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STANDARDS SECTION

FACTFINDING RECOMMENDATIONS

OF

M. ZANE LUMBLEY

CITY OF HELENA, MONTANA,

and

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,
LOCAL NO. 448

Issues: Formal Recognition, Prevailing Rights,
Rules and Regulations, Fire Department Salary Matrix,
Residency, Hours of Work, Longevity, Promotions,
Fire Prevention/Suppression Incentive Programs,
and Discipline

Date Issued: December 24, 1996

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FACTFINDER'S OPINION

PROCEDURAL MATTERS

The Factfinder was selected by mutual agreement of the parties pursuant to 39-31-309 MCA and waived the requirements of (4) thereof which requires the completion of hearings and issuance of written Findings of Fact and Recommendations within twenty (20) days of appointment.

A hearing was conducted before the undersigned in Helena, Montana, on September 18, 1996. The City of Helena, Montana (hereinafter the "City" or "Employer") was represented by Director of Parks and Recreation Randy Lilje, its chief negotiator with the Union. Others appearing on behalf of the Employer were City Human Resource Manager Harry "Salty" Payne, Assistant Fire Chief Steve Larson and Budget Analyst Glenn Jorgenson. Helena Firefighters Association, International Association of Firefighters Local No. 448 (hereinafter the "Union") was represented by Lieutenant J.R. Feucht, its Vice-President. Others appearing on behalf of the Union were Local 448 President Kevin Kelly, Local 448 Secretary Pat Clinch and Firefighter Jim Mitchell.

At the hearing, the parties presented evidence and arguments in support of their respective positions. No court

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reporter was present. Instead, the Factfinder tape recorded the proceedings in order to supplement his personal notes. Before the close of the oral hearing, it was agreed the parties would make certain additional submissions to the undersigned on or before September 25 and responses to the other's submissions on or before October 2, 1996, and that the Factfinder would issue his recommendations within thirty days of the receipt of those additional submissions and final responses from the parties. Timely submissions and closing briefs were received from the parties on September 27 and 28 and October 4, 1996. Thereafter, the Factfinder requested certain additional evidence which was provided by the parties on December 3 and 6, 1996. The Factfinder closed the record on December 12, 1996, after requesting, receiving and taking administrative notice of certain population data from the Montana Department of Commerce, a copy of which has been provided to the parties.

BACKGROUND

Section 30 of the parties' most recent collective bargaining agreement provided as follows:

SECTION 30 - DURATION OF AGREEMENT

This Agreement shall be effective as of the day of signing of the parties concerned, and shall remain in full force and effect until June 30, 1995.

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It shall automatically be renewed from year to year thereafter, unless either party shall have notified the other, in writing, at least sixty (60) days prior to the annual anniversary date that it desires to modify the Agreement.

All sections not annually negotiated upon will remain in full force.

In the event that such notices are given, negotiations shall begin no later than thirty (30) days prior to the anniversary date. At the end of sixty (60) days of negotiation any unresolved issues shall be submitted to mediation as specified in Chapter 31, Title 39 of the Montana Code Annotated 1979 as amended. All agreements reached through renewal of this contract shall become effective retroactive as of July 1 of each contract year.

The Union notified the City on April 25, 1995, of its intent to open the Agreement. The parties met on June 27 and exchanged proposals on July 11, 1995. Thereafter, negotiations were suspended pending receipt of a classification and compensation study by the City regarding its represented employees from an outside entity, Public Sector Personnel Consultants (hereinafter "PSPC") of Scottsdale, Arizona.¹ That report was completed in December 1995 and subsequently delivered to the Union on January 24, 1996.² The parties resumed negotiations. On April 8, 1996, the Employer, fearing the Agreement then under negotiation would not be agreed upon by June 30, 1996, requested

¹ The same organization previously had performed a similar study of the City's non-represented employee classifications.

² The written report of the study is entitled "Report for the City of Helena, Montana[,] on the Recommended Position Classification and Compensation Plan for Represented Positions." It is entered in the record as Employer Exhibit No. 5 and referred to hereinafter as the "wage study" or "study."

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negotiations for the July 1, 1996, to June 30, 1997, Agreement, as well.

In April of 1996 the parties engaged in mediation without success. Thereafter, the parties met on a number of occasions in May and June of 1996. However, in the belief that negotiations had failed, the parties agreed on June 25, 1996, to schedule factfinding. At the commencement of the factfinding hearing, the following issues were unresolved:³

- Section 1 - Formal Recognition;
- Section 8 - Prevailing Rights;
- Section 9 - Rules and Regulations;
- Section 12 - Fire Department Salary Matrix;
- Section 17 - Residency;
- Section 20 - Hours of Work;
- Section 26 - Longevity;
- Section 31 - Promotions;
- Appendix B - Incentive Programs; and
- New Section - Discipline.

For ease of understanding, each issue will be dealt with separately below with the exception of Section 12 - Fire Department Salary Matrix and Section 20 - Hours of Work,

³ Prior to the hearing, the parties reached agreement on the previously-disputed Section 7 - Labor/Management Committee, and withdrew this issue from factfinding.

