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BOARD OF PERSONNEL APPEALS

IN THE MATTER OF CONTRACT ARBITRATION

BETWEEN

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,

LOCAL UNION NO. 601

AND

CITY OF HAVRE, MONTANA

JAMES W. SPANGELO, CITY'S ATTORNEY

BARRY L. HJORT, ASSOCIATION'S ATTORNEY

CARLTON J. SNOW, ARBITRATOR

TABLE OF CONTENTS

		Page
I.	Introduction	1
	A. The Hearing	1
	B. The Statute	2
II.	Issues	4
III.	Positions of the Parties	5
IV.	Background	5
	A. Havre	5
	B. Bargaining History	7
V.	Analysis	8
	A. Factors	8
	B. Comparisons	8
	1. First-Class Cities	9
	2. Second-Class Cities	10
	3. Other Employes	11
	C. Cost of Living	12
	D. Productivity	13
	E. The Factfinding Report	17
	F. The Margin of Difference	17
	G. Reasonableness of a Wage Increase	18
	1. Limitation on the Mill Rate	18
	2. A Computer	19
	3. An Ambulance	20
	4. Reduced Municipal Services	20
	5. Xerox Equipment	21
	6. A Sludge Collector	21
	7. Electrolysis in a Well	22
	8. A Grit Remover	23
	9. Parity	24
	10. Summary on Wages	25
	H. EMT Wage Differential	26
	I. Wage Differential for Training Coordinator and Emergency Medical Technician Coordinator	27
	J. Leaves of Absence and Sick Leave	27
VI.	AWARD	30

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ANALYSIS AND AWARD:
Carlton J. Snow,
Arbitrator

I. INTRODUCTION

A. The Hearing: This matter came for hearing pursuant to MCA, Section 39-34-101 to 106. MCA, Section 39-34-101(2) states that, if the parties proceed through mediation and factfinding, "either party" may petition the Montana State Board of Personnel Appeals for final and binding arbitration of contract terms over which firefighters and an employer have reached an impasse. The hearing in this matter took place on March 26, 1981 in the Council Chambers of the City Hall located in Havre, Montana. Mr. James W. Spangelo, City Attorney, represented the City of Havre. Mr. Barry L. Hjort of the Scribner, Huss and Hjort law firm represented Local No. 601 of the International Association of Firefighters. Mr. Jim Hill, International Vice-President of the Firefighters Association from Tacoma, Washington, assisted Mr. Hjort. Messrs. Ron Lee and Robert Keeler served as witnesses for the Association. Messrs. James I. Clark and Bernard L. Good of the Havre City Council assisted Mr. Spangelow. Messrs. Ray Watson, Gerald Grabfsky, and Clayton Codden served as witnesses for the City.

The hearing proceeded in an orderly manner. The parties had a full opportunity to submit evidence, to examine and cross-examine witnesses, and to argue the matter. The arbitrator placed all witnesses under oath and made a tape-recording of the proceeding as an extension of his own personal notes. Due to time constraints under the statute, the arbitrator did not receive written briefs from the parties; and there was no request that he do so. Due to the arbitrator's bout with influenza, the parties extended by a week the due date for the award. Only after careful consideration of all evidence submitted at the hearing and criteria set forth in MCA Section 39-34-103(5) did the arbitrator reach the results set forth in this report.

B. The Statute: In 1979, the Montana legislature enacted Chapter 34 of the Code, namely, Arbitration For Firefighters. The statute requires firefighters and public employers to exhaust efforts to bargain collectively and to proceed through mediation and factfinding. If the dispute remains unresolved at that time, either party may petition the Montana State Board of Personnel Appeals for final and binding arbitration of the contract impasse. The parties stipulated at the hearing in this matter that this dispute properly had been submitted to the arbitrator and that there were no challenges to the substantive or procedural arbitrability of the dispute. Their bargaining history will be set forth momentarily. Some acquaintance with the statute, however, will place this report in clearer perspective.

The Montana Arbitration Statute for Firefighters calls for final offer arbitration on an issue by issue basis. MCA Section 39-34-103(3) states:

> At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

MCA Section 39-34-103(4) states:

> The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted....

The arbitrator has interpreted the statute as preventing an arbitrator from compromising or mixing final positions of the parties. The legislature directed an arbitrator to select the final position of one of the party's to the dispute on an issue by issue basis.

