitrator William Petrie, at pages 7 and 14. In the first arbitration, which involved the same Sheriff's Deputy bargaining unit that is the subject of the instant dispute, the parties disagreed as to the appropriate comparable pool. After reviewing the evidence submitted in that case, Arbitrator Bilder affirmatively established the above seven counties as the appropriate comparable pool, stating: "For these reasons, the Arbitrator finds the following counties appropriate for external comparison purposes in this arbitration: Brown, Calumet, Waupaca, Winnebago, Fond du Lac, Manitowoc and Sheboygan." In the subsequent and most recent arbitration involving County law enforcement employees, Arbitrator Petrie specifically noted that the parties were in agreement on the counties to be utilized as the appropriate comparable grouping. He stated: "The parties are in full agreement on the identity of these comparables, i.e., Brown, Calumet, Fond du Lac, Manitowoc, Sheboygan, Waupaca and Winnebago counties." In the instant matter, both the County and the Association have continued to rely upon these same comparables in bargaining for the past 30 years. At the hearing each party proposed these same seven counties as the appropriate comparable pool. Also at the hearing, Association Counsel MacGillis confirmed that there was no dispute as to the external comparables, that the external comparables have been established, and that the Association was not seeking a change to that established comparable pool.

However, in its exhibits, the Association included wage data for various additional county and city law enforcement agencies, as well as Wisconsin state troopers. Then, in its briefs, the Association asked the Arbitrator to consider that wage data for those departments “outside of the arbitration established comparable group” in reaching a decision. I’ll address those claims below.

Using Eleven Cities as Comparables

First, while there are no cities whatsoever included in the established comparable pool, the Association asks the Arbitrator to consider eleven city police departments “within commuting distance” because the County is allegedly “suffering significant recruiting and retention issues” which are being “impacted by the municipalities within commuting distance of Outagamie County with significantly higher wages.” (Association’s brief, p. 19; Association Ex. 23). I will address the issue of whether the County is having “recruiting and retention issues” later in my discussion. Here, though, it suffices to say that simply alleging that the County is having “recruiting and retention issues” is not enough to meet the Association’s burden of proof in this regard. More proof is required than merely gathering wage data for an extensive list of “additional agencies” that the Association feels should be considered by the Arbitrator. For the record, it is noted that of the eleven cities proffered by the Association, five are located within Outagamie County and the others are located within Brown County (De Pere, Green Bay), Calumet County (Menasha, in part) and Winnebago County (Neenah, Oshkosh, and part of Menasha).

Knowing that changing a list of established comparables requires a significant burden of proof, the Association makes a rather novel argument that the wage rates in these eleven city police departments should be considered by the Arbitrator under the “such other factors” statutory criterion. (Association’s brief, p. 19). But that catch-all criterion, found at Sec. 111.77(6) (bm)8, has been widely interpreted by arbitrators to address comparisons of an employer’s internal employee groups. Specifically, that section directs the Arbitrator to consider “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.” Here, the Association provided little evidence of same. The only evidence the Association submitted was charts showing 2020 and 2023 census population figures for Wisconsin’s municipalities and counties (Association Exs. 26 and 27); gross call volume statistics for various counties for 2020 through 2023 (Association Ex. 29); and a chart showing that in the past three years, four of the County’s officers have left to work for the City of Appleton and one left to work for the City of Green Bay (Association Ex. 25). In my view, this evidence falls far short of what is needed to alter a previously established set of comparables. Additionally, there is no evidence the parties have utilized cities in their negotiations over the past 30 years, or historically taken into consideration “departments within commuting distance” when negotiating wages, hours and conditions of employment. Because of the foregoing, I’m not going to consider the wages paid to police officers in the eleven city police departments proffered by the Association in making my determination herein.

Notwithstanding what I just said, I am going to address one of the Association’s proffered cities, namely the City of Appleton. Here’s why. At the hearing and in its briefs, a major portion of the

Association's exhibits and testimony focused on Appleton. Because of that, I've decided to address that one city in order to complete the record.

The record shows the following problems with using Appleton as a comparable.

First, as already noted, Appleton is not part of the arbitration established comparable group. That group consists of seven comparably-sized counties which are geographically proximate to Outagamie County and have been historically accepted by two different arbitrators in rulings issued in 1994 and 2006. As noted earlier, the parties themselves have utilized these seven counties as external comparables for the past 30 years. Appleton has never been used as a comparable. It would be one thing if the Association had offered proof that circumstances have changed such that comparison to Appleton is now appropriate for this proceeding. That did not happen though.

Second, the fact that, over the years, some Outagamie County deputies have left the County's employ to work for Appleton is not a new development. Association Ex. 25 shows the names of eight Outagamie County officers who have left Outagamie County to work for other law enforcement entities over the past three years. The part of the document that is relevant to this discussion is the part showing that four went to work for Appleton. However, officers leaving Outagamie County to go and work for Appleton is nothing new. It would be one thing if the Association had shown – through hard evidence - that this number represents a change from what has existed over the course of many years. However, it did not do so. Additionally, none of the four officers who left the County and went to the work for Appleton testified that wages had anything to do with their leaving the County's employ. At the hearing Association President Troy Janda testified that Outagamie County officers work alongside Appleton's officers, often times even responding to the same calls. In Janda's view, this has become an issue of concern among County officers because their wage rates are lower than Appleton's. I understand the County officers' frustration with that. On cross-examination though, Janda agreed that there has been a difference between Outagamie County and Appleton's wage and benefit packages "forever" (with Appleton's wages being higher than the County's wages). When confronted with such existing wage disparities, employees have to decide for themselves whether to remain or leave. There are many factors that go into making that decision, and salary is just one. Other relevant factors for a law enforcement officer can include seniority, more favorable hours or shift opportunities, the benefit package, workplace culture, family situations, or the governmental politics associated with the fact that city law enforcement agencies are headed up by a chief who is appointed versus county law enforcement agencies which are headed up by a sheriff who is elected. Indeed, Officer Janda's own situation illustrates this point. He has been with the County's Sheriff's Department for 23 years. During that time, he remained with Outagamie County despite Appleton's higher wage rates and despite the fact that Janda's own father worked as a police officer for Appleton for many years.