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which will be discussed together in the last section of these Recommendations. The approach in each case will be to quote the language, if any, appearing with respect to that issue in the parties' last Agreement, to set forth the parties' proposed new language for the section of the Agreement at issue and their arguments in support thereof and to conclude with the analysis and recommendation of the Factfinder. Additionally, although factfinders are neither limited nor required by **Title 39 MCA** or any other Montana statute to consider any particular circumstances in arriving at their recommendations, I believe I should be guided by the following words of **39-34-103 MCA** applicable to arbitrators of firefighter disputes in doing so:

. . .

(5) *In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:*

(a) *comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;*

(b) *the interests and welfare of the public and the financial ability of the public employer to pay;*

(c) *appropriate cost-of-living indices;*

(d) *any other factors traditionally considered in the determination of hours, wages, and conditions of employment.*

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This section of the parties' last Agreement stated:

The Employer recognizes the Union as the exclusive bargaining agent for all employees of the Fire Department, with the exception of the Fire Chief, the Assistant Chiefs (not to exceed two), and clerical staff.

While the Union would leave the current language unchanged, the Employer proposes the following language for this section:

The Employer recognizes the Union as the exclusive bargaining agent for all employees of the Fire Department, with the exception of the Fire Chief, the Assistant Chiefs and clerical staff.

It is the position of the Employer that current language violates state law which provides, at 7-33-4103 MCA:

Composition of fire department. Such fire department, when established, may consist of one chief of the fire department and as many assistant chiefs of the fire department and such number of firefighters as the council or commission may from time to time provide and may also include a city electrician and as many assistant electricians as the council or commission may from time to time provide.

The Employer is also of the view that the City shortly will require a third fire station which will necessitate the appointment of an additional Assistant Chief. The Union argues the Employer's proposed language constitutes an effort to remove additional personnel from the bargaining unit and that, if the City believed the recognition language contained in the old Agreement was illegal, it could and should have raised that question earlier through appropriate state agency channels. Moreover, according to the Union, the Employer has

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failed even to fill one of the two Assistant Chief positions already provided for for over a year, instead opting to use a Deputy Assistant Chief in one of the two positions. Lastly, the Union notes that, even when there have been two Assistant Chiefs, both have been located at the Main Station while other classifications have been in charge of Substation 2, thereby undermining the City's argument with respect to the need for more than two Assistant Chiefs.

As noted above, 7-33-4103 MCA provides that the "fire department . . . may consist of . . . as many assistant chiefs of the fire department . . . as the council or commission may from time to time provide." I respect the Union's arguments with regard to the lack of any current or specifically timed future need for more than two Assistant Chiefs. I also agree with the Union that continuation of the provision contained in the expired Agreement does not violate state law since the City Commission will pass on any new contract before it takes effect and may either choose to limit itself to two Assistant Chiefs for the duration of that contract or simply refuse, in line with its statutory right, to approve any accord presented to it with such limiting language. However, the City has made clear it does not intend to continue to limit itself to two Assistant Chiefs in

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view of the potential for an additional fire station. Thus I consider the making of a recommendation by a factfinder that it do so in the face of statutory language like that which exists here doomed from the outset and counterproductive. Accordingly, although the parties' last contract did contain language limiting the number of Assistant Chiefs to a maximum of two, I shall recommend the Employer's proposed language for adoption.

Section 8 - Prevailing Rights

The parties' last Agreement contained the following language:

All rights and privileges enjoyed by the employees at this present time, which are not included in this agreement, shall continue. Prevailing rights are an issue which is to be discussed by the Labor/Management Committee.

The Union proposed the following new language:

All rights and privileges held by the employees at this time even though not identified in this agreement shall remain in full force and effect unless changed within the provisions of 39-31-305 MCA.

The Employer would modify current language as follows:

All rights and privileges held by the employees at this time as identified in appendix "A" in this agreement shall remain in full force and effect unless changed within the provisions of 39-31-305 MCA.

Although not referenced in Section 8 of the parties' last Agreement, that contract contained an Appendix "A" which

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addressed certain "prevailing rights." That appendix provided:

Meetings - The Union Benefit Fund and Relief Association conduct the regular monthly meeting and any special meetings in the Fire Station. They also own and maintain a locking file cabinet and safe kept in the Fire Station.

Bulletin Board - The Union occasionally posts notices on the Fire Department bulletin board.

Telephone - The employees have installed a private telephone and one extension phone having an unlisted number in the Fire Station. The employees pay for and maintain this telephone.

Basement - The employees, subject to the needs of the City, have the privilege of using the Fire Department basement for various personal undertakings, such as mechanical work on personal equipment. The employees own and maintain various hand and power tools for these purposes.

Social Events - The employees annually have a catered dinner for the employees, their spouses and/or invited guests, and have a dinner on special occasions, such as retirement. These dinners are held in the Fire Station.

Handball Courts - The employees periodically perform and pay for major maintenance work on the handball courts. In order to defray these maintenance costs, the employees charge the public a players fee with accurate account of transactions being kept for review by the Chief. As the handball courts are the primary physical training facilities for the firefighters, rules have been formulated by the employees, Training Officer and Fire Chief to ensure that the courts will not be used by the public to the detriment of the Fire Department.

