

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration between:

WEST ALLIS PROFESSIONAL POLICE ASSOCIATION,

Union,

and

Case ID:313.0008

Case Type: MIA

CITY OF WEST ALLIS, WISCONSIN,

Employer.

Appearances:

For West Allis Professional Police Association:

Christopher J. MacGillis

Ryan S. MacGillis

MacGillis Wiemer, LLC

For City of West Allis:

Kyle J. Gulya

Von Briesen & Roper, s.c.

Arbitrator:

Susan J.M. Bauman

OPINION AND AWARD

The hearing in the above captioned matter was held on May 30, 2024, in the City of West Allis before Susan J.M. Bauman serving as the sole impartial arbitrator by selection of the parties. The hearing was held pursuant to Section 111.77, Wisconsin Statutes. At the hearing both parties were afforded full opportunity to call, examine and cross-examine witnesses, introduce documentary evidence and present arguments. The hearing was transcribed. The parties filed post-hearing briefs and reply briefs, the last of which was received on August 9, 2024, whereupon the record was closed. Based upon all the evidence presented and arguments made, the Arbitrator renders this Opinion and Award.

Final Offers

The parties’ final offers differ with respect to wages, contract duration, and modifications to Appendix A.¹ The Union proposes a five year contract, from January 1, 2022 through December 31, 2026. The Employer proposes a four year contract, ending December 31, 2025. The parties’ final offers with respect to wages are as follows:

<u>Effective Date</u>	<u>Union Offer</u>	<u>Employer Offer</u>
First full pay period after		
January 1, 2022	2.5%	2.5%
May 1, 2023	2.5%	2.5%
May 1, 2024	2.5%	2.5%
July 1, 2025	3.25%	3.25%
January 1, 2026	\$3.00/hour increase for Top step Patrol Officers And for Corporal (Specialist I), Step B Sgt of Police and Step B Detective Sergeant And 3% increase across the board For all non-top step patrol Officers and not for those Receiving \$3.00/hour	

The Employer seeks modifications to Appendix A, related to calculation of hourly rates for the purposes of determining compensation for overtime and holiday pay. In lieu of performing such calculations by dividing annual base wage rates by 2004 hours, the Employer seeks to determine such rates by dividing biweekly pay by 77 hours. The Union would maintain the *status quo* with respect to Appendix A.

Statutory Criteria to be Utilized by the Arbitrator

As set forth in Section 111.77(6), Wis. Stats., the following factors are to be considered by the arbitrator:

(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.

¹ At the time of the hearing the parties also disagreed on the specific implementation date for each wage increase, with the Union proposing the first day of the month and the Employer proposing implementation of each increase to be effective for the first full pay period after the specified date. Subsequent to the hearing, the parties agreed to the Employer’s language with respect to the timing of the wage increases.

(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 needs.
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.

BACKGROUND

The parties have stipulated that the appropriate communities for comparison are the following as determined by Arbitrator Edward B. Krinsky in 2003:

Brookfield
Franklin
Greenfield
Menomonee Falls
Muskego
New Berlin
Oak Creek
South Milwaukee
Waukesha
Wauwatosa
West Milwaukee²

² It is not completely clear if the parties include West Milwaukee or not. The City did not include it in its Exhibits 10A or 10B, comparisons of annual salaries and percentage wage adjustments of external comparators. The Union uses it in some of its Exhibits 31, 32 and 33 which are comparisons with comparable communities.

THE EMPLOYER'S POSITION

The Employer argues that its final offer should be accepted. It contends that the City has a history of fairness and equity when it comes to its relationships with both its represented and non-represented employees. This is a cornerstone of collective bargaining in West Allis which is long-standing and necessary to generate stability for the City's workplace culture and for budgeting in consideration of the City's significant economic constraints and limited ability to grow revenues. When reviewing the offers and the statutory criteria, it is apparent that the City's offer is the only reasonable one.

The City claims that the Union's extraordinary offer is an unreasonable solution to alleged, but non-existent, problems. The City contends that the Union does not consistently utilize the same set of comparable communities in analyzing the data and, therefore the Arbitrator should use the City's exhibits which present the more consistent and reliable set of comparable data. In addition to presenting information regarding base wages, the City has provided significant information regarding total compensation for members of the bargaining unit. To that end, even when inclusion of the information results in the City's wage rates comparing less favorably than they otherwise might, the City has included all applicable regular wage compensation in reporting wage rates among the comparable communities.