Another reason why it is inappropriate to compare Appleton to Outagamie County is that "arbitrators have historically distinguished between county and city law enforcement officers in making compensation comparisons." St. Croix County (Sheriff's Dept.), Dec. No. 30598-A (10/13/2003), Arbitrator Jay Grenig, citing City of Wisconsin Rapids (Police), Dec. No. 30175-A (Michelstetter, 2002) and City of Algoma (Police), Dec. No. 29399-A (Dichter, 1998).

Finally, I've decided to address two statements that Association witness Captain Borman made during the hearing relative to Appleton. First, he testified that Outagamie County deputies were leaving to work for Appleton due to a "\$10,000" signing bonus offered by that city. There are several problems with his statement. To begin with, no officers that have left Outagamie County testified as to their reasons for leaving and going to Appleton. Next, Captain Borman's testimony regarding the amount of the signing bonus was inaccurate. An affidavit from Appleton's Human Resources Director Jay Ratchman avers that while the city has occasionally offered a signing bonus, it is not offering one now; that when it has offered a signing bonus, it was limited to \$5,000; and that officers that had been hired under a signing bonus were required to work two years for the city or would need to repay half of the bonus. Second, Captain Borman also testified that officers in Appleton make "\$6, \$8, \$10 an hour more" than Outagamie County officers. The Association's own exhibits show that statement is inaccurate. Under both parties' final offers, the maximum Patrol Officer wage rate for 2023 is \$37.61. The maximum Patrol Officer wage rate for Appleton was \$41.93 in 2023—a difference of \$4.32. (Association Ex. 23). Under the County's final offer for 2024, which is 50¢ lower than the Association's final offer, this difference actually narrows. The max Patrol Officer wage rate under the County's offer for 2024 will be \$39.61, as compared to Appleton's top wage rate of \$43.19 in 2024—a difference of \$3.58. (Association Ex. 23). In 2025, the County's wage offer, while lower than the Association's offer, will still provide a maximum Patrol Officer wage rate of \$40.82 as compared to Appleton's \$44.50—a difference of \$3.68. (Association Ex. 23). This data conclusively shows that Appleton's wage rates are not "\$6, 8, \$10 an hour more" than Outagamie County's wage rate as Captain Borman averred.

Given all the above, I will not be using Appleton as a comparable.

Using State Troopers as Comparables

The Association also asks the Arbitrator to consider the higher wages earned by Wisconsin state troopers. Once again, there is no evidence the parties have ever taken state trooper wage rates into consideration when negotiating wage and benefit levels. Indeed, state trooper wage negotiations are governed under a separate statutory scheme, and state troopers have different job duties than county deputies do. If I were to consider the wages paid to state troopers in making my decision herein, that would be inconsistent with the parties past two interest arbitration awards, and 30 years of bargaining history. Because of the foregoing, I'm not going to consider the wages paid to state troopers in making my determination herein.

Using Eight Additional Counties as Comparables

Association Ex. 21 compares wage rates not only for the seven counties that have been established as appropriate comparables for Outagamie County, but also for eight additional counties. Many of these additional counties are not located anywhere near Outagamie County nor are they particularly comparable on other factors. For example, Waukesha County's population is more than twice that of Outagamie, and Dane County's population is three times higher. (Association Ex. 26). In addition, Dane County is located in south central Wisconsin and encompasses Wisconsin's second-largest urban area, the City of Madison. (Association Ex. 28). The counties of Kenosha, Racine,

Washington and Waukesha are all located in far southeastern Wisconsin, close to Wisconsin's largest urban area, the City of Milwaukee. (Association Ex. 28). None of these counties are geographically proximate to Outagamie County, nor do they share the same labor market. Indeed, their principal economic influences are the State's two largest urban areas, Madison and Milwaukee. As for the three remaining counties shown in Association Ex. 21, a review of the maps provided in both parties' exhibits confirms that Rock County is located in far southcentral Wisconsin, Marathon County is located in northcentral Wisconsin, and La Crosse County is located in southwest/southcentral Wisconsin. Like the Association's other proposed additional counties, these counties are not geographically proximate to Outagamie County, do not share the same labor market, and have never been included among the counties established as appropriate comparables in any of Outagamie County's previous law enforcement arbitrations. Additionally, there is no evidence that County deputies have historically looked to these far distant counties when comparing wage levels.

