IN THE MATTER OF THE FACTFINDING Between INTERNATIONAL ASSOCIATION OF FIREFIGHTERS Union/Association AND CITY OF HELENA, MONTANA City/Employer	)))))))))))))	FACTFINDER'S FINDING and RECOMMENDATIONS

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BOARD OF PERSONNEL APPEALS

HEARING SITE: Colonial Inn, Montana Room
Helena, Montana

HEARING DATE: March 29, 1993

ARBITRATOR: Sherman B. Kellar
9 Monroe Parkway, Suite 280
Lake Oswego, Oregon 97035-1245

APPEARING FOR THE UNION/ASSOCIATION:

Pat Clinch

APPEARING FOR THE EMPLOYER/CITY

Randy Lilje

INTRODUCTION

This case is a factfinding procedure conducted pursuant to Section 39-31-309 of MCA.

A factfinding hearing was held in this matter on March 29, 1993, at the Colonial Inn, Montana Room, Helena, Montana. The Union was represented by Pat Clinch and the City was represented by Randy Lilje.

The parties stipulated that all time requirements of the contract had been waived and the matter was properly before the Factfinder.

The previous contract between the parties herein expired on June 30, 1992.

The City opened the contract with the Association on May 20, 1992. Contract negotiations commenced on May 27, 1993. Initially the Union opened 11 sections while the City opened 26 sections. At the end of the sixty day period specified in Section 32, MCA, the parties requested mediation. Several meetings were held with the mediator resulting in progress in several areas. However, remaining issues remained unresolved and on January 14, 1993, the parties requested the State Department of Labor submit a list of Fact-Finders. On January 25, 1993, the parties selected Sherman B. Kellar as the Factfinder in the case.

All proposed changes have been agreed to, withdrawn or dropped except the following sections:

11. Salary Matrix

18. Residence

19. Call Back

20. Extra Shifts

23. Uniform Allowance

28. Longevity

32. Duration of Agreement

New Section Proposed. Overtime

PRELIMINARY ISSUE - PACKAGING OF SECTIONS 11, 23, 28, 32

The City, in its final proposal to the Union, packaged sections 11, 23, 28, and 32. The City believes these sections are appropriately grouped as a wage and benefit package because they all have identifiable costs to the City which should be factored in as a whole to properly determine their impact on the City's budget.

The Union's position is that these issues have not previously been packaged during the current negotiations and it can see no valid reason why they should be at the last moment.

The City's position that it wants to be able to determine all identifiable costs with certainty so it can accurately assess their impact on the budget is a valid concern. However, packaging the items the City has designated does not accomplish that purpose any better than treating these items separately. The total impact of the items in the package can easily be determined by simply adding the distinct parts to find the whole.

However, the City's worksheets prepared to show the total impact, in terms of dollar increases, resulting from the Union's and the City's proposal was prepared to reflect a package

increase which included wages, clothing allowance and longevity. These three items were separated in the worksheet and any change in their amount is easily calculable to arrive at the total impact.

In terms of the data as presented, it will facilitate the analysis of the impact of the three items to treat them as a package. However, I will reserve the option of treating any of them separately where the process of the analysis dictates.

Accordingly, I will for purposes of this Factfinding treat three of the four issues included in the City's proposal as a package. The fourth, duration of the contract, will be treated as a separate issue. No convincing reason was advanced to include it as part of the City's package either from a logical standpoint or in the manner of the City's factual presentation.

ISSUE I - PACKAGE INCREASE INVOLVING THE FOLLOWING:

A. SECTION 11 - FIRE DEPARTMENT SALARY MATRIX;

B. SECTION 23 - CLOTHING ALLOWANCE

C. SECTION 28 - LONGEVITY

1. The City proposes:

A. SECTION 11 FIRE DEPARTMENT SALARY MATRIX

	Salary/ Monthly (2272.67 hrs)	Salary/ Hourly (2272.67 hrs)
	7/1/92 - 6/30/93	7/1/92 - 6/30/93
Battalion Chief	2604	13.749
Captain	2479	13.089
Lieutenant	2354	12.429
Engineer	2257	11.917
Firefighter III	2201	11.622
Firefighter II	2138	11.289
Firefighter I	2104	11.109
Confirmed Firefighter	2074	10.951
Probationary Firefighter	1635	8.633
	(2080 hrs)	(2080 hrs)
Fire Marshal	2604	15.023
Deputy Fire Marshal	2479	14.302
Asst. Deputy Fire Marshal	2354	13.581
Fire Investigator	2257	13.021
Fire Inspector III	2201	12.698
Fire Inspector II	2138	12.335
Fire Inspector I	2104	12.138
Confirmed Fire Inspector	2074	11.965
Probationary Fire Insp.	1635	9.433

*Hourly wage for overtime calculations

B. An increase in Longevity from $7.50 per month per year of service to $8 per month per year of service.
C. Current Contract Language.