The City is not a wage leader, nor have the City's base wage rates ever approached the middle or average of the comparables. West Allis' maximum wage rates for the Patrol Officer classification, 60 of the 107 bargaining unit members, historically rank at or near the bottom of the comparables, depending on whether resident or non-resident (perimeter) base wage rates are used. These rankings will continue under both parties' 2022-2024 and likely for 2025 as well. Few comparables are settled for 2025, making it difficult to know this with certainty. Base wages for Detective/Specialist II position, comprising 25% of the bargaining unit, compare slightly more favorably, continuing historical rankings of 2nd or 3rd from the bottom using perimeter and resident wage rates, respectively.

The fact that these wages rank near or at the bottom does not necessarily constitute a problem requiring adjustment. Base wage rates are only one element of total compensation. Total compensation demonstrates the City is competitive both as to benefits offered and the City's ability to be an attractive employer for new and lateral entry law enforcement officers. The City's low base wage rankings do not compel arbitral selection of the Union's proposed costly, radical adjustment to Patrol Officer wage rates in the 5th year of the Union's final offer, particularly when the timing of the proposed adjustment extends so far out into the future that great uncertainty exists regarding City finances. The City has recently eliminated positions and laid-off employees in other Departments; only one of the 10 external comparables is settled; the City's wage history shows the City's other Union employees, the Firefighters, settled for what the City is offering in wage increases; the City's wage history shows that City has never been a wage leader and has historically been at or near the bottom for base wage rates and the City's base wage rates have never approximated the middle or average of the comparables; and the Union offers no *quid pro quo* to the City or other cost-offset to minimize the heavy impact of its wage proposal.

The Employer provides significant information regarding its financial situation. The City is land-locked and unable to generate significant increases in assessed value through new construction, thus being unable to

increase its levy to any great extent. West Allis participates in the State of Wisconsin Expenditure Restraint Program which allows it to receive funding from the State only if it keeps its expenditures below a certain level. The inability to raise additional monies has resulted in a budget crunch in recent years that has resulted in initially eliminating unfilled positions and, thereafter, actually reducing the number of individuals employed by the City. The Employer contends that these factors are out of its control, making prohibitive the provision of additional monies to the members of the bargaining unit in 2026.

There is only one comparable that has settled for 2026, the City of Brookfield. It settled with its police union at 4%, a full 3% less than the Union's proposal for 2026. The Union's final offer will result in the maximum patrol officer base wage rankings by 5 or 6 ranks (from 7th or 6th) if settlements in 2025 and 2026 average 3.35% or 3.5%. The Union's final offer would boost West Allis from the bottom of the comparables to at least the middle in a single year, 2026.

Further, the City argues that in these uncertain economic times (at least for Wisconsin cities), a five-year agreement is too long. The City's proposal, on the other hand, maintains the West Allis Professional Police Association in a similar position relative to the comparables through 2025 and maintains parity with the Firefighter's Union that has reached a voluntary settlement with the City for a four year agreement.

The City's proposed revisions to Appendix A more accurately reflect hourly pay rates which, in turn, actually benefit members of the bargaining unit. The amendment gives clarity for the parties as to actual rates of pay and provides clarity to external parties by clearly enunciating actual compensation as compared to the amounts delineated in the current Appendix A. The City's intent is to eliminate inaccurate information without reducing the actual pay received by any bargaining unit member.

The existing Appendix A contains language specifying that overtime and holiday pay are based on an hourly rate that is calculated by dividing the annual pay rate by 2004. It provides that the Base Hourly Rate is based on an 80-hour workweek. The Appendix displays hourly, bi-weekly, and annual pay rates. In practice, the employees are paid bi-weekly pursuant to the bi-weekly rates listed in the Appendix. The annual rates are calculated by multiplying these bi-weekly rates by 26. The hourly rates displayed are calculated by dividing by 2080, 80 hours per pay period even though many officers do not work 80 hours per bi-weekly pay period. Officers who work a 4-2 shift are scheduled for an average of 77 hours per bi-weekly pay period.

The City's final offer deletes language pertaining to the 80 hour bi-weekly pay period and replaces it with language referencing an hourly pay rate based on 77 hours per bi-weekly pay period. The final offer also provides needed clarification as to how holidays are paid. The new language clarifies pay rates so that annual pay is based on 26 pay periods per year plus annual holiday pay, to establish total annual compensation.

The proposal actually benefits the employees because 2004 hours divided by 26 pay periods is actually 77.077 hours per pay period. By rounding down to 77 hours, the hourly rate is higher, resulting in an increase in officer overtime pay rates. To ensure that officers working 80 hours per week see no reduction

in their overtime pay rate, the City seeks to compute all overtime and holidays based on 77 hours per pay period.