To support their claim that I should consider the additional eight counties, the Association relies on their "call center" documents (Association Exs. 29, 30 and 34). In my view, that data is far too simplified and incomplete to suggest that these counties have similar workloads or are in any other way comparable to Outagamie County. To the extent that the Association is claiming that the County's high call volumes have led to low morale because they allegedly prove that County officers do more work than other departments but get paid less, the Association's exhibits simply do not provide the level of detail needed in order to draw such a conclusion. Here's why. A law enforcement officer's workload is much more complicated than simply looking at total call volumes. To assess it correctly, one would have to evaluate many factors, and a similar analysis would need to be done for each of the counties the Association claims are comparable as to what represents a "call". For example, are they all the same? At a minimum, population and staffing levels would need to be factored in. In addition, one would need to distinguish which calls for service are handled by a bargaining unit member versus a non-bargaining unit member, and which calls are handled by deputies/patrol officers vs. the many other law enforcement employees who work at county or municipal law enforcement agencies. Also, one would need to conduct an analysis of the number of staff on duty per shift and of when calls for service come in. In the end, the Association's call volume data does not account for any of the factors that would be required in order to draw meaningful comparisons across other law enforcement agencies.

Given the foregoing, I find that the Association provided no justification for me to consider looking at the wage rates of eight additional counties outside of the seven counties that were established as the appropriate comparable group in two prior Outagamie County law enforcement arbitrations. Therefore, I'm not going to consider the wages paid to deputies in those eight counties proffered by the Association in making my determination herein.

In sum then, I'm not going to consider the wage data for the eleven cities, the state troopers, or the eight additional counties proffered by the Association in making my decision. Instead, my analysis of external compensation levels will be limited to the data shown in Employer Exs. 9-18 and Association Ex. 18, which show wage and settlement data for the seven counties which comprise the established comparable group as previously determined by prior arbitrators and as historically relied upon in bargaining by the parties.

Before I move on from the topic of the external comparables, it is noted that subsumed throughout the Association's arguments that I should consider the wages of those departments "outside of the arbitration established comparable group" is their claim that the higher wages paid in those departments have contributed to the County's recruitment and retention problems. The County disputes that assertion. Although I could address this claim later in my discussion on factor 4, I've decided to address it here because I think the discussion flows better that way.

I'll address the Association's recruitment claim first. In terms of alleged recruitment problems, the only evidence the Association provided was the testimony of Captain Nathan Borman, who acknowledged that recruitment is challenging throughout all employment sectors, not just for the Outagamie County Sheriff's Department. Captain Borman confirmed that all agencies are having recruitment problems and all agencies are seeing fewer applicants apply for vacant positions. Employer Ex. 33 shows that since January 1, 2022, the County has received 248 applications for full-time Patrol Officer positions, 53 applications for part-time Patrol Officer positions, and 3 applications for the Law Enforcement Specialist (LES) position, which is traditionally filled with internal candidates. In Borman's view, the 248 full-time Patrol Officer applications received by the County since January 1, 2022 was not a significant number of applications because he thought many of those applicants were not qualified. However, Captain Borman admitted he does not review Patrol Officer applications; he only reviews Communications Center hires. Rhetorically speaking, how, then, can he offer any reliable analysis of the quality of those 248 applicants? For example, how can he compare the quality of those applicants to the quality of applicants in prior years? The answer is he cannot. Finally, Employer Ex. 33 also shows that the County currently has openings for only 2 full-time Patrol Officer positions and 5 part-time Patrol Officer positions, and there are no openings for Law Enforcement Specialists. These numbers support the County's assertion that it receives many applications for open positions and does not have a hiring problem.

The focus now turns to the Association's retention claim. First, the Association cites the testimony of Association president Troy Janda who testified that there has been an increase in the number of deputies who have failed to complete their probationary period. However, the Association presented no statistics or other evidence to back up Janda's claim. For example, how many deputies failed to complete their probationary period? Over what period of time? How is this different from previous years? All those matters are unclear from the record. Simply saying that the County has a retention problem does not make it so. It has to be proven and that did not happen here. Second, the Association also points to the fact that eight officers have left Outagamie County in the past three years to go to work for other agencies. However, that statistic does not represent a particularly sizable turnover rate over a three-year period for a bargaining unit consisting of 61 full-time employees. Moreover, the Association's characterization of these eight departures as constituting a turnover rate of 13% is erroneous. Here's why. If eight officers had left the County in a single year that would equate to a 13% turnover rate; however, the Association's chart refers to a three-year time period – not one year. Additionally, what the actual data shows is that none of these eight individuals left Outagamie County to work for any of the comparable counties. As already noted, one left to work in the private sector, two

left to work for federal agencies, and the remaining five left to work for the cities of Appleton and Green Bay—all over the course of three years and none of which are comparables. Additionally, the data shown in Association Ex. 25 is less than thorough because it does not show the year in which each employee left the County's employ; it does not show how long each employee had been with the County before leaving the County's employ; it does not show the position each employee held before leaving or the position they took with their new employer; and it also does not present any reasons why each individual left the County's employ. Most notably, none of these eight individuals appeared at the hearing to testify as to why they left the County. Consequently, there is no evidence that any of the eight left the County because of low wages. Based on all the foregoing, I conclude that the Association did not prove that the County has an apparent retention problem.

The Interest and Welfare of the Public and Greater Weight Statutory Criteria

Under Sec. 111.77(6) (bm) (3), the "interest and welfare of the public" factor, the Arbitrator must consider the County's financial ability to pay the costs of the parties' respective final offers. Under Sec. 111.77(6) (am), the "greater weight" factor, the Arbitrator is required to give "greater weight" to the economic conditions in the jurisdiction of the employer. In this case, like most Wisconsin interest arbitration cases, these two statutory factors are closely intertwined. Each side argues that its final offer is preferred under these two statutory criteria.