Salary Matrix for FY94

Salary Matrix adjustment for contract year July 1, 1993 - June 30, 1994 shall be calculated as part of a base package. This package will amount to an increase of 4%. The calculation of the base package includes straight wages, differential pay, longevity, medical, dental, life insurance, and clothing allowance. The base will be determined from the employee roster and status as of the last pay period in FY93. A sample calculation of the base and the FY94 increase is shown below.

HOW TO CALCULATE THE BASE AS OF THE LAST PAY PERIOD IN FY93
(The base package includes all firefighters as a whole)

Annual Straight Wage Total (Current Wage * 12) _____
Annual Differential Pay (Current Monthly * 12) _____
Annual Longevity Pay (Current Monthly * 12) _____
Annual Medical Cost (Current Monthly * 12) _____
Annual Dental/Life (Current Monthly * 12) _____
Annual Clothing Allowance (Current * 12) _____

BEGINNING BASE PACKAGE

Beginning Base Package * 4% _____
(-) Increase in Differential Pay (Monthly * 12) _____
(-) Increase in Longevity (currently $90 * 30) _____
(-) Increase in Medical Cost (Current * 12) _____
(-) Increase in Dental/Life (Current * 12) _____
(-) Increase in Clothing Allowance (Current * 12) _____

Remaining dollar amount to be allocated evenly
to all [illegible] _____

Remaining dollar amount / # of firefighters /
12 months = monthly increase for each rank _____

2. <u>The Union Proposes:</u>

A. SECTION 11 - FIRE DEPARTMENT SALARY MATRIX

	7/1/92 - 6/30/93	7/1/93 - 6/30/94
Battalion Chief	2644	2750
Captain	2519	2620
Lieutenant	2394	2490
Engineer	2297	2389
Firefighter III	2241	2331
Firefighter II	2178	2265
Firefighter I	2144	2230
Confirmed Firefighter	2114	2199
Probationary Firefighter	1695	1763
Fire Marshal	2644	2750
Deputy Fire Marshal	2519	2620
Asst. Deputy Fire Marshal	2394	2490
Fire Investigator	2297	2389
Fire Inspector III	2241	2331
Fire Inspector II	2178	2265
Fire Inspector I	2144	2230
Confirmed Fire Inspector	2114	2199
Probationary Fire Insp.	1695	1763

B. An increase in Longevity from $7.50 per month per year of service to .4% of Confirmed Firefighter Wage of $2,114. In the first year this translates to $8.46 per month per year of service.

C. The City will provide all uniforms without cost to the employees.

3. The City Argues:

The level of wage and benefits in the City's 2 year package proposal is not only appropriate but exceeds what it believes is an adequate level.

First of all, the consumer price index was 3.1 percent when these negotiations commenced. It has decreased during the negotiations and is currently at 2.9 percent. The wage portion of the offer alone exceeds that figure for all positions. According to a recent survey published by the American Chamber of Commerce Researchers Association, Helena's cost of living ranks below the national average.

Comparing Helena's firefighter to others in the state is very difficult because the job titles and job descriptions in Helena's department do not always correspond to each other throughout the fire departments in the state. It would therefore be inappropriate to compare any of these even though they may have the same job title in all the fire departments in the state, such as confirmed firefighter or captain.

However, the City believes that a good comparison can be made of the different fire departments by tracing what would happen to a firefighter as he or she progressed through a 25 year career.

The City prepared such an analysis using the fire departments of the nine Class "A" Montana cities which are the agreed comparables. All of the other departments have signed new contracts. The analysis does not attempt to compare job

descriptions but does show how a firefighter can advance in all nine departments during a 25 year career. All departments are similar in advancement to just below the first officer rank. In all cities, in order to achieve an officer rank a vacancy must occur. Advancement to officer ranks was started simultaneously for all cities. However, in some departments advancement opportunities are greater because the number of officer ranks available to the total number of firefighters in the unit is greater.

The results of this analysis establishes that, with the exception of the probationary firefighter in year one, Helena firefighters rank third or fourth each year over the course of a 25 year career. Throughout the 25 years of a Helena firefighter's career he ranks third in the total compensation comparison.