"Final offer" arbitration, then, is a procedure which calls for an arbitrator to select the position of either party on a particular issue in its entirety, without altering the proposal. Supporters of final-offer arbitration claim that "it increases the pressure on the parties to take realistic bargaining positions and to settle their disputes through direct negotiations without use of arbitration." (See, Stern, Final Offer Arbitration (D.C. Heath and Company, 1975, page 3 Some believe that statutorily preventing an arbitrator from compromising the final positions of the parties and requiring acceptance of a final position in its entirety keeps an arbitrator from introducing

personal prejudices into an award and draws the parties closer to a resolution of their own dispute. For almost a decade and a half, interest arbitration has found favor among legislators all across the country, from Pennsylvania to Michigan to Montana. This particular dispute in the City of Havre is the first interest arbitration proceeding to come to hearing under the Montana Arbitration for Firefighters Statute.

II. ISSUES IN DISPUTE

There are basically four issues in dispute between the parties. They are:

1. Wages
2. Wage Differential for Emergency Medical Technicians
3. Wage Differential for the Training Coordinator and the Emergency Medical Technician Coordinator
4. Leaves of Absence and Sick Leave

The parties agreed at the arbitration hearing that all salary payments determined by the arbitrator will be retroactive to July 1, 1980. The Association withdrew any issue in dispute between the parties concerning minimum manning.

III. POSITIONS OF THE PARTIES

EMPLOYER	ASSOCIATION
1. Wages - 7%	1. Wages - 9%
2. EMT Differential - $25 Monthly	2. EMT Differential - $20 Monthly
3. Coordinators of Training & EMT - $10 Monthly	3. Coordinators of Training & EMT - $20 Monthly
4. Leave of Absence & Sick Leave Proposal -	4. Leave of Absence & Sick Leave Proposal -
Sick Leave is set forth in 2-18-618 M.C.A., 1979.	Sick Leave with pay is set forth in 2-18-618, M.C.A., 1979.
In the event of a death in the immediate family of an employee, the employee shall be granted up to forty (40) hours off charged to sick leave. In the event of a serious illness or accident in the immediate family of an employe, the employee may be granted up to forty (40) hours off, subject to the approval of the Fire Chief; and this leave of absence may be charged to sick leave, subject to the discretion of the Fire Chief. The immediate family shall be defined as spouse and children of the member, and mother, father, brother, sister, grandmother, and grandfather of the member and of members' spouse. (Emphasis added).	In the event of a serious illnes or death in the family of an employee, the employee shall be granted up to forty (40) hours (with family) defined as spouse and children of the member, grandmother, grandfather father, mother, brother, sister of the member and those of the members' spouse. It will be the responsibility of the Employer for replacement of an employee with qualified personnel immediately upon notification of such illness or death according to this Article.

IV. BACKGROUND

A. The City of Havre: Havre, Montana is located in north central Montana. It has a population of approximately 10,824 people and, according to recent figures of the census bureau,

increased less than one percent in population from 1960 to 1980. Cities in Montana of 10,000 or more people are characterized as "first-class" cities, and Havre is one of eight such cities in the state. According to the Association, there is a suburban population outside the city limits of approximately 3500 residents. All these individuals live within the fire district protected by the Association. Fire District No. 1 covers approximately forty-four square miles.

In the city of Havre and Fire District No. 1 there are:

59 municipal buildings
16 churches
9 schools (ADA of 2811)
1 hospital
350 stores
60 warehouses
12 hotels and motels
31 restaurants
15 gas stations
30 bars
6 grain elevators and fertilizer plants
2 manufacturing plants
1 large Burlington Northern Railway facility
Approximately 4,000 private homes
Several movie houses

The Employer in 1980-81 budgeted approximately $133,000 for fire department personnel. The parties to this dispute are approximately $4,500 - $5,000 apart on their respective wage proposals. That is the most critical issue in dispute between the parties. In the last five years, Havre has experienced a relatively static mill rate. In 1977-78, the mill rate was $9,092. In 1978-79, there was a 7½% increase to $9,776. In 1979-80, there was a decline of 1.89% in the mill rate to $9,591. In 1980-81, there was a 1.2% increase in the mill rate to $9,766.

B. Bargaining History: The last collective bargaining agreement between the parties was effective from July, 1979 to June, 1980. In April of 1980, the parties began negotiations for a new agreement between them. The following sequence of events took place:

1. April 22, 1980 - The Association mailed a letter of intent to management to bargain with the Employer.

2. May 7, 1980 - The Association presented its initial bargaining position to the Employer, requesting a wage increase of 15.25% on the base.