The City's proposed Appendix A more accurately reflects actual hourly pay rates and better reflects annual pay. The Union did not offer any evidence contrary to that stated in an e-mail in evidence and the testimony of the finance director. The Union final offer perpetuates the existing inaccurate Appendix A hourly wage rates.

The City's final offer is the more reasonable and should be incorporated into the new Labor Agreement.

THE UNION'S POSITION

The Union argues that its ranking at the bottom of the comparables is unfair to its members inasmuch as call volume and crime statistics demonstrate that members of the West Allis Police Department have a greater workload than employees in comparable communities. While this bargaining unit has historically been at the low end of the comparable groups, it has fallen behind, with the gap between the Association's annual wages and the next ranked external comparable steadily increasing. The Union's proposal not only closes the gap, but also allows the West Allis PD to remain competitive with the external comparable groups.

The City has the capacity to pay the 2026 wage proposal presented by the Union. Its fund balance is more than double that recommended by the Government Finance Officers Association (GFOA). In 2023 alone, the City had a net projected surplus of over \$9 million, increasing the general fund balance to more than a projected \$54 million. The City has failed to provide any explanation how it was able to increase its general fund balance in one year without layoffs. The City chooses to allocate funds to things other than the police wages. This is not an inability to pay but, rather, a choice to not pay police wage increases at the amount sought by the Union.

The Union contends that the City's cost summary of the Union final offer is flawed. It failed to include any wage increase in its costs summary for 2026. In so doing, the City artificially increases the cost of the WAPPA offer. Additionally, the City's analysis does not credit the savings from the decreased wages for the years 2022-2025. The WAPPA contends that the costs are:

Total Sum the City Would Be Required to Pay in 2026 Anyway With Market Rate Adjustment (3.25%)	\$517,936.00
Total Sum of the City's Savings – 2022-2025 ³	\$182,301.00
Grand Total	\$700,237.00

The cost of the Association's \$3.00 increase for top steps is actually \$199,375.00 which will be less because it applies only to those at the top step; others would receive a 3% increase.

³ The Union brief reads 2022-2005.

The Union points out that the City received American Rescue Plan Act (ARPA) funds and Shared Revenue funds that it chose not to use to contribute to the WAPPA wages. The City chose to allocate more than half of the funds towards a new Department of Public Works (DPW) building even though its own consultant had recommended remodeling and adding on to the existing facility rather than building a new one.

WAPPA points out that its five-year proposed wage increase would cost less than 11% of the ARPA money received from 2021 to 2022 and Shared Revenue for 2024. Given the City's historical trend of having a healthy budget, its statements regarding the inability to fund the proposed wage increase is inconsistent. The City clearly has the funds now and is more than capable of funding the Union's proposal.

The City's claim of inability to pay is inconsistent with wage increases for other positions within the Department such as the Community Service Officer (CSO) and Dispatch positions. CSOs saw an \$8 to \$12 per hour increase, and Dispatchers received a \$5.00 per hour increase. Additionally, the City has budgeted for several unnecessary items such as outsourcing tree pruning, staffing for the Farmers Market and the purchase of Amazon Prime.

The Police Department brings in grant money to fund various expenses, including wages. The revenue brought in by the Department frees up enough money for the City to fund the WAPPA proposal. The interests and welfare of the public and the financial ability of the City both strongly favor the Association's proposal.

WAPPA acknowledges that the party seeking to change the status quo in an interest arbitration bears the burden of proof to justify that change. The Association seeks to maintain the status quo with respect to the calculation of wages pursuant to Appendix A. The City's final offer seeks to fundamentally and substantially change the way wage rates are calculated. The Employer failed to meet its burden, failed to present concrete examples of issues caused by the current hourly rate calculations or offer any other significant justification for changing the wage rate calculation. The City has also failed to offer any *quid pro quo* for the proposed change. The Association proposal of maintaining the status quo with respect to Appendix A must prevail.

The WAPPA final offer furthers the public's interest by providing a longer period of stability before a successor agreement must be bargained. This offer would provide an 18-month stabilizing period before negotiations begin anew. The City offer only extends through 2025, so only about six (6) months would pass before the parties begin negotiating again. Given that the current negotiations have been ongoing since early 2022, extending the new contract through 2026 would benefit both the parties and the public. A satisfied workforce is a more productive workforce, and the current morale of WAPPA members is very low because of low wages at the bottom of their comparable group.