Other - The City shall retain for the benefit of the duty employees the following items: beds, chairs, tables and lockers. The employees own and maintain a pop machine, televisions, radios, cooking utensils and kitchen equipment. They maintain certain magazine and newspaper subscriptions.

While the Union does not object to continuation of an Appendix "A" in the new Agreement, it asserts that the list in question historically has been intended as exemplary rather than an all-inclusive list. In its opinion, to try to

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in question historically has been intended as exemplary rather than an all-inclusive list. In its opinion, to try to list in the Agreement every existing prevailing right is inappropriate because it is too easy to overlook long-standing rights. Moreover, according to the Union, rights and privileges are dynamic, changing from year to year depending on the parties' relationship and specific discussions undertaken by the Labor/Management Committee. In this connection, the Union notes that, according to the City Manager and the City's Personnel Director, no prevailing rights disputes have come before them previously, which demonstrates that the parties have been able to resolve any questions which may have cropped up with respect to this subject. The Employer asserts it should not be required to buy a "pig in a poke," citing Arbitrator Dorsey's Interest Arbitration Decision in *City of Miles City, Montana, and International Association of Fire Fighters, Local 600*.⁴ Although the Employer concedes no problems have occurred with respect to this language historically, it argues that a failure to identify specific prevailing rights could lead to such problems in the future, particularly if a new Chief had a different philosophy about such matters.

⁴ Unpublished, January 21, 1994, Employer Exhibit No. 16 herein.

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On this issue, I agree with the Union. Not only is it undisputed that the parties have experienced no difficulties with this Section historically, I must respectfully disagree with Arbitrator Dorsey's analysis and conclusion that such a provision "goes beyond a customary and usual maintenance-of-benefits clause."⁵

As to the second point, I have found such clauses commonplace. Moreover, as Arbitrator Dorsey notes, ". . . 'proven, mutual, controlling past practices of the parties' . . . would be valid and binding on the parties . . ." even without such language. Thus, in my view, such language merely recognizes that there are such practices. If there is a dispute about them, their existence is subject to proof in a grievance proceeding wherein the burden of proof would lie with the Union in asserting the historic existence of some claimed prevailing right.

Additionally, on the basis of my review of the excerpts from the collective bargaining agreements either currently or recently in force between various firefighter locals and other Montana cities which were provided to me, I believe the Union's proposed language is more widely accepted in the

⁵ Id., sl.op., p.14.

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industry.⁶ All of those Agreements except the ones covering firefighter employees of Billings and Great Falls contained prevailing rights provisions. Of the four comparable cities with contracts containing such provisions, all guaranteed to employees those rights and privileges held by the employees in question at the time of signing of those Agreements "which are not included in this Agreement" just as sought by the Union here.

Although not a comparable city, it is worth noting that only the Anaconda-Deer Lodge County collective bargaining agreement included a specific list of prevailing rights because I believe a comparison of the short list of five prevailing rights contained in that contract with the seven areas covered in Appendix "A" of the parties' last Agreement here points up the difficulty of any effort to list all the prevailing rights which have accumulated over the parties' years of collective bargaining. The fact there is no overlap whatsoever between the two lists, especially considering the nature of many of the rights listed in the two contracts, several of which would appear likely to be universally held, underscores my view that it is far too easy to omit existing

⁶ The excerpts reviewed were from Great Falls, Bozeman, Butte-Silverbow, Billings, Anaconda-Deer Lodge County, Havre, Kalispell and Missoula. For reasons which appear below in the discussion of Fire Department Salary Matrix and Hours of Work, however, I have not considered the cities of Anaconda and Havre to be comparable to Helena.

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rights in an effort to compile an all-inclusive list. Accordingly, I shall recommend adoption of the Union's proposed language in this section of the Agreement.⁷

Section 9 - Rules and Regulations

The language with respect to this subject in the parties' last Agreement read:

The existing official rules and regulations, general, and special orders of the Helena Fire Department are to be kept on file for review in the Department watch rooms and the office of the City Clerk. New rules or changes in the rules of a mandatory subject will be discussed by the Labor/Management Committee, and presented to the City and the Union for approval or disapproval. If either the Union or the Employer rejects the recommendations, the issue will be sent back to the Labor/Management Committee for further recommendation, or is tabled until the next formal negotiations. All other subjects will be discussed by the Labor/Management Committee.

The Union proposes the following new language:

1.) The Union agrees that its members shall comply with all Fire Department rules and regulations, Standard Operating Procedures, and policies and procedures. The Employer agrees that departmental rules and regulations, Standard Operating Procedures, and policies and procedures which affect wages, hours, terms or conditions of employment or job performance shall be subject to the grievance procedure.

2.) Changes in rules and regulations, Standard Operating Procedures, and policies and procedures which affect wages, hours, terms or conditions of employment are considered mandatory subjects for bargaining and shall be mutually agreed to between the Employer and the Union prior to their implementation.

The Employer's proposal for this section is as follows:

⁷ Since neither party proposed elimination of Appendix "A", and its continued existence does not detract from the recommended language of Section 8, I see no reason to recommend it not be continued.

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The existing rules and regulations, general, and special orders of the Helena Fire Department are to be kept on file for review in the Department watch rooms and the office of the City Clerk. New rules of a mandatory subject or changes in the existing rules of a mandatory subject will be negotiated through the normal bargaining process.