In its exhibits the Association includes hundreds of pages addressing the County's current and previous budgets, the County's ARPA (American Rescue Plan Act) and shared revenue distributions and external population and median household income comparisons—all in an effort to buttress the Association's contention that the County is in a strong economic position and thus has the ability to pay the Association's higher wage final offer.

The County is not asserting an inability to pay argument in this proceeding. However, arbitrators have recognized that even where inability to pay is not at issue, that does not mean a union's proposal should automatically be selected. As Arbitrator Mary Jo Schiavoni noted in DC Everest SD, Dec. No. 30059-A (10/25/2001):

[S]imply because the [employer] ha

s the ability to pay either offer because its economic condition is strong does not mean that it is obliged to accept the higher offer. The interests of the tax-paying public and a preponderance of other factors may lead to the conclusion that the more fiscally conservative final offer should be selected.

Another way of putting it is that an employer should not be penalized for being fiscally responsible and for achieving fiscal restraint and a strong bond rating. The statutory criteria addressing the greater weight and interest and welfare of the public factors does not require an employer to pay whatever a union asks, simply because the employer may be able to afford it.

In its briefs, the Association argues that the County is in a strong financial position because it has a favorable bond rating, initiated a number of economic development initiatives, funded market wage increases for its non-represented employees, and received ARPA funds and increased shared revenue monies. The Association also points out that the County's 2024 budget lowered the property tax rate by 10.13%. (Association's initial brief, pp. 5, 9). I'll address each of these points in the following discussion.

First, a strong bond rating is necessary to allow the County to procure more favorable interest rates for its debt obligations. Regardless of whether or not the County's most recent budget includes new capital project debt, the County currently has nearly \$95 million of debt on its books, including \$2.4 million attributable to the Sheriff's Department. (Association Ex. 6, p. 327). Rather than an indicator of financial health, favorable bond ratings are oftentimes described as indicators of fiscal responsibility. As noted at page 322 of the County's 2024 budget: "The Outagamie County debt management program is the product of years of deliberate and sometimes painful decision making by the leaders of the county. The result of these years of thoughtful planning is an Aaa national credit rating by Moody's rating agency." (Association Ex. 6, p. 322). In that connection, it is noted that the County continues to not use a provision in State law which would allow it to levy for proprietary debt service. The County avers that this decision on the part of the County's budget managers will save taxpayers \$3.3 million in 2024. (Association Ex.6, p. 1 of Executive Budget Message).

Second, economic development initiatives such as the airport concourse expansion noted at page 5 of the Association's initial brief are critical for expanding job opportunities at the airport as well as positioning the County for future economic growth at that facility. This benefits the County and taxpayers alike. Moreover, as noted in the County Executive's Budget Message, the County relied on one-time funds from the American Rescue Plan Act and the Bi-Partisan Infrastructure Act to support the airport concourse expansion project, rather than requiring taxpayers to shoulder the entire cost of the project. (Association Ex. 6, p. 1 of Executive Budget Message).

Third, the record shows that the market wage adjustments provided to the County's non-represented employees in 2024 were the result of a 2023 county-wide compensation study prompted by record-high turnover amongst the County's non-represented workforce. The study revealed that 60% of the County's non-represented positions were paid below competitive market rates. The same is not true of the County's law enforcement employees. The Sheriff's Department is neither experiencing record-high turnover nor are bargaining unit wages below market rates. (Note: The factual basis for the last part of this statement is found in my discussion of factor 4 below).

Fourth, it is fiscally irresponsible to use increased shared revenue dollars, surplus fund balance monies or one-time ARPA funds to finance recurring wage increases. The increased shared revenues received by the County for 2024 were essentially a one-time boost that is very unlikely to occur at the same level for 2025 and, going forward, shared revenues will fluctuate from year to year and thus are not a reliable funding source. As for fund balance monies, the County's fund balance essentially represents the County's "savings account"; such funds are not commonly used to fund recurring expenses. Additionally, the County's ARPA funds were one-time monies which must be committed by the end of 2024, will not recur in future years, and have been earmarked by the County Board to finance

key capital projects, including projects for the airport and the County's highway department, not recurring wage increases. (Association Ex. 6, p. 1 of Executive Budget Message). County Executive Nelson explained the budgetary risks of using such one-time monies for wage increases in an email to employees in 2022:

The federal funding has certain strings attached and is "one-time funding", meaning once it's spent, it's gone. It's not prudent to use one-time funds for ongoing, operational costs like staffing, otherwise you create a budget deficit and need to either find other funding to cover those costs or cut positions to make the budget work for future years. (Association Ex. 15).

Over the years, arbitrators have also acknowledged the necessity of avoiding the use of non-recurring funding sources to pay recurring expenses. In a recent interest arbitration award, City of West Allis (Police) Case ID: 313.008 (8/30/2024), Arbitrator Sue Bauman recognized that when she opined:

While the City did see an influx of funding from the federal government as a result of the COVID recovery program, ARPA, and also saw increased shared revenues from the state during this biennium, these funds are not monies that the City Council should use to pay for on-going costs such as salaries. ARPA funds were a one-time occurrence much of which the City Council determined to utilize to build a new DPW building. Though the WAPPA takes issue with the City's decision to build a new facility, in contradiction to a 2018 recommendation of a consultant, even the consultant's report makes clear that while the new facility might be more costly at this time, it will have a longer life span, will include new technologies, and will probably be less costly over a 50-year span.