A ranking of third or fourth for the Helena department is appropriate. This conclusion is justified by the ratio of firefighters to total population served. In this comparison Helena ranks fifth among the departments or one firefighter for every 819 persons. By comparison, Bozeman is one firefighter for every 1,079 persons and Butte is one for every 1,239 persons. In addition, the Helena firefighter ranks either fourth or fifth in number of calls made per year.

Another factor which comprises a comparable is the comparison of the firefighters with other employees of the City, especially the non-union salary matrix employees. The City compiled a comparison of the salary matrix for such employees and the firefighters over the last ten years. This comparison shows

that the firefighter who started with the City ten years ago has, compared to the salaried City employee, increased his compensation more than twice as much, 43 percent to 85 percent.

It is very important to bear in mind that the Helena department along with one other of the nine departments is at the top of the scale in a comparison of the ratio of officer position to the total number of firefighters. Because of this, the opportunity for advancement is greater than other fire departments as well as the City's salaried matrix employees.

The city admits that occasionally a matrix employee does receive a grade increase. The comparison show that 6.2 percent of matrix employees would receive a grade increase using the five year average used or 7.2 people for every matrix positions. In a comparison where there have been grade increases over the last ten years, there is still at least a 30 percent increase difference in favor of the firefighters.

4. <u>The Union Argues:</u>

<u>Wages:</u> The first year wage increase of $125 per month per employee represents a 5.9 percent increase in total base pay. When the other money issues are totaled, the wage proposal represents a 5.47 percent package increase. The City's offer of $85 per month represents a 3.9 percent increase in base pay and a total package increase of 2.8 percent for the first year. During the past year other city employees received a 4.3 percent cost of living increase on the salary matrix together with a minimum 2 percent step raise which resulted in the other city employees

receiving increases ranging from 6.3 to 9.3 per cent in base pay alone.

The second year proposal of 4 percent increase in base pay is very reasonable. The greatest concern of the Union is the uncertainty of the cost of medical and dental insurance during the second year. While the rates are known for 1993, the medical and dental insurance is up for renewal in 1994. Neither the City nor the Union have any idea how much the cost of this coverage is going to increase in 1994. Under the City's 4 percent package, it could apply as much of that increase to cover the increases in the cost of medical and dental insurance as it wishes. The result could very well be that all or a major portion of the 1994 wage increase could be used up by payment for medical and dental insurance. The Union's offer of a 4 percent increase in the base pay provides a definite figure and represents certainty for both the City budget officials and the firefighters. Under the City's proposal, the insurance factor injects a degree of uncertainty which could create a fertile area for distrust and disagreement depending on how the 4 percent figure is applied.

The Union's comparison data consists of taking selected classifications and comparing the total package offered by the City and the Union against the other nine departments to determine where these classifications rank after giving effect to both the Union and the City proposals.

In the Confirmed Firefighter classification the Union's contends that the total monthly pay, including base, longevity,

EMT, clothing and insurance, under the Union's proposal would be $2474, (ranking 3rd) and the City's proposal would be $2434, (ranking fifth).

The Union submitted data for a Top Firefighter's, (with ten years service), total monthly pay but only included computations including base plus longevity and EMT. However by extracting data from other parts of the union presentation, it appears that the Union's proposal the rank would be third and under the City's it would be fifth.

Lastly, the Union presents a comparison of the total monthly pay, including base, longevity, EMT, clothing and insurance, of a Captain classification with 20 years service. The Union's proposal increases the compensation to $3040, (ranking 2nd) and the City's proposal increases the compensation to $2990, (ranking fifth).

Longevity: The Unions proposal for a .4 of 1 percent of the Confirmed Firefighter's wage as an ongoing yearly increase in the longevity pay for those employees who work for long periods of time but are not promoted because of the unavailability of positions or when a firefighter opt not to take a promotion to officer rank. Further, it was an attempt to raise Helena's longevity pay closer to the average for the state. Under the Union's proposal the longevity pay would be $8.45 per month which is still $.83 less than the average for the state. The Union further proposed to cap the longevity pay when approached the state average. The City's offer of $8.00 per month per year is $1.28

below the average in the state.

Uniform Allowance: The Union's proposal that the City absorb all of the cost the uniform was an attempt to respond to City's contention that uniform money is not being spent on uniforms and firefighters have purchased unauthorized uniform items with uniform allowances. In addition the Union's proposal addressed a safety issue by requiring all uniforms to meet NFPA 1975 standards. The Union believes that its proposal could possibly save the City money since it would only have to replace a uniform when it is worn out. Also, under the present practice if there is any uniform change, the City must provide two sets for each employee in addition to the $250 allowance for that calendar year.