3. July 28, 1980 - The City counter-offered with a 7% wage offer.

4. August 11 - 13, 1980 - The parties bargained collectively, exchanging offers and counter-offers.

5. August 14, 1980 - The parties declared an impasse and jointly requested mediation.

6. September 16, 1980 - The mediator held a session with the parties.

7. November 20, 1980 - The parties selected a factfinder.

8. December 2-3, 1980 - The factfinder held hearings.

9. December 17, 1980 - The factfinder issued a report.

10. December 30, 1980 - The parties met for a bargaining session and agreed to submit unresolved issues to interest arbitration.

11. February 27, 1981 - The arbitrator received notice of appointment.

12. March 26, 1981 - The arbitrator held a hearing.

V. ANALYSIS

A. Factors to Consider: The firefighters' arbitration statute sets forth factors which an interest arbitrator is compelled to consider in making a determination. The statute directs an arbitrator to consider (1) wages of firefighters; (2) wages of other employes performing "other services generally;" (3) the public interest; (4) financial ability of the employer; (5) cost of living indices; and (5) "any other factors traditionally considered in the determination of hours, wages, and conditions of employment." The arbitrator has duly considered all statutory criteria, but some of them will be discussed and emphasized more than others in this report.

B. Comparisons: Comparisons with both other employes and other cities provide a dominant method for resolving wage disputes throughout the nation. As one writer observed, "the most powerful influence linking together separate wage bargains into an interdependent system is the force of equitable comparison." (See, Ross, Trade Union Wage Policy, 1948, page 6). As Veblen stated, "The aim of the individual is to obtain parity with those with whom he is accustomed to class himself." (See, Veblen, The Theory of the Leisure Class, 1934, page 26). Arbitrators have long used comparisons as a way of giving wage determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party's wage proposal. (See, "Factors Relied on By Arbitrators in Determining Wage Rates," 1947

Columbia Law Review 1028). As Factfinder Althen explained to the parties in their factfinding report, some comparisons are fraught with problems, and one should use comparisons only as a tool without letting them become the single determinant in a dispute. (See, Havre Factfinding Report, page 5). While recognizing those limitations on comparisons, the arbitrator, nevertheless, concludes that comparisons provide valuable insight into the reasonableness of a party's wage demand.

1. First-Class Cities: Havre is a first-class city with an official population of 10,824. Witnesses for the Association and the Employer both stated that they believe more people reside in the city than the last census figures represent. (The Factfinder used a slightly different population figure for Havre.)

Data about first-class cities submitted by the parties reveal the following:

City Name	1980 Population	July, 1980 Monthly Salary for a First-Class Firefighter
1. Missoula	33,027	1339
2. Helena	21,611	1380
3. Bozeman	21,611	1324
4. Billings	68,317	1312
5. Butte	unavailable	1305
6. Kalispell	unavailable	1304
7. Great Falls	56,568	1303
8. Havre	10,824	—

These data show that the average monthly salary for a first-class firefighter in a first-class city of Montana is $1332.43. The Employer has offered a 1980-81 monthly salary to first-class firefighters

of $1141. The Association seeks a salary for a first-class firefighter in Havre of $1162. For this particular job classification, the parties are $21 apart.

2. Second-Class Cities: A comparison with second-class cities reveals the following:

City Name	1980 Population	July, 1980 Monthly Salary for First-Class Firefighter
1. Anaconda	unavailable	$1437
2. Glendive	6,031	1135
3. Livingston	unavailable	1019
4. Miles City	9,586	943
5. Lewistown	7,079	922

These data show that the average monthly salary for a first-class firefighter in second-class cities of Montana is $1091.20. In other words, the Association in Havre seeks a salary for its first-class firefighters that is 6½% above that of a comparable employe in a second-class city, while the Employer desires to pay a salary that is only 4½% above that of a comparable employe in a second-class city.

A composite salary for first-class firefighters in first and second class cities was $1,231.92 in July, 1980. (See, Association Exhibit D, excluding Havre and Missoula Rural). The Association seeks to be within 6% of that composite salary, and the Employer desires to pay an amount that is 7.8% removed from the composite salary in first and second class cities.

These data support a conclusion that the Association's desire for a 9% wage increase is reasonable. The Association's proposal that a

first-class firefighter in Havre be paid $1162 a month, nevertheless, will cause that position to be ranked last among first-class cities and only $71 above the average for that position among second-class cities. Additionally, the rate of $1162 will not rank a first-class firefighter in Havre even first among second-class cities and only $27 ahead of the third-ranked city with a second-class designation. One must remember all the while that Havre has a "first-class" designation. It is recognized that the arbitrator received no data on the tax base, mill rate, or other pertinent information concerning these cities with which Havre has been compared. It also must be noted that comparative data used by the arbitrator are almost a year old.