A comparison with wages of other employees performing similar work favors the Association's proposal.⁴ Members of the West Allis PD handle more calls and respond to more serious crimes than the comparable communities even though the population of West Allis is smaller than some of them. The higher call volume and number of high-risk calls coupled with low wages has had a significant impact on the morale of WAPPA members. These factors have also affected retention and recruiting, and there are currently six (6) open positions. Despite all this, West Allis ranks last in its comparable group. The Association, as a *quid pro quo*, accepted below market average raises in 2022, 2023, 2024 and 2025 in order to obtain more in 2026. The Association received a total of 1.80% less than the average raises received by the others in the comparable group in exchange for receiving a significant boost in 2026.

By the end of the 2020-2021 contract, West Allis ranked 10th in annual salary and was \$2,150.54 behind the average annual salary for the comparable group. By the end of 2024, under the City's final offer, West Allis slips back into 12th place in annual salary and \$3,800.54 behind the average annual salary for the comparable group.⁵

Turning to internal comparables, the only other group that bargains with the Employer are the Firefighters. The Association proposal maintains historic parity with the West Allis Fire Department. Both groups are at the bottom of their respective external groups. Parity was a big factor in these negotiations due, in part, to the Malin arbitration award. When the Firefighters reached a settlement, the City attempted to impose that settlement on the police force, using strongarm and take it or leave it tactics. The City's reliance on parity is in direct contrast to its position during the arbitration before Arbitrator Malin.

A representative of the Firefighters union made clear that the settlement it reached with the City was a "bad deal" that the Union agreed to under threats of consolidation with the Greenfield Fire Department and the threat of position cuts. All such talk ended after a tentative agreement was reached. The WAPPA proposal mirrors the Fire Department settlement for the first four years as a *quid pro quo* for the increase it seeks in 2026.

The overall compensation package, other than wages, remains the same under both parties' final offers. The City's compensation package is favorable in some areas but ranks lower in others. The overall compensation package is competitive and consistent with others in the group of comparables.

In its 2024 budget, the City projected the general fund surplus would increase by over \$9 million. Thus, the change in circumstances factor favors the Association's offer.

In looking at other factors, pursuant to §111.77(6)(bm)(8), the Association's offer is favored as the increase proposed by the Association is necessary to improve morale and fairness. Current officers look

⁴ The parties generally agree on the set of comparable communities. The Association contends that the City of West Milwaukee which was included in the comparables as found by Arbitrator Krinsky should be included. The Employer has not included West Milwaukee in its comparables exhibits.

⁵ These amounts are based on the perimeter wage rate since 95% of the members of the WAPPA live outside of the City of West Allis.

at open positions in other departments and go through a difficult analysis to decide whether to stay in West Allis or move elsewhere. Such moves impact immediate pay, seniority, shift selection, and an officer's family. The low pay in West Allis had led to low retention rates in new recruits.

Officers in the WAPPA don't want to leave, they just want to make the Department better and move towards the middle of the comparable group. The current rate of pay is unfair, and the Association's final offer should be adopted.

DISCUSSION

Interest arbitration is available to public safety bargaining units in Wisconsin which do not have the right to strike. It is axiomatic that an interest arbitration award must be decided in a manner that, to the extent possible, reflects a settlement the parties would have reached to resolve (or avoid) a strike. The arbitrator is charged with determining, based on the factors delineated in §111.77(6) of the Wisconsin Statutes, which of the final offers is more likely to have been achieved by the parties had they continued to negotiate and mediate, rather than having impasse declared. Additionally, it is well established that interest arbitration is a rather conservative process and that interest arbitration awards will generally not provide for new benefits a party has not been able to acquire at the bargaining table, nor is interest arbitration an avenue for achieving significant change in wage rank relative to a group of comparable communities.

Against this background, the arbitrator must consider two final offers which appear to have been developed in the context of Arbitrator Malin's award between the City of West Allis and the West Allis Professional Firefighter Association Local 342 issued on March 31, 2021.⁶ In that case, the Arbitrator determined that rough parity existed between the police and fire units in West Allis and that it was appropriate to maintain that rough parity in rendering the award. The parties to this proceeding seem to have overlooked the final paragraph of that Award in which Arbitrator Malin states:

Although the issue of wages is close, as discussed above, the issue of contract duration is not at all close. As discussed above, the interests and welfare of the public weighs heavily in favor of the Union's final offer of a two-year contract. My authority is limited to selecting the entire final offer of one of the parties. Integrating the very strong case for the Union's final offer on contract duration with the much closer question of wages compels the selection of the Union's final offer as the one which better comports with the statutory factors and is more likely to have been the contract that parties would have agreed to if their bargaining process had not broken down.