Although it may not appear so at first blush, the parties are very close to agreement on this provision. In fact, had they not reached agreement on new language for Section 7 - Labor/Management Committee, which removed the discussion of new rules or changes in rules regarding mandatory subjects of bargaining from the Labor/Management Committee, it is unlikely any change would have been seen necessary by either party with regard to Section 9. However, inasmuch as a change in Section 9 is necessary, the Union argues for its proposed language because it believes that language is more specific, more complete and, as a result, easier to understand. The Employer, on the other hand, prefers its shorter version of this section since it is beyond cavil that the employees must comply with all legitimate rules, regulations and Standard Operating Procedures and that the Employer is bound by law to negotiate over all those subjects which affect wages, hours and conditions of employment. In this connection, the Employer expresses some concern that the Union's proposal expands the rights of the Union membership beyond those provided for by

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law.

I am inclined to agree with the Employer's proposal regarding Section 9. As I understand it, the reason the parties find it necessary to modify the Section 9 language appearing in their last contract is their agreement on different Section 7 language. Since the Labor/Management Committee is no longer charged with the responsibility of making recommendations to the Union and Employer regarding proposed new or changed Employer rules and regulations as it had been under the old Agreement, such proposed new or changed rules and regulations, general and special orders automatically are left to resolution via the "normal bargaining process" which the Employer proposes to reference in its suggested language. The rights and obligations of both parties with respect to that "normal bargaining process" are well identified in **Title 39 MCA**.

Similarly, the obligation of the members of the Union to comply with the rules and regulations and other legitimate directives of the Fire Department is universally recognized as a result of the Employer's right to operate its affairs, many individual components of which are specifically identified in Section 3 - Management Rights. Moreover, Section 22 - Grievance Procedure Regarding Contract

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Interpretation already specifically provides for the submission of disputes relating to the "application of any item in this contract" to the procedure established therein. Thus, I am of the opinion that the provisions the Union seeks to add to Section 9 constitute surplusage and provide no additional protection to either party over and above that already provided by other language of the Agreement.

I am not convinced otherwise by the Union's argument with regard to the Employer's failure to reference "Standard Operating Procedures, and policies and procedures" which, contrary to my understanding of the Union's assertion, I am unable to locate in any relevant statute. In this connection, I note the Union omits the historic reference to "general, and special orders" but provides no explanation why that historic language does not continue to serve the needs of the parties. Absent some showing that a change is necessary, I am not inclined to recommend one. Accordingly, I shall recommend adoption of the Employer's proposed Section 9 language.

Section 17 - Residency

The following language appeared in this section of the parties' last Agreement:

The Employer agrees that employees may reside outside of the legal boundaries of the City of Helena with the following restrictions:

- (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.
- (2) The employee's residence must be accessible by adequate roads so that the employee is reasonably available in case of emergency.
- (3) Residency outside the 10 mile limit will be subject to the approval of the Fire Chief.
- (4) Employees are required to have telephone capability in their place of residence for the purpose of contacting them.

The Union proposes the following language for inclusion in the new Agreement:

The Employer agrees that employees may reside outside of the legal boundaries of the City of Helena with the following restrictions:

- 1. The employee's actual place of residence must be within fifteen (15) road miles of the City measured to the nearest point of the corporate limits of the City of Helena.
- 2. The employee's residence must be accessible by adequate roads so that the employee is reasonably available in case of emergency.
- 3. Residency outside the 15 mile limit will be subject to the approval of the Fire Chief.
- 4. Employees are required to have telephone capability in their place of residence for the purpose of contacting them.

The Employer would reword the existing language as follows:

The Employer agrees that employees may reside outside of the legal boundaries of the City of Helena with the following restrictions:

- (1) The employee's actual place of residence

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must be within ten (10) road miles of the City measured to the nearest point of the corporate limits of the City of Helena.

(2) The employee's residence must be accessible by adequate roads so that the employee is reasonably available in case of emergency.

(3) Residency outside the 10 mile limit will be subject to the approval of the Fire Chief.

(4) Employees are required to have telephone capability and pager receivability in their place of residence for the purpose of contacting them.

The Union asserts the extension of the living area contained in this provision from ten to fifteen miles is necessary in order to provide more living choices for its membership in view of the increasing cost of housing inside the ten-mile limit and the inability of certain members to afford that housing. In its view, a fifteen-mile limit would continue to provide a sufficiently quick response time on those irregular occasions members are called back to work, particularly since the Employer also proposes to increase manning. Additionally, according to the Union, some living areas between the ten- and fifteen-mile limits are more accessible than certain other ones inside the ten-mile limit. The Union also notes its members are the only City employees subject to a residency requirement. In response to the Employer's proposed addition of a pager requirement, the Union asserts pager receivability is variable in the Helena area, with blank spots even within the 10-mile area. It also

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points out that, although Helena police officers have emergency response requirements, they are not required to be on pagers.

The Employer argues that it is not unusual for fire department employees in other cities to have residency requirements. In its view, since it is precluded by state law from using volunteer firefighters to supplement its paid firefighting force, it must be able to ensure the prompt response to emergency call-outs. In its opinion, there are adequate housing opportunities within the 315 square miles located within the ten-road mile limit outside the incorporated City limits. In connection with its proposed addition of a pager receivability requirement, the Employer notes it would only require employees to take their pagers to their residences and not to take their pagers with them when they engage in such activities as taking hunting trips.