The increased shared revenues the City received are related to increased sales tax revenues collected by the State of Wisconsin. This is an inconsistent funding source, with no guarantees that the monies will be there in the future.

Next, while the County's budgeting for 2024 lowered the property tax rate by 10.13%, taxpayers still experienced a 2.02% increase in the County's portion of their tax bill. (Association Ex. 6, p. 2 of Executive Budget Message).

Finally, the focus turns to the Association's claim that the County could have funded the Association's higher wage final offer by cutting back its funding on the money it spent on dog park developments, displays at the County's nature center, an ADA compliant football field, a kayak launch, and improvements at the children's farm. Notwithstanding the Association's second guessing of the County Board's prioritization of the above expenses, these items are all important for the community and for County operations. Moreover, the Association provided no analysis of the consequences of reducing any of these services or expenditures. In City of West Allis (Police), Id., Arbitrator Bauman addressed a similar scenario in which the union also argued that various community development projects should have been scrapped or reduced in order to pay for the union's higher wage proposal. Arbitrator Bauman rejected the Union's arguments in that regard, stating:

The Association points to a number of other spending decisions made by the City which it views as inappropriate, given, in its view, the failure of the City to adequately pay its police officers. These include increases in pay for dispatchers and community service officers. The testimony of the police chief made clear that it was imperative for the city to increase the wages of dispatchers in order to be able to hire any. The CSOs are part-timers who receive very little other than an hourly wage. The Union also questioned contracting of tree pruning and staffing for the Farmer's Market as well as the purchase of an Amazon Prime subscription. These are all decisions that the City has chosen to make presumably after doing its due diligence and determining that these expenditures are appropriate under all the circumstances.

After weighing all the foregoing, I conclude there is no clear-cut choice as to whether the Greater Weight and Interest and Welfare of the Public criteria favor the Association's final offer or the County's final offer. Thus, the County's economic conditions do not favor adoption of either the Association's or the County's final offer. It follows from this finding that the other criteria listed under Sec. 111.77(6) (bm) will determine which party will prevail.

Comparison of the Wages of the Comparables (Factor 4)

Although the parties' respective wage offers were identified at the beginning of this decision, I've decided to repeat them. For 2023, both parties propose a 3% increase to wage rates. For 2024, the County proposes a \$2.00 per hour increase while the Association proposes a \$2.50 per hour increase. For 2025, the County proposes a 2%/1% split wage increase while the Association proposes a 2%/2% split wage increase.

As previously noted, the cost difference between the parties' offers is approximately \$150,000 over the three years of the CBA, not including the costs of benefits such as health and dental insurance or the improved vacation benefit the employees will begin receiving upon commencement of the new 2023-25 CBA.

The context for this decision is as follows: All of the comparables are settled for 2023; in 2024, all but two of the comparables are settled; and in 2025, just three of the comparables are settled.

Here's an overview of the discussion which follows. There is no question that the County's wage offer is not as high as the settled comparables for 2024 and 2025 and that the Association's final offer provides wage increases that are more closely aligned with the external comparables. The following shows this. First, let's look at the numbers for 2024. The County proposal of \$2.00 per hour equates to a 5.3% increase to the maximum Patrol Officer wage rate. The Association proposal of \$2.50 per hour equates to a 6.6% increase to the maximum Patrol Officer wage rate. When the County filed its initial brief in this matter, Calumet County had not settled, but it had certified final offers. With the numbers that were then available, the County calculated the 2024 settlement pattern for that year as 6.6%. The Association's wage proposal matched the comparable average (i.e., 6.6%) while the County's wage proposal is 5.3%, which is 1.3% below the average. After the County's initial brief was filed though, Calumet County settled a new 2022-2024 agreement. That agreement implemented Calumet County's final offer on wage increases for 2022 and 2023 and a modified wage increase for 2024 which brought

Calumet County's maximum Patrol Officer wage rate to \$38.28, an increase of \$2.53 over Calumet County's 2023 wage rates. When the recent Calumet County settlement is factored into the County's own numbers, the new comparable average for 2024 is 7.2% (compared to 6.6% when Calumet County was not yet settled). As previously noted, the County's 2024 wage proposal is 5.3% while the Association's wage proposal is 6.6%. Thus, after the Calumet County settlement is included, the Association's wage proposal for 2024 is about a half percent below the average while the County's wage proposal is almost two percent below the average. Now let's look at the numbers for 2025. As noted above, just three units in the comparables have settled for 2025. The cents per hour increase for those three units is \$1.79. That number is well above the County's proposal of \$1.20 and even the Association's proposal of \$1.62. Thus, if I were to look only at the numbers for 2024 and 2025 that I just referenced, the Association's wage offer is certainly the most reasonable. However, in this case, I can't just look at those numbers for 2024 and 2025 in a vacuum (as the Association wants me to do). I also need to consider the prior CBA because it provided a significant wage catch-up. I'd be remiss as an interest arbitrator if I ignored it. Here's what I'm referencing. In 2021 the Outagamie County officers received a significant pay increase, namely an 8.8% increase. That wage increase boosted Patrol Officer maximum wage rankings from 7th to 3rd and improved the Patrol Officers' positioning as compared to the average from almost \$1.00 below the average to more than \$1.00 above the average. The County's wage offer for 2024 and 2025 – while certainly below the average in both cents per hour and percentage – nonetheless continues those improved rankings. Given that prior improvement in the rankings, I find that the County's wage offer suffices under the circumstances because it maintains the current ranking. The following analysis elaborates on this conclusion.