That is, the parties focused on the finding of rough parity between the police and fire bargaining units and developed final offers that maintained parity between the bargaining units for four years. This is why the wage proposals for the first four years are identical and why the WAPPA included a fifth year in which it

⁶ The Union proposed a two year contract with a 3% increase effective 4/1/2022, a 2.0% increase effective 1/1/2021 and 1.0% increase effective 10/1/2021. The Employer proposed a one-year contract with 2.25% increase 1/1/ 2020.

seeks to make up what it perceives as losses during those four years and to improve its relative wage rank vis-à-vis the comparable communities in the fifth year.

Wages and Contract Duration

The parties have offered identical wage proposals for four years, 2022, 2023, 2024 and 2025. The Union has proposed that in the fifth year, 2026, members of the WAPPA at the top steps of the wage scale receive a \$3.00 per hour increase while the remaining members of the bargaining unit receive a 3% across the board increase. The Union contends that in mirroring its proposal on the Firefighter’s voluntary settlement for the first four years, they are putting themselves further behind the comparable groups and, therefore, seek a significant increase in 2026 which not only brings them back to their current relative position, but also brings them to approximately the middle of the comparables, the position they think is where they should be.

The following shows the percent increases for the comparable communities for the years in question:

<u>Community</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Brookfield ⁷	4%	4%	3%	3.5%	4%
Franklin	3%	3%	3%	Not settled	Not settled
Greenfield	2%	2%	2%	Not settled	Not settled
Menomonee Falls ⁸	3%	3%	5%	Not settled	Not settled
Muskego ⁹	2%	4%	4%	4%	Not settled
New Berlin ¹⁰	3%	4%	3.5%	Not settled	Not settled
Oak Creek ¹¹	2%	2%	3%	Not settled	Not settled
South Milwaukee ¹²	2%	3.5%	3.5%	2%	Not settled
Waukesha ¹³	2.25%	3%	3.25%	Not settled	Not settled
Wauwatosa ¹⁴	2%	3%	3.25%	Not settled	Not settled
West Milwaukee ¹⁵	2.75%	4%	3%	3.25%	Not settled

⁷ The City of Brookfield settled for 2.5% 1/1 and 1.5% 9/1/2022; 4% 1/1/2023 and \$1000 lump sum; 4% 1/1/2026 and \$500 lump sum.

⁸ Menomonee Falls 2024 settlement was 3% effective 3/1/2024 and 2% effective 12/1/2024.

⁹ Muskego settlements were 1% 1/1/2022 and 1% 7/1/2022; 1% 1.1.2023 and 3% 7/1/2023; 2% 1/1/2024 and 2% 6/30/2024; 2% 1/1/2025 and 2% 6/29/2025

¹⁰ New Berlin settlements were all splits: 1.5% 1/1/2022, 1.5% 7/1/2022; 2% 1/1/2023, 2% 7/1/2023; 1.75% 1/1/2024 and 1.75% 7/1/2024.

¹¹ Oak Creek also split its settlements: 1% on 1/1/2023 and 1% on 7/1/2023; 1.5% 1/1/2024 and 1.5% on 7/1/2024.

¹² South Milwaukee split the 2023 raises with 2.5% 1/1/2023 and 1% 8/1/2023.

¹³ Waukesha settlements were also split with 1% effective 1/1/2022, 1.25% effective 7/1/2022, 1.5% 1/1/2023, 1.5% 7/1/2023, 1.5% on 1/1/2024 and 1.75% on 7/1/2024.5

¹⁴ Wauwatosa split the 2024 increases with 1.5% on 1/1/2024 and 1.5% on 7/1/2024.

¹⁵ The Union provided information about West Milwaukee but did not provide any information as to whether these increases were split over the year in question. The Union also included information about Greendale and St. Francis,

The average wage lift in these communities is 2.53% in 2022, 3.05% in 2023, 3.33% in 2024, 3.17% in 2025 where only four comparable communities have reached settlements, and 4% in 2025 where only one community has settled. The 2022 – 2025 proposals of both the City and the Union are 2.5% in 2022, 2.5% in 2023, 2.5% in 2024, and 3.25% in 2025. There is no question that the members of the WAPPA will continue to loose ground relative to the wages of the comparables over the four years in question.