I am not inclined to recommend adoption of either party's proposed modifications to Section 17 because neither party has convinced me that the existing arrangement has proved unworkable in any fashion. Thus, for example, the Employer was unable to cite any basis for adding the requirement for pager receivability at employee residences. Similarly, although the Employer does not seriously dispute

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that opportunities for affordable housing may increase the farther one drives outside the City limits, the Union was unable to provide me with comparative prices which might serve to overcome the Employer's argument that the ten-mile limit continues to provide ample housing opportunities.⁸ In sum, I am neither convinced that the current telephone system is subject to sufficient shortcomings to require the addition of pager receivability nor satisfied that the possibly greater opportunity for affordable housing outside the ten-mile limit outweighs the inarguable, i.e., that, on balance, an increase from ten to fifteen miles will necessarily lengthen emergency response times. Accordingly, I shall recommend that the language appearing in Section 17 of the parties' last Agreement be continued in their new Agreement.

Section 26 - Longevity

This provision in the last collective bargaining agreement read as follows:

All members of the bargaining unit will receive \$8.00 per month for each year of service with the Helena Fire Department. They will also receive a longevity increase on their anniversary date as long as they are with the Helena Fire Department. (Members of the Department now receiving

⁸ While I have studied the real estate information provided at my request by the parties, I am simply unable to extract enough guidance from that document to enable me to conclude either that housing opportunities within the ten-mile limit are such as to work a hardship on the Union's members or that extension of the residency boundary from ten to fifteen miles beyond the Helena city limits would relieve such hardship.

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longevity for other City service shall continue to receive that longevity.)

The Union would increase longevity pay from \$8.00 to \$9.00 per month for each year of service, whereas the City would continue the \$8.00 rate. Neither has proposed changing the remaining provisions of Section 26.

The Union asserts the proposed increase is necessary because Helena firefighters currently receive less longevity pay than that received by firefighters employed by comparable Montana cities. Moreover, the Union notes that longevity pay for non-represented, as well as for other represented, City employees was increased recently pursuant to the recommendations contained in the separate wage studies performed with respect to its represented and non-represented employees by PSPC.⁹ In view of these longevity pay increases given other employees, the Union asserts it would be inappropriate for the Employer now to argue that it suffers from an economic inability to pay similar increases to its firefighters.

The Employer contends it wishes to treat all its

⁹ Whereas Section 26 of the parties' last Agreement describes longevity pay as "\$8.00 per month for each year of service," the wage study stated its recommendation as "\$8 for each month of service." While this is confusing on its face, the net result is the same after disregarding the pay study recommendation that longevity pay commence after four years of service, a provision which does not appear in Section 26. Thus an employee's years of service are multiplied by twelve months and then by the longevity dollar level, with the resulting amount representing the total longevity pay the employee may expect to receive in a given twelve-month period.

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employees fairly but that it simply cannot afford to increase longevity pay for firefighters. Moreover, from the Employer's perspective, longevity pay is merely a part of the total wage and benefit package paid to firefighters. As a result, it asserts that the Factfinder must consider its inability to pay arguments here as well as in connection with deliberations regarding the salary matrix to be discussed below.

I agree with the Union that firefighter longevity pay should be increased. As the Union asserts, Helena firefighters lag behind firefighters in comparable Montana cities. A review of the longevity pay received by firefighters in six other Class 1 Montana cities¹⁰ reveals that the average longevity pay paid to firefighters in these cities in Fiscal Year 1996 is approximately \$13.94.¹¹ The specific longevity pay paid by these six cities ranged from a low of \$7.50, the minimum allowable under 7-33-4128 MCA, at Great Falls, to a high of approximately \$30.00 at Kalispell. Of the six, only Great Falls pays less than \$8.00 and only

¹⁰ These "cities of the first class," defined in 7-1-4111 MCA as cities having a population of 10,000 or more, are Billings, Bozeman, Butte, Great Falls, Kalispell and Missoula. As stated in footnote 6 *supra*, the reasons for their selection by the undersigned are discussed in connection with Wages and Hours of Work below.

¹¹ This approximate average differs from the bar chart depicted in Union Exhibit No. 2, largely because it is gleaned from the excerpts from those collective bargaining agreements provided me by the Union from the six Class 1 cities I have found comparable rather than the eight cities the Union used to calculate its average.

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Billings and Great Falls pay less than \$9.00. Three of the cities, namely Butte, Kalispell and Missoula, pay in excess of \$10.00.¹²

On the basis of a comparison of Helena with these comparables, there is no question but that it is appropriate to increase Helena firefighter longevity pay as requested by the Union. However, the \$9.00 figure requested by the Union is arguably out of line with that paid to other City employees, all of whom, except for police department employees, now receive \$8.00.¹³ Police officers receive five cents per hour per year of service, which I calculate amounts to \$8.67 per month for each year of service. While I recognize the difficult financial situation in which the City finds itself, I perceive no justification for paying firefighters less longevity pay than that received by uniformed police employees. Their mission, when compared to that of non-uniformed City employees, demands no less. In

¹² Even if I were to include in these calculations the two Class 1 cities of Anaconda and Havre and the three of Montana's five Class 2 cities (populations with more than 5000 but fewer than 10,000 residents, according to 7-1-4111 MCA) for which I was provided longevity pay statistics, namely Lewistown, Livingston and Miles City, firefighters in all of which receive more than \$8.00 longevity pay, the average for the eleven cities thus compared would approximate \$12.70 per month for each year of service.