5. Factfinders Finding's and Recommendation

It is the Factfinder's task, in arriving at his findings and recommendations is to consider the following factors: comparability, ability to pay, cost-of-living indices and any other items traditionally utilized in wage and benefit determinations.

A. Comparability: Both parties selected all nine Montana class "A" cities for inclusion in their comparison. There are nine such cities in Montana. Both paries agree that is difficult to make comparisons among the various departments because they have found that the job titles and job descriptions do not consistently correspond to each other in the various departments used as comparables.

The City's approach to this dilemma was to chart a 25 year career of a Helena firefighter from probationary employee to

battalion chief starting with the City's first year offer. This was then compared against the other eight departments. The results demonstrated that, except for the first year, and a four year period, (14-17) at no time did Helena rank lower than third or fourth and for the 25 year life of the comparison Helena ranked third overall.

The Union's approach was not so comprehensive. It selected three classifications and compared where they would rank under the Union's and City's proposal against the other departments. The recurring problem with this approach is that in comparing specific classifications among departments that vary in size from 5 to 100 substantial distortion is inevitable and casts some doubt on the accuracy of the ranking system.

In examining the Union's comparison's, one must look at not only the rank but how far from the next step the City falls. For example, total monthly compensation for the City's Confirmed Firefighter is only $1 below that for Bozeman which ranks fourth.

The longevity item was part of the City's package proposal. However, it was listed separately by both the City and the Union. The Union's analysis took the first year of longevity of the 7 departments where it is not included in the pay matrix and arrived at an average. Based on this calculation, Helena was $1.28 below this average. However, the average is heavily weighted by Missoula ($15) and Butte ($11). The average drops substantially at the end of eight years when Missoula drops to $7.50.

Examining the City's 25 year scenario, its $8.00 proposal

is never below the average. During the first ten years it is barely above average. However, from year ten it climbs steadily until it is 38.76 above average by year 25.

In the matter of uniform allowance, Helena ranks last. In addition, by inference, the Union's proposal that the City provide uniforms that meet NFPA 1975 standards suggest that current uniforms do not meet those standards. Even under the City's compilation, Helena ranks last in uniform allowance. There has been no change in the uniform allowance for a substantial period of time. There has been no uniform change in ten years.

Both parties submitted significant evidence in support of their respective positions. However, because of the problem previously noted relating to the discrepancy in job titles and job descriptions among the various departments and the long term aspect of the City's analysis, I find that the City's is more probative in terms of supplying the most accurate effect of its proposal, particularly as it relates to wages.

I find the analysis submitted by the Union regarding longevity, while accurately determining an average in the current year, is seriously flawed when viewed over an eight to ten year period. Accordingly, I find the City's analysis more accurately reflects the true comparability of the City's proposal.

With respect to uniform allowance, I find that both the Union's and the City's analysis accurately reflect the ranking of the City relative to the other departments. Helena ranks last in this item.

B. Cost of Living: The City presented evidence that the national consumer price index at the end of February, 1993, for all urban consumers was at 2.9 percent. In addition, the City introduced newspaper articles from Helena's paper, the Independent Record, reviewing a survey of 300 cities recently released by the American Chamber of Commerce Researchers Association showing that Helena's cost of living is .8 of one percent lower than the national average. Of the five Montana cities surveyed, Great Falls was the least expensive at 96 percent of the national average and Bozeman the most expensive at 108 percent of the national average. These same articles state that the typical Helena worker makes only 77 percent of the national average.

Another Independent Record article revealed the results of a WEFA Group and University of Montana survey which showed Lewis and Clark county with the lowest projected nonfarm income, average annual growth rate for the years 1992-1995.

The Union did not introduce any evidence relating to cost of living indices or any evidence to contradict the conclusions supported by the City evidence regarding cost of living comparisons.

I find that the evidence introduced by the City established that the cost of living is lower than the national CPI of 2.9 percent. Further, I find that the 1992-1995 projected nonfarm income for Lewis and Clark County, which includes the city of Helena, is 3.2 percent below the national average; .6 of one percent below the state average and lower than any county

containing fire departments used in analyzing comparables.

C. Ability to Pay: The City did not introduce any evidence of inability to pay and did not advance that position at the hearing. The City instead argued that its proposal was more than an adequate increase and exceeded the CPI significantly at even the lowest rate of increase proposed. The City, in fact, introduced the City budget which indicates the mill cap rate is 82.52 and the current rate is 77.36.