3. Other Employes: Data submitted by the parties concerning wages paid other employes were not especially useful in determining a reasonable wage for Havre firefighters. The Association in its Exhibit E tried to establish that, even with a 9% salary increase, a first-class firefighter in Havre would not compare favorably with employes in the city such as a painter, a heavy equipment operator or a mechanic. But the Employer submitted evidence without rebuttal that a number of those positions currently are not staffed. The Employer, on the other hand, submitted evidence concerning prevailing wages for December, 1980 in the Havre community. The City's document, however, lacked authentication as well as a number of internal curiosities. For example, it listed the monthly salary of a police patrolman as $950. While page 3 of City Exhibit No. 5 listed a Havre

patrolman's monthly salary as $1,069. Additionally, the Employer's list of prevailing wages in Havre for December, 1980 pegged a mechanic's wage as from $3.25 - $3.90 an hour, but Ordinance No. 678 suggested that in July of 1980 a city mechanic received $7.35 an hour. Data submitted by the parties concerning services performed by other employes failed to provide useful guidelines for resolving the dispute between the parties.

C. Cost of Living: The Association contended that a movement upward in indices of consumer prices provides justification for a wage increase. This is a criterion mandated for consideration by the legislature, but it is not in itself determinative. One seeks some indication of the amount of real wages for Havre firefighters, and it is generally said that the amount of real wages is revealed by dividing some appropriate index of rates of pay by an index of consumer prices. The standard index used in the United States is the Consumer Price Index prepared by the Bureau of Labor Statistics. The difficulty with the Consumer Price Index is that it provides no insight concerning differences in cost of living from one city to another in Montana. Consequently, one does not know what the Consumer Price Index is for Havre, Montana. Nor does the Index give us insight into the standard of living that particular individuals can sustain on a given income. The point is that such price indices do not provide the precision many want to give them credit for providing. But the Employer offered no rebuttal to the Association's contention that,

for June of 1979 to June of 1980, the cost of living index for urban wage earners increased 14.2% and 11.7% from January of 1980 to January of 1981. Firefighters in Havre seek only a 9% wage increase.

By including appropriate cost of living indices in MCA Section 39-34-103(5)(c), the Montana legislature gave its support to the philosophical proposition that real wages of firefighters in the state should not be reduced by price increases beyond their control. Arbitrators involved in interest arbitration long have agreed with the same general principle. (See, for example, Los Angeles Transit Lines. 11 LA 118 (1948)).

D. Productivity: During the last decade in the United States, there has been a significant decline in productivity of workers. That is, in most industries the output per hour generally has declined; and some argue that wages should reflect this change. (See, "What Happened to Progress?" Journal of Economic Issues, June 1978, pages 405-425). At a time of general decline in productivity, Havre firefighters have increased their productivity. Fewer employes are doing more work than in the past. It is not simply a matter of the same number of employes performing more work, but fewer employes are accomplishing the job for the Employer. Recognizing that productivity is another standard for determining wages which lacks scientific precision, it, nevertheless, is a factor customarily considered by arbitrators in determining wages. (See, Public Service Electric and Gas Company, 15 LA 496 (1950); Pacific Gas and Electric Co., 7 LA 530 (1947); and Associated General Contractors, 9 LA 201 (1947))

Neither party proved with mathematical precision that productivity of firefighters in Havre has declined or increased, but inferences drawn from evidence put forth by the Association support a conclusion that fewer Havre firefighters are accomplishing more tasks for the Employer than in the past. The Employer's contention that the "24-72" hour work schedule of the firefighters has impacted negatively on productivity remains unclear to the arbitrator. There was no showing that the schedule has changed in recent years nor that management had attempted to implement what it might consider to be a more productive work schedule for firefighters.

The most significant impact on productivity in recent years has been a reorganization of dispatching duties for the police and fire departments. Prior to August of 1979, the Employer paid four staff members plus a "relief" person to run a dispatching center. Hill County financed the operation in part by its contribution of $15,000 annually. When the City of Havre requested that the county increase its contribution to $18,000, the county informed the Employer that "it would no longer be contracting its dispatching service with the City of Havre but would instead institute its own 24-hour dispatching service." (See, Employer's Hearing Brief, page 10). The Employer, then, reduced its communications workforce by three employes, plus laying off the part-time person. It instituted a system in which a firefighter assumed responsibility for all police and fire dispatching duties after 3:00 P.M. on weekdays and for twenty-four hours a day on weekends. Processing police calls was new work for firefighters.