¹³ Although the parties agree that the Union's longevity proposal and the Employer's augmentation of the longevity pay of certain other employees both occurred during Fiscal Year 1995, which ended on June 30 of that year, the precise timing of the initial study involving non-represented employees and the resulting increase in their longevity pay are unclear to the undersigned. Presumably, however, the longevity pay increases given other represented employees occurred during Fiscal Year 1996 inasmuch as the wage study applicable to those employees did not issue until December of 1995.

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view of the approximately 320 total combined years of service of the 29 firefighters on the payroll as of July 1, 1995, and the approximately 360 total combined years of service of the 33 firefighters on the payroll as of July 1, 1996, the total annual cost of implementing a longevity increase from \$8.00 to \$8.67 would amount to approximately \$2573 in Fiscal Year 1996, approximately \$2894 in Fiscal Year 1997 and approximately \$3215 in Fiscal Year 1998.¹⁴ In line with my overall ability to pay findings in the discussion of wages infra, I recommend an increase in longevity pay commencing with Fiscal Year 1996 from \$8.00 to \$8.67 per month for each year of service.¹⁵

Section 31 - Promotions

This section of the parties' last Agreement stated:

The following procedure will be followed by the Advisory Board as a basis for recommendations to the Chief regarding all promotions within the established bargaining unit.

¹⁴ In the case of individual firefighters, the total he or she would receive annually if this recommendation is adopted amounts to \$104.04 for each year of his/her service. Unlike other City employees, as that portion of Section 26 of the Agreement which is not in dispute provides, the amount of longevity pay due a firefighter changes on his/her anniversary date rather than on January 1 of each year. Moreover, unlike other City employees, who receive a lump-sum longevity check each October, the longevity pay due individual firefighters is pro-rated and paid to them on a biweekly basis.

¹⁵ My intention is to recommend the same longevity pay for firefighters as is paid to uniformed Helena police department employees. While I believe that amount is \$8.67 per month for each year of service, if my calculations should be off by a few cents, it would not change my ruling. If for some reason the actual amount paid to policemen/women is significantly different, I would entertain a request for reconsideration on this issue.

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- 1) Examinations shall be impartial and shall relate to those subjects which will test fairly the candidates' ability to discharge the duties of the position to be filled.
- 2) Promotional tests shall be given each year in February. Seventy (70) percent will be a passing score. When a test has been passed it will not have to be taken again. Resource material used for the examination will be identified and available at both stations within 30 days of the last test and in advance of the next test. The most recent test score will be used for promotion.
- 3) Announcements for promotional exams will be posted at both stations sixty (60) days prior to the exam.
- 4) All applicants will be notified of their final score within thirty (30) days after testing.
- 5) Standings on promotional list will be determined by the following criteria:
 - A) 34% of the promotional score will be based on longevity
 - B) 33% of the promotional score will be based on test
 - C) 33% of the promotional score will be based on interview

The formula will be based on 100% for each category.

(Max.25 yrs.=300pts)	(Max.100pts)	(Max.100pts)	(Max.100pts)	
Longevity	Test Score	Interview		Applicants
$\frac{\text{Months} \times 1/3}{3}$	+ $\frac{\quad}{3}$	+ $\frac{\quad}{3}$	=	Final Score

- 6) To be promoted applicant must meet all criteria for promotion, and must have thirty (30) hours of Department provided or approved training in each year of the last two (2) years.

The Union would word Section 31 as follows:

The following procedure will be followed by the Advisory Board as a basis for recommendations to the Chief regarding all promotions within the established bargaining unit.

- 1) Examinations shall be impartial and shall relate to those subjects which will test fairly the

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candidates' ability to discharge the duties of the position to be filled.

2) Promotional tests shall be given each year in February. Seventy (70) percent will be a passing score. When a test has been passed it will not have to be taken again. Candidates will be encouraged to test annually and the highest score will be used for the promotion formula. Resource material used for the examination will be identified and available at both stations within 30 days of the last test and in advance of the next test.

3) Announcements for promotional exams will be posted at both stations sixty (60) days prior to the exam.

4) All applicants will be notified of their final score within thirty (30) days after testing.

5) Standings on promotional list will be determined by the following criteria:

- A) 34% of the promotional score will be based on longevity
- B) 33% of the promotional score will be based on test
- C) 33% of the promotional score will be based on interview

The formula will be based on 100% for each category.

(Max.25 yrs.=300pts) (Max.100pts) (Max.100pts) (Max.100pts)

Longevity	Test Score	Interview	Applicants
$\frac{\text{Months} \times 1/3}{3}$	$+$ $\frac{\quad}{3}$	$+$ $\frac{\quad}{3}$	$=$ Final Score

6) To be promoted applicant must meet all criteria listed in Appendix "B" for promotion.