D. Other Factors: A significant "other factor" frequently used is comparing the wage increases of other city employees of like productivity. The City presented an analysis comparing a firefighter with the salary matrix of a cross section of City employees over the past ten years. At best, the firefighter's compensation was over twice as much during that period. At worst, taking into account an average of grade increases by other City employees the firefighter increase was 30 percent greater. This is due in large part to the ability of the firefighter to advance consistently in rank.

The Union's position was that other City employees received a 4.3 percent increase with a minimum 2 percent step increase resulting in base pay increases from 6.3 to 6.9 percent. There was no supporting evidence substantiating how these percentages were derived and whether the increases were across the board. The statement was made in isolation with no evidence of where the other City employees were before the raise and their relative position vis-a-vis the firefighters. Consequently, the

statement, as presented, had little probative weight in establishing the desired comparison.

The City introduced several Independent Record articles relating to the budget problems of the state government. These articles focused on proposed budget cuts, reduction in the number of state employees, freezes on wages of state employees and generally dire projections for Helena's economy over the next three years. Of course, all of these factors adversely the City's economic health.

In addition, the City of Helena is the State Capitol and the hub for Lewis and Clark County. As a result, its population swells consistently from the normal of approximately 25,000 to a day-time population of approximately 42,000. This influx population puts a significant strain on the City's services. Unfortunately, these people do not live in the City limits and their real property is therefore not a tax base from which the City can obtain additional revenues.

6. Factfinder's Analysis and Conclusion: While the Union's desire and goal to have their constituency be number one or two, is certainly admirable and understandable, it did not submit any evidence a ranking of third or fourth for the Helena firefighters is not appropriate. There was no evidence submitted that the Helena firefighters should rank first or second. Even under the Union's various comparisons, the City's proposal in nearly all phases resulted in an advancement in ranking. According to the University of Montana survey, projected nonfarm income from 1992-

95, the income for Lewis and Clark County will be significantly below that of other counties in the state.

The City's evidence established that there is 1 firefighter for every 819 people in Helena as opposed to one for every 1235 in Butte and one for every 1079 people in Bozeman. The comparison of the number of calls per year reveals that the Helena firefighter makes the same ratio of calls.

The City's worksheet extensions of its proposal show that eight positions will be eligible for promotion in the first year of the new contract. The added cost to the City will be $17,692. In the second year of the contract an additional 12 members of the bargaining unit could be eligible to receive. The City did not extend these increases but from the data submitted involving the first year of the contract, the increases in rank would all be at the higher level. The cost would obviously be substantial. Over the two years of the contract 66.7 percent of the bargaining unit could be eligible for rank increases.

When you examine the Union's and City's proposed wage increases, without promotions and benefits, the increased cost to the city is $53,908 and $36,806 respectively. When you examine the proposal with promotions, but without benefits, the cost is $70,804 and $54,498 respectively. In addition to the benefit package of a firefighter, excluding medical and dental insurance, the City bears the cost of Workman's Compensation, Unemployment Compensation, Worker's Compensation Payroll Tax and Firefighter's Retirement. When all of these factors are combined, the total increased cost

under the Union's proposal is $83,077 and under the City's is $63,892. The difference is $19,185 or 30 percent.

The City's final offer constitutes a wage increase, when giving effect to promotions, of 5.939 percent.

On balance, I find an examination of the evidence presented, in its totality, supports the conclusion that the package offered by the City as it relates to wages and longevity pay adequately keeps the Helena firefighters in a comparable portion with other departments, significantly exceeds the consumer price index and takes into account the particular financial environment of the City of Helena.

I indicated earlier that while I would examine the City's proposal as a package, I reserved the option to treat one or all of them separately if the analysis dictated. I believe with respect to the uniform allowance, it does. It has been a substantial time since the uniform allowance has been increased. Helena ranks last in the department comparison and there is some serious indication, unrebutted by the City, that current uniforms do not meet 1975 NFPA standards. Based on this evidence, I find that the current uniform allowance is inadequate.

Accordingly, it is my recommendation with respect to year one of the contract that the parties accept wage the package submitted by the City with respect to wages and longevity. In addition, I recommend that the parties agree to maintain the current contract language in SECTION 23 - CLOTHING ALLOWANCE, and increase the dollar amount each employee shall receive to $285.