The City concluded that this overall change saved it $39,384. To compute its "true savings," the Employer maintained that it must subtract the $18,000 it desired to charge Hill County, giving it a total savings of only "$20,000." (See, Employer's Brief, page 10). Even if the Employer's figures are taken at face value, there would be a savings of $21,384; and the $1384 not reflected in the Employer's figure is significant, given the closeness of the parties' wage proposals. More significantly, however, is the fact that the Employer subtracted $18,000 in order to compute its "true savings." Presumably, the $18,000 had been charged Hill County as a reflection of dispatching services provided Hill County by the Havre Fire Department. But when Hill County decided that it would "institute its own 24-hour dispatching service," it must be assumed that there was a congruent impact on work demands of the Havre dispatcher. Recognizing that the savings to the City probably was not $39,384, it also is reasonable to suggest that the total savings was more than $20,000. The fact remains that the Havre fire department dispatcher has assumed dispatching responsibilities previously accomplished by a staff member in the police department. (It should be noted, according to the Association, that reducing the fire department workforce from 19 to 16 officers in order to accommodate the communications reorganization saved the Employer $53,000) (See, Factfinder's Report, page 10).

Another indication of productivity is the fact that an increasing number of firefighters have earned their EMT certification. Additionally three employes are in the process of obtaining their EMT training.

Such training enables a firefighter to provide the community with vastly improved service. It was unrebutted that in the past firefighters have not received compensation for developing these additional skills.

Finally, the Employer has increased the fire department's potential productivity by purchasing a "backup" ambulance. Until recently, the department had only one ambulance vehicle. It is reasonable to assume that, in times of emergency, both vehicles will be utilized, thereby enhancing the Employer's delivery of services to the public. Recognizing the problems of equitably distributing the fruits of increase productivity to those who actually produce it, it, nevertheless, is reasonable to utilize this factor as a wage determinate for the entire workforce in the department. Recognize also the Employer stipulated at the arbitration hearing that it has an excellent fire suppression force in Havre and that the firefighters' commitment to excellence is a credit to the city.

The Employer's contention that a reduced fire inspection program indicates lost productivity is not persuasive. According to unrebutted testimony, the department continues to do inspections on request. Additionally, Mr. Keeler testified without rebuttal that management shifted fire inspection duties from a fire inspector to the assistant fire chief. In other words, the Association presented unrebutted evidence that the Employer had removed responsibilities for making fire inspections from the bargaining unit to a management official. That individual himself has been given a regular shift to work. It is not reasonable to charge the Association with having undermined

productivity in light of unrebutted testimony that fire inspection duties continue to be performed by the department and the fact that changes in the inspection program resulted from management directives.

E. The Factfinding Report: A final factor to highlight as a basis for showing the reasonableness of the Association's wage proposal is the Factfinder's report. Both parties indicated their favorable response to that report and stipulated to the report's factual accuracy. The Employer, however, disagreed with the conclusion of the report that a 2% wage increase should be paid for increased productivity. The Employer did not dispute the factfinder's conclusion that increased productivity had taken place. Rather, there was some question from the Employer concerning the amount of money which had been saved by its reorganization of dispatching duties. The fact remains that the factfinder's basic conclusion remains unassailed.

F. The Margin of Difference Between the Parties: A witness for the Association testified without contradiction that the total cost of the Union's proposal is $22,000 - $23,000 over current costs. A knowledgeable witness for the Employer testified that he had no reason to challenge those figures. The Factfinder computed the costs of the Employer's 7% proposal at approximately $18,000. Those computations included salary increase for two employes who are not members of the bargaining unit. It, therefore, is reasonable to conclude that the monetary difference between the parties is approximately $4500-$5000, in contrast with the approximately $20,000 which separated

the parties during factfinding. The general fund from which the fire department is funded has a total budget in 1981 of $1,200,175.00 In summary, data submitted by the parties support the Association's wage proposal as being reasonable, but it is necessary to analyze mitigating circumstances to determine whether the budget in Havre can withstand a reasonable wage increase for firefighters.