Let's begin with the following relevant bargaining history. County Ex. 11 shows that in 2020, the County's Patrol Officer maximum wage rates had fallen considerably behind the external comparables, ranking 7th out of 8 and trailing the comparables' average by almost \$1.00. Recognizing that this low wage ranking needed to be addressed, the parties agreed in the 2020-2022 CBA that officers would get above average wage increases in an effort to improve employee rankings. Specifically, in 2020, officers received an across-the-board 4% increase. In 2021 they received another 4% increase, this time in the form of a 2%/2% split increase, as well as the addition of a new maximum step on the wage grid which resulted in an 8.8% total wage increase to the maximum Patrol Officer wage rate. This generated a \$2.84 boost to maximum Patrol Officer wage rates, as compared to an average cents-per-hour increase among the comparables of 89¢. In 2022, officers received another 4% wage increase, which provided a boost of an additional \$1.40 to the maximum Patrol Officer wage rate that had been increased by \$2.84 only one year earlier. The result of these three above average increases was a boost in 2021 wage rankings from 7th to 2nd and an increase as compared to the comparables' average from 97¢ below the average to 98¢ above the average. In 2022 the wage ranking dropped slightly from 2nd to 3rd, but the County's position as compared to the average improved, from 98¢ above the comparables to \$1.03 above. These wage increases show that in the prior CBA, the County voluntarily agreed to provide above average wage increases in an effort to improve its standing in the rankings.

In its briefs, the Association ignores the fact that Outagamie County implemented substantial catch-up wage increases in the parties' prior agreement. Nonetheless, the Association places great

emphasis on the fact that some of the comparables who are settled for 2024 and 2025 got significant wage increases in those years. (Association's initial brief, pp. 6, 14). Because of that, let's look at what happened in the comparables.

Here's what the applicable data shows. As compared to the County's proposed wage increase of \$2.00 in 2024, Waupaca and Winnebago provided lower wage increases of 99¢ and \$1.71 respectively, but Calumet provided \$2.53, Fond du Lac provided \$4.86, and Sheboygan provided \$2.86. The Fond du Lac increase was provided in large part to maintain appropriate differentials between its deputies and its jail staff, who received a higher wage increase in 2024 as a result of a wage study that revealed a need to bring the jail staff into closer alignment with their comparables. In addition, Fond du Lac's higher wage increase for 2024 was accompanied by a revision of overtime and leave of absence language and a switch to 12-hour shifts. Additionally, Fond du Lac's higher wage increase was accompanied by an agreement to eliminate the County's lowest-cost health insurance tier. Sheboygan County's 2024 increase was higher, in part, because the parties agreed to eliminate the annual uniform allowance and roll it into base wage rates.

The focus now turns to their rankings. In its initial brief, the Association alludes to the reason why some of the comparables provided higher wage increases in 2024 and 2025. For example, at page 14 the Association states that, subsequent to the parties' previous 2020-2022 agreement, "several groups have received large increases that moved them up in the comparable rankings" and "closed the gap" with Outagamie County. Not surprisingly, these comparables were seeking to attain wage rates closer to Outagamie County's higher wage levels. For instance, prior to the increases Fond du Lac County provided in 2024 and 2025, it ranked 5th out of 8. Assuming Brown County implements a 3% increase in 2024, Fond du Lac will rank 2nd in 2024, with only Brown County paying higher wage rates. Similarly, prior to the increases Sheboygan County's officers received in 2024 and 2025, it ranked 7th out of 8. Again, assuming Brown County implements a 3% increase in 2024, Sheboygan will now rank 5th in 2024, still below Brown, Fond du Lac, Winnebago and Outagamie, but above Calumet, Manitowoc and Waupaca. And Winnebago—the remaining comparable that is settled for 2025—ranked 7th out of 8 back in 2021. In the years since, its wage increases have brought it to a 3rd place ranking in 2024, behind only Fond du Lac and Brown, again assuming Brown implements a 3% increase for 2024.

The data just noted shows that a large number of the external comparables are attempting to move out of lower-placed wage rankings toward middle and upper-placed wage rankings—just like Outagamie did when the County agreed to provide a 16.8% cumulative wage increase in the prior CBA (4% in 2020, 8.8% in 2021 and 4% in 2022) bringing it from a 7th place ranking to 3rd and raising its maximum Patrol Officer wage rate from 97¢ below the comparables' average to \$1.03 above by 2022. By implementing higher wage increases, these comparables are actually chasing Outagamie County's high-ranking wages.

Next, the focus turns to which ranking is going to be used for external comparisons. Specifically, is it going to be the 2nd place ranking that existed in 2021 or is it the 3rd place wage ranking that existed at the end of the 2020-2022 CBA? I find it is the 3rd place ranking that existed at the end of the 2020-2022 CBA.