Moving to the second year of the contract, neither party submitted any evidence relating to comparables, ability to pay or cost of living. I find this rather puzzling since the major portion of the calculations had already been done in preparing these items for year one of the contract. It would have been an easy task to extend the calculations for the wage and benefit packages under both proposals into the next year. Perhaps the restrictive factor was the unknown cost of medical insurance. However, there was no attempt to present evidence indicating what the other fire departments had done in their contracts, all of which have been renewed. Surely, these contracts made provision for insurance in year two. Both parties to this agreement are aware that there is a definite prospect of substantial increases in the cost of medical and dental insurance when that contract comes up for renewal in 1994.

Given these factors, I believe there is serious difficulty with the City's proposal for a 4 percent package increase. In the absence of any limit on the amount of the package increase that would be free from allocation to cover increased insurance costs, it simply is to speculative from the Union's constituency. As the Union pointed out at the hearing, it is possible, under the City's proposal, that all or a major portion of the 4 percent package increase would be allocated to cover the additional cost of insurance. The City offered no safeguards against this occurrence. To inject this degree of uncertainty in the City's proposal will do nothing but invite paranoia and

disagreement. Both of these elements are clearly counter productive to the collective bargaining relationship.

In the absence of evidence supporting the traditional criteria for justifying wage and benefit increases and in order to promote stability in the relationship between the parties, it is my recommendation that the parties accept the Union's proposal for a second year wage increase of 4 percent for all ranks.

ISSUE II - DURATION OF AGREEMENT:

1. The City Purposes:

The City wants to include this as part of the wage and benefit package. The language is the same as the Union's proposal.

2. The Union Proposes:

The Union wants to treat this as a separate item. It proposes the same language as the Employer.

3. The City Argues:

The City chose to include this as a bargaining chip in its wage and benefit package should the Union decide it wants to negotiate further.

4. The Union Argues:

Both sides have proposed the same language on this section. However, the City has tied it to the package containing salary, longevity and clothing allowance. Both parties have proposed a two year contract.

5. Factfinder's Findings:

I find that there was no evidence submitted by the City that justifies this section being tied to the other three items of the City's package. I further find that both parties are in agreement on the language of Section 32.

6. Factfinder's Analysis and Recommendation:

Obviously the City's premise that it should tie this to the other items in their package should the Union wish to bargain further was seriously defective. The parties are at an impasse, in

the factfinding mode and if not successful here, will be in interest arbitration where their destiny will be out of their hands.

Based on the above, it is my recommendation that the parties adopt what they have already agreed upon and accept the language of SECTION 32 - DURATION OF AGREEMENT except the termination date shall be June 30, 1994.

ISSUE III - SECTION 19 - CALL BACK:

1. The City Proposes:

The City did not deal with this issue in their memorandum. At the hearing it was agreed that it could be included in one paragraph

2. The Union Proposes:

The call back section had been agreed upon in July. However, the Union, based on a problem that arose which that was not covered by either current or tentatively agreed upon language, proposed the following language: "If an employee is required to remain on duty past the end of his scheduled work period that he be paid time and one half his regular rate of pay for all time worked in one-half hour increments".

3. The City Argues:

NOT.

4. The Union Argues:

The City has proposed the same pay rate. but have taken language out of the Call Back section and put them in a new section called Overtime. The Union sees no necessity to create a new section since most of the City's proposed language is already in the Call Back section.

5. Factfinder's Findings, Analysis and Conclusion:

The City, it would appear, based on its lack of comment on this section in its memorandum, tacitly agrees that the Union's

portion is acceptable. In fact, in documents submitted at the hearing the city included in its packet a copy of the Union's proposal. On the Union's proposal relating to addition to Section 19 - Call Back, someone City representative wrote O.K.

Based on the above factors, I recommend the parties agree that the language proposed by the Union be added as a new paragraph to SECTION 19 - CALL BACK

ISSUE IV - SECTION 20 - EXTRA SHIFTS:

1. The City Proposes:

SECTION 20 - EXTRA SHIFTS

Extra shifts will be filled by off-duty combat shift personnel on a voluntary rotation basis utilizing the currently established rotation list. Firefighters not possessing a telephone in their place of residence will be ineligible to placed on the rotation list. Compensation for combat shift personnel will consist of one and one-half (1 1/2) times their hourly rate for the first eight (8) hours and the remaining shift will be paid at their hourly rate.

Combat firefighters assigned to the fire prevention bureau may fill extra shifts for any absence which will last more than two (2) shifts or when the overtime budget is depleted. When requested to fill overtime shifts firefighters assigned to the fire prevention bureau will be given at least 12 hours notice.