G. Reasonableness in Light of Financial Hardship:

1. Limitation on the Mill Rate: The City of Havre has had a relatively static mill rate for at least five years. The Employer suggested a significant cause of its budgetary problem is the fact that there are legal restraints hampering its ability to annex the Holiday Shopping Mall. The Employer cited Missoula Rural Fire District v. City of Missoula as support for its contention. (See, 540 P.2d 958 (1975)). While not professing expertise in Montana annexation law, studying the Missoula Rural Fire District case lends support to the conclusion that the Employer is not faced with the severe restrictions on its annexation power it depicted. There was no hint from the parties of the existence of a rural fire district which includes tracts of land the city desires to annex, as was the case in City of Missoula. Even if such an obstacle existed, Section 11-2008, R.C.M. 1947 provides a procedure for withdrawing land from a rural fire district. The City of Missoula attempted to annex property using the wrong annexation procedure, and that is something it is reasonable to assume the City of Havre would not do. In other words, it is reasonable to conclude that the City's mill rate is not cast in iron for perpetuity.

2. Buying a Computer: The Factfinder in this matter concluded that the Employer would be able to fund a 9% salary increase by using Revenue Sharing Funds. The Employer, however, has budgeted approximately $25,000 of those funds to purchase a computer to be used to implement a state-wide Budgetary Accounting and Reporting System. According to unrebutted testimony, the Employer is required to implement BARS in order to retain its classification as a "first-class" city. The Employer's Brief referred to this expenditure as the "purchase of this mandated computer." But evidence submitted by the parties suggested that the state only has mandated use of the Budgetary Accounting and Reporting System but has not compelled the Employer to purchase a $25,000 computer. As the City Clerk testified,

> I can't say we absolutely have to have a computer, but without it we might have to hire additional personnel. And I think the computer will keep that from happening.

Conventional wisdom has it that purchasing computers does not necesarily reduce the number of staff members. A computer merely provides a more accurate system of record-keeping. Arguably, the Employer even will have to increase its clerical staff in order to provide an additional person to verify what data go into the computer.

It also should be noted that, according to uncontradicted testimony, the Employer "brought in a top computer expert" to help the parties select the right computer. According to Mr. Watson, the bid for the computer has not yet been let, indicating that even amid recent financial hardships there were funds available for a consultant.

3. Purchasing an Ambulance: The Employer also used its Revenue Sharing dollars to purchase what a councilman characterized as a "backup ambulance." There was no indication of problems with the existing ambulance nor any need for a "backup" vehicle. It is not the desire of the arbitrator to impugn the budgetary priorities of elected officials in Havre, but it is his obligation to test the basic proposition of the Employer that "severe financial hardships" prevent the City from funding what the arbitrator has concluded is a reasonable wage demand. (See, Employer's Closing Argument).

4. Reducing Services: The chairman of the City's Finance Committee testified that there had been serious consideration given to reducing services offered by the City. For example, the Council considered closing the City Library as well as the city's swimming pool. Instead, however, the swimming pool budget received a 29½% increase in proposed funds over actual expenditures for 1980. The library received a similar 21½% increase in its proposed budget. The point is there was no testimony showing that the Employer modified library hours or services to reduce costs or that management trimmed the swimming pool budget. While granting that the swimming pool is an income producing entity (with approximately $13,000 from the county and $10,000 from the school district), it, nevertheless, is difficult to argue for a "severe financial hardship" in light of such budgetary increases. It might also be noted that the Employer funds its own garbage collection, while in many municipalities private

citizens are expected to pay for the service on an ad hoc basis.

5. A Photo-Copier: The Employer also has used Revenue Sharing Funds to buy a new copier. The new copier will be placed in the City Engineer's office, and the old copier has been "transferred to the city library." The point is that the old copier continues to function, and there was no showing that the library needed a copier nor whether or not it already had one. One would not challenge the correctness of management's decision to purchase the new copier, but the availability of a "financial hardship" argument is undermined by such a purchase.

6. A Sludge Collector: Since the Employer made its 7% proposal to the Association, it has experienced a number of equipment failures in the Water and Sewer Departments. One failure involves the Link Belt Straight Line Sludge Collector. According to the Employer, "We've got it tied together with bailing wire and prayers." The Assistant City Engineer testified that without the Link Belt Straight Line Sludge Collector, "sediment would just eventually fill the settling basin, and that would be the end of the plant." The Sludge Collector removes sediment from water brought in from the river.

The Assistant City Engineer estimated that repairs to the machinery would cost approximately $50,000. What the Employer failed to explain was the fact that it had no notice of this problem. The Sludge Collector came with the plant when it was built in 1947, and presumably routine maintenance would have alerted the Employer to impending problems. Customarily, sinking funds are established for such contingencies.