Reviewing annual wage comparisons for the period 2018 through 2024, the following information is relevant:¹⁶

Year	Average Annual Wage Of Comparables	WAPPA Relative to Average	WAPPA ranking
2018	\$76,414.38	-\$3,953.42	12
2019	\$78,002.67	-\$3,187.15	11
2020	\$79,639.59	-\$2,579.95	11
2021	\$81,714.70	-\$2,150.54	10
2022	\$83,845.57	-\$2,292.41	10
2023	\$86,485.15	-\$2,893.07	12
2025	\$89,482.50	-\$3,800.54	12

Again, there is no question that under the terms of either the Employer or the Union’s final offer, the relative position of the WAPPA will drop to near the bottom of the comparable group. The Union chose to mirror the Employer’s proposal for the first four years, relying on parity, and then seeks to “make up” the losses during the fifth year of its proposal. However, the Union proposal does not attempt to restore its ranking to 10th amongst the list of comparables – it seeks to move to the middle of the group by seeking a \$3.00 per hour increase for members at the top of the salary schedule and a 3% across the board increase for the others. According to the Employer’s calculations, this proposal represents a 9.12% increase. Given that the Employer acknowledges that a cast forward calculation of costs for 2026, with no wage increase, would cost the city an additional \$495,096, or 3.12%, it is more appropriate to consider the Union proposal as being about a 6% increase in total compensation. This is not close to the “market rate” that can be expected to be received by public sector bargaining units in Wisconsin in 2026, barring completely unforeseen circumstances.

The Union has sought to include wages for 2026 in its proposal to mirror the Firefighters settlement for the first four years and then to make a leap forward where it becomes the entity which the Firefighters would seek to emulate in their next round of bargaining. The Union seeks a fifth year in this contract to get out from under the internal settlement. While both parties argue that their contract proposal is the more appropriate length, with citations from arbitrators as to why a longer or shorter contract is

neither of which is an agreed-upon comparable. The Employer did not provide information regarding West Milwaukee in its charts.

¹⁶ Information taken from Union Exhibit 32.

appropriate, in this case the reasons for the longer contract proposed by the Union have less to do with stability and a reprise from bargaining for 18 months than with needing something longer than the Firefighters settlement so that additional monies can potentially be gotten by the WAPPA membership.

Turning to the statutory criteria of §111.77(6) Wis. Stats., a review of all of the facts presented, including volumes of budget documents, audits, collective bargaining agreements and related information, the undersigned finds that the position of the Employer is the more reasonable proposal for the reasons that follow.

The economic conditions in West Allis are not unlike those in other municipalities in the State of Wisconsin. Due to actions of the State legislature, the City is constrained in the amount of money it can levy from the taxpayers. Since the City is landlocked, there is little opportunity for new development, a significant factor in determining increases in tax levies. The City is also constrained by the Expenditure Restraint Program which provides state aids to the city if, and only if, it keeps its spending lower than state-established limits. Over the past several years, the City has been forced to closely examine its spending, resulting initially in the non-filling of vacant positions and, thereafter, actual layoffs of some employees. 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. The City had a significant budget surplus in 2023 (unaudited amount of about \$9 million). It is true that the City could opt to use some of these monies to fund an increase in police salaries. However, as noted above, based on the Employer's proposal and no increase in wages to police department salaries in 2025, the City would expend an additional \$495,096, or 3.12%, on wages and benefits for members of this bargaining unit in 2026 due to commitments made in prior years.¹⁷

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

¹⁷ The City's calculation of 2026 costs was made at the request of the Arbitrator to ascertain the financial commitment the City was making in its four year proposal and its monetary impact for 2026. This was not intended to suggest that West Allis would make a 0% increase proposal for 2026.

doing its due diligence and determining that these expenditures are appropriate under all the circumstances.

Additionally, the WAPPA argues that the police department brings in significant grant money that offsets the need to use tax revenues to pay for its proposal. It is true that many grants flow to the police department. It is also true that these funds are considered in the development of the City's budget. Some of the grants pay for specific services that the police department would be unable to provide if the grant monies were not made available from the State and Federal governments and other sources.

In sum, the economic condition of the City is not such that it has an inability to pay what the members of the WAPPA seek. The Mayor and City Council have made difficult decisions in adopting the budget for 2023, just as they did for 2024 and will for 2025 and 2026. These are uncertain economic times for the City of West Allis, but the economic conditions do not favor adoption of either the Employer's or the Union's proposal.