2. The Union Proposes:

SECTION 20 - EXTRA SHIFTS

The first paragraph is identical to the City's except there is no sentence requiring telephones in the firefighter's residence to be eligible for extra shift duty.

The proposed second paragraph reads as follows:

Combat firefighters assigned to the fire prevention bureau may only fill extra shifts for an extended absence of more than two consecutive shifts, or after the overtime budget has been exhausted and the city commission has not allowed any supplemental overtime funds, and with 24 hours advance notice. (Emphasis supplied to indicate language additions or changes)

3. The City Argues:

The City needs flexibility of moving fire prevention officers to fill in for combat officers or add to the combat forces. This function it claims is inherent in its right to manage the department. There is no safety issue since the fire prevention officers have ongoing combat training. The right to assign fire

prevention officers to fill extra shifts when the overtime budget has been depleted is again of matter of the right to manage the department and to use the overtime funds available as they see fit. If the City Commission allocates supplemental overtime funds then the question does not arise until those funds are depleted.

4. <u>The Union Argues:</u>

This section of the contract has been a contentious matter between the parties for the last two years. The Unions's proposal allows the City to fill extra combat shifts if the absence will last more than 2 shifts or if overtime funds are exhausted and the City Commission has not provided supplemental funds. The requirement for 24 hours notice is to allow firefighter to make arraignments with his family and to take care of prevention duties or appointments already scheduled. The twelve hours proposed by the City will not give the firefighter time to do this. The City's proposal would allow use of fire prevention officers when the overtime budget is exhausted, no matter how much or how little is budgeted.

The language regarding the telephone requirement appeared in this section after the City had proposed it both in the residency and call back sections. The Union rejected both of the prior proposals. The Union contends that the requirement of a telephone in the firefighters residence, if it belongs in the contract at all, should be in the Residency Section.

6. <u>Factfinder's Findings:</u>

The City and the Union both submitted proposals for this

Section. There was no evidence that either party intended their proposals to be additions to the Extra Shift Section currently in the contract. Therefore, I find that both proposals are intended as a replacement for this section in the current contract.

The City submitted no written evidence relating to their position and did not cover it in their memorandum. There was an oral statement of its position given at the hearing relating to movement of fire prevention officers to fill combat officers shifts and the matter of the overtime budget. I find there no evidence presented which would justify inclusion of the telephone requirement in this section as a condition of securing extra shift work.

6. Factfinder's Analysis and Recommendation:

The posture of the parties with respect to this section and its interrelation with the Residency and Call Back sections of the contract is rather puzzling.

I agree with the Union that the requirement of a telephone in a firefighter's residence belongs in either the Residency or Call Back Section. From the City's argument, it is not clear if the it wishes this requirement in lieu of or in addition to the pager system in the Call Back Section. It is possible that they have bargained this out of the Call Back Section and neglected to advise me. In any event, it does not seem appropriate in the context presented to include the telephone requirement in this section. To require its inclusion in this section as a condition for extra shift work is to use it as a

penalty. This is unjustified. If the requirement has merit, as the City contends, it has merit on its own and should required without linkage to whether a firefighter is entitled to extra shift opportunities.

Other than the telephone matter, there is little difference in the two proposals. The Union's argument about safety seems specious since their own proposal provides for use of fire prevention officers to fill extra shift combat requirements.

The Union's addition of the word "only" and substitution of the word "extended" for the word "any" in the second paragraph do nothing to enhances their stated position. The addition of the word "consecutive" could be significant depending on how the extra shift works in practice. There was no evidence submitted as to how that word would change current practice, if at all.

It would seem to me that if the City Commission allocates additional overtime funds to the fire department, the department should be able to use these funds as it deems best to serve the interests of the department. This decision is clearly within the purview of their managerial functions. There are a whole myriad of possible needs for overtime funds other than those associated with extra shift considerations. Although the Union did not express its objections in these terms, I can understand it could have concerns in the fire department deliberately under budgeted for overtime with the purpose of early exhaustion of this fund. If the City Commission then allocated additional funds, the fire department could then argue that these funds were not budgeted and

therefore not subject to the provisions of this section. If this is truly the Union's position, if should be addressed in a manner that does not interfere with the City's right to manage its fire department. On the other hand, if the City Commission expressly allocates supplemental funds to extra shift expenditure then the department would be bound to use them for this. However, it is clearly management's function to determine the yearly overtime budget. In context presented here, the budgeting of funds is clearly a prerogative of management . The phrase proposed by the Union is an infringement on that prerogative.