Building on that, I further find that the County's wage offer for 2023 and 2024 maintains this 3rd place ranking and further improves its positioning as compared to the comparables' average. Here's why. For 2023 and 2024, the County's final offer results in maximum Patrol Officer wage rates that will continue to exceed the average even more—by \$1.12 in 2023 and \$1.09 in 2024. (County's initial brief, p. 19; County Ex. 11). Factoring in the Calumet County settlement, and assuming a 3% increase for Brown and Manitowoc Counties for 2024 (the number proffered by the Association), the chart shown later in this section shows that in 2024, the County's offer will still exceed the average of the comparables by 94¢, as compared to \$1.44 under the Association's final offer.

While it's true that by the end of the 2023-2025 contract, the comparables' average differential decreases under the County's final offer, the same chart referenced in the preceding paragraph shows that the County's offer still keeps maximum Patrol Officer wage rates at 71¢ above the average. By contrast, the Association's offer would propel Patrol Officer wage rates to \$1.44 above the average in 2024 and \$1.64 above the average in 2025. In my view, there simply is no compelling justification for increasing the existing average differential as proposed in the Association's final offer, especially when the County's final offer provides wage rates that will continue to significantly exceed the comparables' average.

In so finding, I'm well aware that Brown County, whose wage rates are historically higher than Outagamie's, is not settled for 2024 and, as such, the comparables' average will rise once a settlement occurs in Brown County. However, Manitowoc County is also not settled for 2024, and its wage rates are lower than Outagamie's. Thus, the comparables' average will likely moderate back down once a settlement occurs in Manitowoc County. Also, as previously noted, in 2024 Sheboygan County eliminated its annual uniform allowance payout and rolled it into wages in the form of a 30¢ increase to wage rates. This had the effect of boosting the comparables' average and making Sheboygan County's wage rates somewhat less comparable on an apples-to-apples basis, since Outagamie County and the other comparables continue to pay uniform allowance on an annual basis.

A review of wage rates for the County's Law Enforcement Specialist (LES) position yields results similar to those summarized above for the Patrol Officer position. The LES position equates to the Sergeant position among the external comparable communities. Comparing wage rates for this position is important because more than a quarter of the full-time officers shown in County Exs. 25 and 26 occupy the LES position. In 2020, the maximum wage rate for the County's LES position ranked 2nd among the comparables but was \$1.20 below the average. By 2022, the above average wage increases implemented in the parties' 2020-2022 bargain resulted in wage rates that maintained the County's 2nd place ranking but exceeded the average by 60¢. The County's offer for 2023 and 2024 maintains that 2nd place ranking and exceeds the comparables' average by an even greater amount (73¢ in 2023 and \$1.40 in 2024). By contrast, the Association's wage offer generates a maximum LES wage rate that exceeds the average by \$1.90.

In City of Glendale (Police), Dec. No. 38786-B (7/3/2021), Arbitrator Dennis McGilligan noted that an offer which maintains existing comparable rankings is reasonable, especially where those rankings were the result of voluntary negotiations:

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

I further find that the fact that the three comparable settlements that exist for 2025 are trending on the higher side does not compel acceptance of the Association’s wage offer here. That’s because three settlements among a comparable pool of seven counties falls short of establishing a pattern. Indeed, the four remaining comparable counties could settle for terms that completely change the trajectory of whatever final settlement pattern emerges for 2025. Moreover, as just noted, the fact that the County’s offer for 2024 provides a lower cents-per-hour increase than the comparables’ average (\$2.00 vs. the comparables’ average of \$2.37) is tempered by the fact that 30¢ of Sheboygan County’s increase was due to rolling the cost of its annual uniform allowance into base wage rates. In addition, there are two comparables who remain unsettled for 2024—one with higher 2023 wage rates than Outagamie County (Brown) and one with lower wage rates (Manitowoc). Thus, the County’s final offer will very likely maintain the positioning shown in County Exs. 11 and 12—that is, a 3rd place ranking for Patrol Officers (2nd place for the LES position) and maximum wage rates that continue to exceed the average of the comparables for both positions. These are not the hallmarks of a compelling “problem” in need of correction through arbitration.

In sum then, it is clear that the County’s wage offer for 2024 and 2025 is below the average (in both cents per hour and percentage) among the settled comparables. That fact, though, does not compel selection of the Association’s wage offer. Here’s why. The County’s wage offer for 2024 and 2025 – while certainly below the average in both cents per hour and percentage – nonetheless continues the improved rankings and relationship to the comparables’ average that resulted from the parties’ 2020-2022 bargain which directly preceded the instant negotiations. That bargain boosted Patrol Officer maximum wage rankings from 7th to 3rd and improved the Patrol Officers’ positioning as compared to the average from almost \$1.00 below the average to more than \$1.00 above the average. I’m persuaded that the County’s wage offer – while admittedly low - maintains that ranking. Thus, I do not accept the Association’s claim that the County’s offer drops the County from 3rd place to 4th place in the rankings. If it is assumed, as the Association does in its exhibits and its briefs, that all comparables who are not yet settled for 2024 and 2025 will receive a 3% increase in those years, the maximum Patrol

Officer wage rates under the County's final offer will still exceed the comparables' average. The following chart (which is drawn from County Ex. 11 and updated to include the Calumet County settlement) shows this:

	2023	2024	2025
Brown	\$40.64	\$41.86 (assuming 3%)	\$43.11 (assuming 3%)
Calumet	\$35.75	\$38.28	\$39.43 (assuming 3%)
Fond du Lac	\$36.19	\$41.05	\$43.10
Manitowoc	\$36.26	\$37.35 (assuming 3%)	\$38.47 (assuming 3%)
Sheboygan	\$35.67	\$38.53	\$40.07
Waupaca	\$33.05	\$34.04	\$35.06 (assuming 3%)
Winnebago	\$37.97	\$39.68	\$41.47
AVERAGE	\$36.50	\$38.68	\$40.10
Outagamie COUNTY OFFER	\$37.62 +\$1.12	\$39.62 +\$0.94	\$40.82 +\$0.71
Outagamie ASSOCIATION OFFER	\$37.62 +\$1.12	\$40.12 +\$1.44	\$41.74 +\$1.64

This chart, which is on pages 26 and 27 of the County's reply brief, establishes that the County's final offer will result in wage rates that will continue to exceed the comparables' average, even factoring in the higher comparable settlements that have occurred in some counties for 2024 and 2025. As shown above, by the end of the CBA in 2025, the County's final offer will result in Patrol Officer wage rates that exceed the average by 71¢. I find no compelling justification for increasing the average differential even further to \$1.64 under the Association's final offer, especially in light of the fact that prior to the significant catch-up increases that were provided in the previous CBA, Outagamie County ranked second-to-last and was 97¢ below the average. Since the County's final offer maintains its existing above-average wage rates and wage rankings, I find that the modest wage increase in the County's final offer suffices under the circumstances.

Based on the above discussion, I find that the County's final offer on wages is more reasonable than the Association's.

The Effective Date for the Wage Increases

Not only does the County's final offer maintain the employees' positioning as measured against the comparables, it also makes no change to the existing status quo regarding the effective dates on which wage increases are to be implemented. As set forth in the footnote at the bottom of County Ex. 19, the County has historically implemented wage increases for all of its employees, both represented and non-represented, on dates coinciding with the start of the payroll period in which the pay adjustments are effective. The County's final offer continues this historical system of

implementation dates by proposing that its wage increases be effective the first pay period in January, 2023; the first pay period in January, 2024; the first pay period in January, 2025; and the first pay period in July, 2025. In contrast, the Association's final offer clearly states that wage increases are to be effective on January 1, 2023; January 1, 2024; January 1, 2025; and July 1, 2025. This constitutes a change in the status quo.

At the hearing the Association dismissed its proposal by suggesting it would agree to the County's position. Then in its brief, the Association again states it would stipulate that its proposed wage increases "would become effective on the first full pay period in January" (ignoring the fact that the Association's offer also contains a pay increase for 2025 that would take effect in July). (Association's initial brief, footnote on p. 4). While the Association implies that this issue is no big deal, it actually is. Here's why. First, the legislature set forth language in the statute for a process for changing offers. One party simply cannot unilaterally change its offer at hearing. This has been recognized, and applied, by many arbitrators over many years. Second, the change being proposed is significant for this reason: officers within the unit cover work hours 7 days a week, 24 hours a day, resulting in many different work cycles. A change in pay application to January 1 from a payroll cycle requires a recalculation of, and overtime for, every single employee in the unit. This occurs not only for now, and next year, but in making backpay calculations for 2023. It would take considerable time and effort to comply with the Association's proposal.

If the Association's final offer were to be selected by the Arbitrator here, it must be implemented as written, without modification. That's problematic for this reason. As noted above, the Association's final offer, as written, without modification, changes the status quo. The Association has not met a single one of the required standards to change the status quo through arbitration, which include a compelling need for the change, a quid pro quo for the change, and clear and convincing evidence that both of these standards have been met. Regardless of the Association's intent or lack of care in finalizing its final offer, the fact is that the Association's final offer does change the status quo, without providing "clear and convincing evidence" (indeed, any evidence) that it has met the standards required to do so through arbitration.

Based on the above discussion, I find that the County's final offer on the effective date for the wage increases is the more reasonable offer because it maintains the status quo.

The Remaining Statutory Criteria

The lawful authority of the employer (factor 3) is not an issue in this interest arbitration proceeding, nor are the stipulations of the parties (factor 2).

I'm persuaded that the average consumer prices for goods and services, known as the cost of living (factor 5) has no impact on the decision herein.

Although the Employer contends that its overall benefit package (factor 7) is better than in some of the comparables, the Association argues that the County is better on some issues and not as good on

some aspects of the overall benefit package. For purposes of this arbitration, the benefits package has no impact on the decision since neither party is attempting to modify the benefits package.

Finally, as already noted, the catch-all criterion (factor 8) is commonly interpreted by arbitrators to refer to the internal comparables. The record shows that deputies have historically received significantly higher wage increases than the County's non-represented employees. Both parties' wage offers are consistent with this trend (meaning that deputies will again receive a higher wage increase than the County's non-represented employees under either side's final offer). That being so, I find that factor 8 has no impact on the decision herein.

After considering all of the factors provided in Sec. 111.77(6) Stats., – including (am) and (bm) - and for the reasons set forth in the opinion above, I find that the County's final offer is more reasonable than the Association's. It follows from that finding that the County's final offer is selected for inclusion in the parties' 2023 – 2025 CBA.

AWARD

The County's final offer is selected for inclusion in the parties' 2023 - 2025 CBA.

Dated in Madison, Wisconsin this 16th day of October 2024.

A handwritten signature in blue ink, appearing to read "Raleigh Jones", with a stylized flourish at the end.

Raleigh Jones