More importantly, the water department operates from a budget separate from the general fund. The Employer has statutory authority to borrow whatever funds it can repay in five years. It also has jurisdiction to float a bond. Significantly, the Employer has not filed a request for a rate increase for the water or sewer department. (Management witnesses disagreed concerning this matter. Mr. Watson testified that a water rate increase had been filed with the Public Service Commission, but Mr. Mariani testified that none had been filed. Since he is the City Clerk, the arbitrator has presumed that he is more familiar with such matters.)

7. Overhauling a Well: Recently, the Peppin Park Well has developed problems. According to Mr. Grabfsky, "during the last four years it (the well) has been consumed by electrolysis from some source." He testified that the well currently is out of operation and that management has received no estimate on what it would cost to repair it. He stated that, "I'm guessing it will take $15,000 - $20,000 to overhaul it." By Mr. Grabfsky's own admission, management has had notice of the problem for approximately four years and must be presumed to have been planning some response to the problem. Additionally, even if management used the approximately $4500 needed to fund the salary proposal to repair its well, it would still have to borrow funds or float a bond in order to meet what the Assistant City Engineer characterized as an "emergency."

9. Wage Parity: The Employer argued that it has attempted to maintain police - fire wage parity in Havre. The "parity wage rule" for protective services states that entry level jobs of firefighters and police officers should be identically compensated and extended upward through other key jobs in the departments. The concept of parity between police officers and firefighters has deep roots in the United States. As early as 1898, there was a parity clause for police and fire personnel in New York City. Detroit, Michigan used such a concept as early as 1907.

Wage parity takes little account of promotional opportunities and job content and has been the source of vigorous debate for decades. Mr. Mariani, who has been City Clerk in Havre since 1963, stated that it has been a policy of the City Council to keep the wages of police and fire personnel "pretty much the same." But page 3 of City Exhibit No. 5 does not support such a conclusion. For example, assuming a 7% increase in 1980-81, the police chief in Havre would earn 9.8% more than the fire chief. The assistant police chief would earn 9.7% more than the assistant fire chief. A police sergeant would earn 1.93% more than a fire department captain. Shifting the balance to the other side, a fire department engineer would earn 1.58% more than a police department senior patrolman. A first-class firefigher would earn 3.8% more than a first-class patrolman. Finally, a firefighter would earn 5.6% more than a patrolman. It is clear that a mixture of wages exists in Havre and that the parties have not been maintaining wage parity.

10. Summary on Wages: To prove financial hardship, arbitrators customarily have placed the burden of proof on employers. (See, for example, North Jersey Broadcasting Co., 3 LA 437 (1946); Brockton Gas Light Co., 8 LA 124 (1947); and Puget Sound Navigation Co., 11 LA 1100 (1948)). In the arbitration proceeding in this particular case, the Employer never pleaded inability to fund the Association's wage proposal. The arbitrator is convinced that the Employer is operating under financial constraints, but the Employer failed to prove that it is unable to fund the approximately $4500 necessary for a 9% wage proposal. For example, the Employer has not charged a number of user fees available to it. It has applied no water or sewer rate increases. There was no evidence that money has been borrowed nor bonds floated to respond to equipment problems in the water and sewer department. Another disturbing element is the fact that, at the arbitration hearing, the Employer persistently dealt with what might be rather than what is. On several occasions, the Assistant City Engineer provided what he called "guesstimates" instead of hard facts.

At the same time, the arbitrator is quick to recognize that there are no criteria for precisely and scientifically evaluating the Employer's financial limitations in relationship to the Association's wage proposal. Consequently, the burden of proof has been placed on the Employer to show that there is tangible evidence of its "severe financial emergency." A different conclusion might well have resulted had the Association continued to seek the 15.25% increase it initially proposed, but the Employer failed to show that its financial constraints

justified denying the approximately $4500 which the Association seeks.

Nor can the Employer's "snowfall argument" be forgotten. During factfinding hearings in December of 1980, the Employer argued that, "if normal snowfall is received this winter there will be no such surplus to carry-over to the 1981-82 budget." (See, Factfinder's Report, page 12 and its reference to City Exhibit No. 5, pages 1-2 submitted in the factfinding hearing.) There followed in Havre a winter with significantly less than normal snowfall. Yet, there, nevertheless, were no surplus funds because "the City road crew has maintained normal activity and road repairs throughout the winter resulting in no funds available to be carried over in their budget as occurred in fiscal year 1979-80." (See, Employer's Brief, page 9). Such "normal activity in road repairs" is not consistent with the Employer's position advanced in arbitration that management is in "severe financial straits." (See, Employer's Brief, page 9).