Permanent vacancies resulting from resignation, termination, retirement, demotion, or the establishment of an additional position shall be filled by a permanent appointment within thirty (30) days of said vacancy. Where no promotional list exists, the Employer may make temporary appointments extending beyond the (30) day period until such time that a candidate meets eligibility requirements under Appendix "B".

The City proposes the following language for this

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section:

The following procedure will be followed by the Advisory Board as a basis for recommendations to the Chief regarding all promotions within the established bargaining unit.

1) Examinations shall be impartial and shall relate to those subjects which will test fairly the candidates' ability to discharge the duties of the position to be filled.

2) Promotional tests shall be given each year in February. When a test has been completed the most recent test score will be utilized in the promotional process. Candidates will be allowed to retest at any time the test is given. Resource material used for the examination will be identified and available at both stations within 30 days of the last test and in advance of the next test. The most recent test score will be used for promotion.

3) Announcements for promotional exams will be posted at both stations sixty (60) days prior to the exam.

4) All applicants will be notified of their final score within thirty (30) days after testing.

5) Standings on promotional list will be determined by the following criteria:

- A) 34% of the promotional score will be based on longevity
- B) 33% of the promotional score will be based on test
- C) 33% of the promotional score will be based on interview

The formula will be based on 100% for each category.

(Max.25 yrs.=300pts) (Max.100pts) (Max.100pts) (Max.100pts)

Longevity	Test Score	Interview	Applicants
$\frac{\text{Months} \times 1/3}{3}$	+ $\frac{\quad}{3}$	+ $\frac{\quad}{3}$	= Final Score

6) To be promoted applicant must meet all criteria for promotion.

The Union, in addition to deleting the old paragraph 6

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requirement with respect to 30 hours of training in each of the two preceding years, a point on which the parties are in agreement, would make the following changes to Section 31:

- (1) It would encourage firefighters to test annually by assuring the preservation of their highest test score for promotion purposes even if it is not their most recent one;
- (2) it would clarify paragraph 6 by adding the words "listed in Appendix 'B'" when referring to those criteria which applicants must satisfy for promotion; and (3) it would add language requiring the filling of permanent appointments within thirty days of vacancies resulting from resignation, termination, retirement, demotion or the establishment of an additional position, except where no qualified candidates exist. Unlike the Employer, it would retain the requirement of a 70% passing score on the written test criterion in order to avoid the potential for special treatment of firefighters favored for promotion by the Chief. In the Union's view, it is important to retain the highest score achieved in order to encourage employees to continue to retest in an effort to improve their score. As for the proposal with regard to requiring the filling of permanent vacancies within thirty days, the Union argues it seeks merely to ensure as efficient a process as possible in dealing with the chain reaction that

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occurs as the result of a promotion or other change at the top of the chain of command.

The Employer would remove the minimum promotional test score but continue to require use of the most recent test score for promotion purposes. As to the former, it contends all candidates should be ranked, notwithstanding their test score. In its view, a minimum test score is unnecessary because candidates with a low score on the written test will not be ranked so highly as those who scored higher on the test. As for the use of the most recent test score for promotion purposes, the Employer asserts it is good for the Department and good for employees if firefighters are required to stay current rather than relying on old, arguably outdated test scores. In response to the Union's proposal with regard to the timing of the filling of permanent vacancies, the Employer contends that this constitutes an improper effort on the part of the Union to insert language into another section of the Agreement, namely Section 19 - Working Out of Classification, a section which was not opened in negotiations. Moreover, the Employer argues such language is improper in any event since it would require the Chief to make promotions viewed as inappropriate in situations where the promotional list is limited to individuals potentially

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seen as unfit for the position in question. Additionally, the City resists language which requires the filling of "additional positions" within a specific period of time inasmuch as it contends such language could be construed as requiring it to fill a position for which it has not budgeted.

With the exception of the clarification proposed by the Union in paragraph 6, I am of the view that the language for Section 31 which appeared in the parties' last Agreement should be continued. I make this recommendation for the reason that, again following the approach generally taken by factfinders, I do not believe either party has demonstrated the unworkable nature of historic contract language. I also believe that by retaining the requirements for a 70% passing score on the written test and use of the most recent test score, the interests of both the Department and the employees are best served because of the greater likelihood of the promotion of individuals who are best qualified. The same can be said for the interests and welfare of the public. While I understand the Employer's argument that a minimum score is not necessary, I am sensitive to the Union's concern for potential favoritism. On the other hand, although I recognize the Union's legitimate goal of encouraging members

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to retest annually and their concern that employees will be discouraged from doing so by virtue of the fear of receiving a lower score than before, it can be argued just as forcefully that employees will be encouraged to prepare well for retesting in order that they might improve their scores. Ultimately, no matter what approach is taken in this last regard, the relative ranking of firefighters on the written test will be determined by the relative ability and initiative of the firefighters themselves.

With respect to the clarification of paragraph 6 proposed by the Union, which it appears the Employer has not directly opposed, that change, with my friendly amendment by way of addition of the word "also," would appear to serve the interests of all involved by removing any potential for ambiguity.