The lawful authority of the employer is not an issue in this interest arbitration proceeding, nor are the stipulations of the parties.¹⁸

Both parties have argued that their position best meets the interests and needs of the public. In particular, the Association argues that the longer term of its proposal provides a longer period of stability before the parties once again commence negotiations for a successor agreement. The City contends that there are too many unknowns in the future, particularly about its financial situation, to enter into an agreement that does not end until the end of 2026.

Both parties provide quotations from prior arbitration awards which support their arguments. In this instance, the question is whether the award should cover four or five years, not a question of one, two or even three years. When this award is issued, there will be more than a year left under a four year agreement, more than two years under a five year agreement. Unlike with the Malin Award that was issued in March, 2021 for an Award that would go through December 31, 2020, prior to the date of the issuance of the Award, or December 31, 2021, nine months after the issuance of the Award, it made sense to opt for the two-year contract. In this case, whichever proposal is adopted, the parties will have time to re-group and consider how they want to proceed for the next collective bargaining agreement.

The interests of the public are best met if the City does not commit itself to expenditures far into the future which it does not know it can finance without the need to reduce services and/or layoff personnel. The City has already had to take such difficult actions to balance its budget in the past. The public interest is best met by ensuring, to the extent possible, a continuation of services and the avoidance of additional layoffs. While a five-year contract would negate the need to bargain until sometime in 2025, this does not outweigh the fact that the amount sought by the Union for 2026 is not consistent with any known settlement pattern and it seeks to raise the relative ranking of West Allis as compared to the comparable group. Ultimately it is not the length of the WAPPA contract proposal but the nature of the 2026 request that makes the City's offer more reasonable.

¹⁸ The undersigned is not aware of any of the tentative agreements that may have been reached by the parties.

As noted extensively above, the members of the WAPPA are paid less than their counterparts in comparable positions in comparable communities. There are no private counterparts to be considered, only the police departments in the identified comparable communities. The proposals with respect to wages are identical for the first four years, 2022 through 2025. In its attempt to make up what it considers its losses in 2022 through 2025, the Union argues that the difference between what it identifies as “market rate” for those years and the amount it seeks in those years serves as a *quid pro quo* for asking significantly more than “market rate” in 2026. To be a *quid pro quo*, the Union must have given up something it already had. The Union made the choice to match the Firefighters’ voluntary settlement for 2022 through 2025. That does not constitute a *quid pro quo*. Rather, had it agreed to reduce some existing benefit, that might have been a *quid pro quo* warranting the Employer to increase its offer to something more palatable to the Union.

While it is clear that the Employer’s proposal results in the members of the bargaining unit suffering a loss in take-home pay relative to the comparables, and a decline in relative wages compared to those other communities, it must be noted that seven (7) of these communities are not yet settled for 2025 and all but one are not settled for 2026. For 2022, 2023, 2024 and 2025, the final offers are identical and do have a negative impact on the West Allis police bargaining unit. Being constrained to picking the final offer of one of the parties, there is no way to prevent this back-sliding. What the Union seeks in 2026 is too much. With only one comparable settled at 4%, the Union seeks more than 6% and seeks to move from nearly the bottom of the wage rankings of the comparables to the middle. Interest arbitration is not the forum for making such a move.

The average consumer prices for goods and services, known as the cost of living, has no impact on the decision herein. Both parties have made the same proposal for the first four years. The cost of living for 2025 and 2026 are both unknown at this time and will continue to be unknown for a long time.

Although the Employer contends that the overall benefit package offered by the City of West Allis is better than in some of the comparable communities, and testimony of bargaining unit members made clear that they aren’t even aware of some aspects of their benefit package, the Union argues that the City is better on some issues and not as good on some aspects of the overall benefit package. Whether the benefits package is sufficient to make up for the low wages in West Allis is an argument the parties can make at another time. For purposes of this arbitration, the benefits package has no impact on the decision since the parties’ offers for 2022 – 2025 are identical with neither party attempting to modify the benefits package.

The Union argues that the low wages has caused low morale amongst its membership and that the City has had difficulty in attracting and retaining qualified applicants. The City of West Allis is not alone in seeing a reduction in the number of qualified applicants for positions in the Police Department. This is the case throughout Wisconsin and the rest of the country, especially in rural areas. Chief Patrick Mitchell testified that hiring police throughout the State is a challenge. He also stated that West Allis has held its own over the past five years in terms of recruitment and retention. The City typically gets close to full

staffing after a recruitment, but then retirements and resignations start. There are currently six (6) vacancies of the 126 sworn positions.