H. EMT Wage Differential: The Employer offered firefighters $25 a month for EMT certification. The Association sought $20 a month. Comparative data submitted at the hearing support adoption of the $20 a month proposal. Unrebutted comparative data reveal the following:

NAME OF CITY	EMT WAGE DIFFERENTIAL
Miles City	$20 monthly
Butte	$15 monthly
Billings	$26.24 monthly

These data show that the average monthly payment for EMT certification

in departments providing such a payment is $20.41. This is consistent with the proposal that the Employer pay $20 monthly for each member of the bargaining unit who is certified as an Emergency Medical Technician.

I. Wage Differential for Coordinators of Training and Emergency Medical Technicians:

The City offered to pay $10 monthly to a training coordinator as well as to an emergency medical technician coordinator. The Association sought $20 a month for each person. In the absence of data to support the proposed $20 monthly payment, it is reasonable to adopt the Employer's proposal of $10 a month. The Association submitted no such data or persuasive argument to justify adoption of its proposal.

J. Leaves of Absence and Sick Leave: The Union proposed the following sick leave provision:

> Sick leave with pay as set forth in 2-18-618 M.C.A., 1979.
>
> In the event of a serious illness or death in the family of an employee, the employee shall be granted up to forty (40) hours (with family) defined as the spouse and children of the member, grandmother, grandfather, father, mother, brother, sister of the member and those of the member's spouse.
>
> It will be the responsibility of the Employer for replacement of an employee with qualified personnel immediately upon notification of such illness or death according to this Article.

The Employer submitted the following leave of absence and sick leave proposal:

> Sick leave is set forth in 2-18-618, M.C.A., 1979.
>
> In the event of a death in the immediate family of an employee, the employee shall be granted up to forty (40) hours off charged to sick leave. In the event of a serious illness or accident in the immediate family of an employee, the employee may be granted up to forty (40) hours off, subject to the approval of the Fire Chief; and this leave of absence may be charged to sick leave, subject to the discretion of the Fire Chief. The immediate family shall be defined as spouse and children of the member, and mother, father, brother, sister, grandmother, grandfather of the member and of the member's spouse.

It is not the arbitrator's prerogative to mix proposals put forth by the parties or to alter them, and the Association's proposal is fraught with administrative problems. The Association's proposal is replete with what arbitrators call "words to grieve by." The Association's proposal provides that in the event of a "serious illness" an employe "shall" receive sick leave. There is no definition of "serious illness." The Employer's proposal remedies that problem by making a request in the event of a serious illness subject to the discretionary approval of the Fire Chief.

The most troubling part of the Association's proposal is contained in the second paragraph. It calls for replacement of employes with "qualified" personnel. There could be endless disputes concerning the definition of "qualified." Additionally, the proposal requires that such qualified personnel be placed on the job "immediately."

Frivolous and unproductive grievances could result from including such language in a collective bargaining agreement between the parties. The Employer's sick leave proposal does not contain the same ambiguities and, accordingly, shall be included in the agreement between the parties.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes:

(1) That, based on comparative data, cost of living information, productivity reports, and other evidence submitted by the parties, the Association's 9% wage proposal shall be adopted by the Employer.

(2) That an EMT wage differential of $20 monthly for EMT certified employes shall be adopted by the Employer.

(3) That the Employer will pay $10 monthly to a training coordinator and emergency medical technician coordinator, provided that only two such positions will exist and that, if they should be abolished by the Fire Chief at any time, such bonuses will terminate; and

(4) That the following sick leave proposal shall be included in the agreement between the parties:

> Sick leave is set forth in 2-18-618, M.C.A., 1979.
>
> In the event of a death in the immediate family of an employee, the employee shall be granted up to forty (40) hours off charged to sick leave. In the event of a serious illness or accident in the immediate family of an employee, the employee may be granted up to forty (40) hours off, subject to the approval of the Fire Chief; and this leave of absence may be charged to sick leave, subject to

the discretion of the Fire Chief. The immediate family shall be defined as spouse and children of the member, and mother, father, brother, sister, grandmother, and grandfather of the member and of the members' spouse.

The arbitrator shall retain jurisdiction of this matter for thirty days from the date of this report in order to resolve any problems resulting from the award. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow

Carlton J. Snow
Professor of Law

Date: 5-1-81