It is my recommendation with respect to SECTION - 20 EXTRA SHIFTS that the parties adopt the Section proposed by the City with the elimination of the phrase relating to the requirement of a telephone in the firefighter's residence.

ISSUE V - RESIDENCY

1. The City Proposes:

The City wanted, at one time, to include in this section the requirement that each firefighter have a telephone in his residence. Since the Factfinder has recommended that if such a requirement is appropriate it belongs in the Residency Section, it is logical to assume the City would now want it included in this section.. The City would propose, with this addition, that the rest of the paragraph retain its current language.

2. The Union Proposes:

The addition of the requirement that firefighters have telephone capability in their place of residence. The removal of the following residency mileage restriction: "(1) The employee's actual place of residence must be within ten (10) road miles of the City measured to the nearest point of the corporate limits of the city of Helena ....(3) Residency outside the 10 mile limit will be subject to the approval of the fire chief.

3. The City Argues:

A comparison presented by the City established that all but two of the other comparison fire departments have three types of residency requirements: (1) within the district; (2) mileage to City; (3) time to reach City. One district that does not, Anaconda, has only 5 firefighters and uses volunteer firefighters.

It is a logical requirement that a departments firefighters reside within a reasonable distance of the station for the obvious reason of response time. The question of what is reasonable would depend on many conditions. The City has had the 10 mile requirement and it has worked in practice. There was no tenable evidence supplied by the Union that this requirement should be changed.

In the same vein, the requirement that the firefighter have a telephone in his residence treats the problem of being able to get in touch with the firefighter in the case of an emergency. Because of power failures during the incident with the derailed train it became apparent to the City that the paging system alone may not be adequate. Also, a problem with the paging system is the firefighters have a tendency not to wear their pagers when at home.

4. The Union Argues:

The Union wants the mileage restriction out of the residency provision. It contends that it is an unreasonable requirement in light of the quality of today's vehicles and roads. In exchange for this the Union is willing to agree that firefighters may be required to have telephone capability in the residences.

The requirement of telephone capability reflects the fact that not all firefighters have a telephone but have telephone capability in their residence for the purpose having people contact them.

5. Factfinder's Findings:

I find that the Union did not produce any compelling

evidence supporting its contention that there should be no mileage requirement as to residency. I find that there is a pervading public policy consideration in terms of the fire department's charge to protect the lives and property of the City's citizens that their firefighters be within a reasonable response distance from the City If, in fact, the City has the ability of contacting the firefighter on the firefighters telephone equivalent, I find that the requirement that the firefighter have a telephone is too restrictive.

6. Factfinder's Analysis and Recommendations:

All but one of the other fire departments, (Anaconda is excluded for this purpose because it uses volunteer firefighters), in the state have residency requirements of one nature or another. Some are time oriented and others are distance oriented. They all have one common and obvious purpose, response time to a fire in case of an emergency. It is patently unreasonable not to have any residency mileage restriction. A firefighter could live 50 miles away and be virtually useless under a variety of different scenarios. The Union did not produce any reasonable argument which would justify elimination of the current mileage requirement.

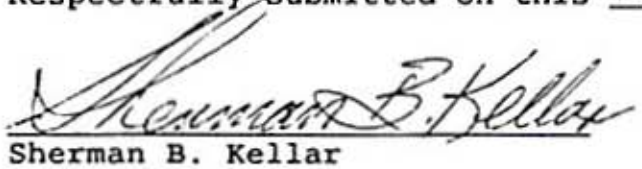
Turning to the question of telephone versus telephone capability, it again is obvious that the fire department has a very valid concern that it be able to contact its firefighters in cases of emergency. It is a duty that the department owes to the public. It was not made clear at the hearing precisely what type of equipment would be included within the words, "telephone

capability." It is actually not relevant. What is relevant is that the fire department currently have the kind of equipment that can communicate with a particular firefighter's equipment to the same degree of clarity and reliability as a telephone. In each instance the firefighter with different equipment should have to establish that fact.

With the above constraints, I can see no reason that a firefighter should not be able to have telephone capability versus a telephone.

Accordingly, it is my recommendation that the parties agree to leave the residency language as it is in the current contract. Additionally, it is my recommendation that the parties agree to add language requiring telephone capability in the residences of the employees. I would recommend that the language clearly spell out that the fire department must be able to contact the employees with equipment that it currently has to the same degree of clarity and reliability as a telephone. Under no circumstances should the City be required to purchase equipment in order to interface with the firefighter's telephone capability.

Respectfully submitted on this 27th day of April, 1993 by:



Sherman B. Kellar
Arbitrator