The chief also spoke about retention and noted that the chief reason people leave is for retirement. The second highest reason is failure to meet the probationary period, 8 recruits in the past ten years have failed to successfully complete probation. The Union contends that probationary employees leave because of the low pay but offered no proof to support this position. According to the Chief, the probationary employees who left did so because they did not successfully complete their probationary period. Four of 54 members of the Department have left for other law enforcement jobs. Of those, only one stayed in the West Allis area. On the other hand, the West Allis PD has hired experienced police officers from both Brookfield and Wauwatosa, members of the group of comparable communities with wages higher than those in West Allis.

The Chief testified that he would love to see his officers earn more, but that he does not feel that the City's low wages compared to the comparable communities detrimentally impacts the City's ability to recruit personnel. In other words, in the opinion of the Chief of Police, the West Allis Police Department is composed of excellent, committed officers who earn less than their counterparts in other communities, but this does not affect the ability of the Department to recruit or retain personnel.

Although the Association argues that the low wages at West Allis prevent the City from hiring or retaining qualified personnel, the Chief disagrees. The Association also argues that the Department is understaffed. The Chief explained how this happens when members of the Department announce resignations and retirements just as a new recruit class comes on board. The Chief is very comfortable with the staffing levels in the Department and is very supportive of the police force.

The Association also argues that morale is very low in the West Allis Police Department due to the combination of low wages and high call and crime numbers. The record shows that very few West Allis police officers leave the department for other law enforcement positions except in unusual cases involving returning to Illinois or moving to be closer to where a spouse is employed. It may well be that there is low morale in the Department, but officers are not leaving because of the low wages. The fact that the parties have not entered into a new collective bargaining agreement that covers the period beginning in January 2020 to date might be a factor contributing to low morale.

Because the Union seeks an increase in the fifth year of the contract that is not in line with the one existing settlement and even what it considers to be a market rate for 2026, the Employer's offer is the more reasonable.

Appendix A

In addition to the issues of contract duration and wages, the Employer has proposed to modify Appendix A of the collective bargaining agreement to, in its words, "eliminate inaccurate information without reducing the actual pay received by any association members. In fact, all members are paid slightly more

under the City's proposal than the members would have under the prior version." There are three (3) aspects to the proposal.

First, certain officers work 80 hours per biweekly period, but it is inaccurate to base all hourly rates on 80 per biweekly pay period. Many officers on the 4-2 schedule work an average of 77 hours per biweekly pay period. The status quo utilizes 80 hours per biweekly pay period when only a portion of WAPPA members work those hours.

Second, the annual rate and monthly rate excluded holiday pay, which led to confusion over how much members are actually paid per year. Annual paychecks can vary between 26 and 27 per year. Holiday pay is part of annual compensation, so Appendix A was cleaned up to show annual pay based on a presumed 26 pay periods a year plus annual holiday pay to establish estimated annual compensation.

Third, the edits to computation for overtime and holiday were changed to keep the spirit of 2004 hour concept without confusingly computing something based on annual hours. This benefits the union because the rounding down to 77 hours per pay period results in a higher hourly rate.

The Union is opposed to the changes and contends that the Employer has failed to provide a *quid pro quo* for the changes. The WAPPA also suggests that the Employer seeks these changes to make the West Allis hourly rate higher, to look better when compared to other communities. It is annual rates that are usually compared in interest arbitrations, and it is very clear that the Employer is not including the very small increase that WAPPA members will receive for overtime in its arguments as to why its final offer is preferable. Inasmuch as these changes result in a higher hourly rate, and therefore greater overtime pay for the members of the bargaining unit, no *quid pro quo* is needed.

Looking at the statutory factors provides no great insight as to which proposal is preferable. This proposal is not given much weight in determining the final award in this matter.

SUMMARY

In considering the final offers of the parties, the undersigned is constrained to choosing either the final offer of the City of West Allis or the West Allis Professional Police Association. As stated at the onset, the role of the arbitrator is to issue an Award that is more likely to have been reached had the parties continued to bargain. Neither of the offers presented was acceptable to the other party, and neither would have ultimately been accepted had the parties continued to bargain. In formulating their final offers, both parties were too concerned about parity with the Firefighters to consider the impact of their proposal upon the members of the bargaining unit. Although, as argued by the Employer, the percentage by which the wages of the police officers fall under its proposal compared to the comparables is rather small, it is real dollars, not percentages, that impact the daily lives of the bargaining unit members. The Association, in its attempt to maintain parity with the Firefighters created a situation that, for the first four years of the successor agreement, put West Allis lower in the rankings of the comparable