Lastly, as concerns the Union's proposed addition of language with respect to the timing of the filling of permanent vacancies, I agree with the Employer that such language should not be added to the parties' next Agreement. I reach this conclusion for two reasons. First, I believe the proposed language would create an ambiguity when viewed in the light of the language currently contained in Section 19 - Working Out of Classification. Secondly, as I have

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found before, I am unwilling to recommend a change absent a showing that existing Section 31 or, for that matter, Section 19, language has not served the parties well historically. Although I appreciate the Union's concerns with respect to a "chain reaction," particularly if and when a new fire station is built, I do not believe those concerns, absent some showing of past difficulties, outweigh the discretion which the parties historically have seen to afford the Chief.¹⁶ Accordingly, I shall recommend that the language from Section 31 of the parties' last Agreement be continued into their new Agreement, except that paragraph 6 thereof be written as follows:

To be promoted, applicant also must meet all criteria listed in Appendix "B" for promotion.¹⁷

Appendix "B" - Criteria For Fire Department Incentive Program

The parties' last collective bargaining agreement

¹⁶ Because I believe the proposed language could appear as easily in Section 31 as in Section 19 of the Agreement, I have not relied on the Employer's argument to the effect that Section 19 was not opened in negotiations in reaching my conclusion with respect to the permanent vacancy language.

¹⁷ Although neither party has suggested it, I believe their effort to describe the mathematical formula employed in reaching an applicant's final score is ambiguous. Thus, while I understand the intent of the formula is to accord up to 100 raw points for longevity before application of the 34% weighted multiplier to that component of the score, the words "Max. 25 yrs. = 300 pts" fail to do that literally. The parties' intent could be accomplished without dispute if the header for that portion of the formula read "Max. 100 pts" as the other headers do and a qualifier of "Max. 300" were inserted between the word "Months" and the multiplier "x 1/3" just below the word "Longevity." Additionally, in order to accomplish precisely the goal of according 34% of the weighted average to the factor of longevity, I would suggest eliminating the divisors of "3" and substituting for them multipliers of ".34" before or after the longevity factor, ".33" before or after the test score factor and ".33" before or after the interview factor.

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contained the following language in Appendix "B" which was established pursuant to Section 28 - Incentive Program:

CRITERIA FOR FIRE DEPARTMENT INCENTIVE PROGRAM

FIRE PREVENTION BUREAU

0 - 1 YEAR

PROBATIONARY FIRE INSPECTOR

- ESSENTIALS (IFSTA)
- INSPECTION & CODE ENFORCEMENT (IFSTA)
- S.C.B.A. (IFSTA)

1 YEAR - 2 YEARS

CONFIRMED FIRE INSPECTOR

- FIRE CAUSE DETERMINATION (IFSTA)
- RESCUE (IFSTA)
- STREET & ADDRESS TEST (70% PASSING)
- FIRST RESPONDER (IFSTA)

2 YEARS - 3 YEARS

FIRE INSPECTOR I

- BUILDING CONSTRUCTION (IFSTA)
- PUBLIC FIRE EDUCATION (IFSTA)
- *UNDERGROUND STORAGE TANK INSPECTION (COURSE & LICENSE)
- PRIVATE FIRE PROTECTION & DETECTION (IFSTA)

3 YEARS - 4 YEARS

FIRE INSPECTOR II

- WATER SUPPLIES FOR FIRE PROTECTION (IFSTA)
- HAZARDOUS MATERIALS FOR 1ST RESPONDERS (IFSTA)
- SAFETY (IFSTA)
- VENTILATION (IFSTA)

4 YEARS - 5 YEARS

FIRE INSPECTOR III

- FIRE SERVICE INSTRUCTOR (IFSTA)
- COMPANY OFFICER (IFSTA)
- HAZARDOUS MATERIALS MANAGING THE INCIDENT (IFSTA)
- SALVAGE AND OVERHAUL (IFSTA)
- RESIDENTIAL SPRINKLERS (IFSTA)

5 YEARS - 6 YEARS

FIRE INVESTIGATOR

- INCIDENT COMMAND SYSTEM (IFSTA)
- *FIRE PREVENTION SPECIALIST I (NFA)
- LEADERSHIP IN THE FIRE SERVICE (IFSTA)

6 YEARS - 7 YEARS

ASSISTANT DEPUTY FIRE MARSHAL

- INDUSTRIAL FIRE PROTECTION (IFSTA)
- *FIRE PREVENTION SPECIALIST II (NFA)
- HIGH RACK STORAGE (IFSTA)

7 YEARS - 8 YEARS
DEPUTY FIRE MARSHAL

- *U.F.C. SCHOOL
- *ICBO/WFCA CERTIFICATION
CHIEF OFFICER (IFSTA)

1. Any required courses for a lower rank which have not been completed will be done at the following rate and time to be eligible for promotion.

Fire Inspector I will have all courses completed prior to any promotion.
2. If promoted prior to 6/30/92. Any course which was required at previous rank for promotion to new rank must be completed by 6/30/92. (i.e., Assistant Deputy Fire Marshal to Deputy Fire Marshal, the courses that were to be done that year (6-7) must be completed) [.] If not rank attained will be forfeited.
3. Courses which must be applied for in order to obtain the course, must be applied for so that they are attended the year that they are required. (i.e. N.F.A. Fire Spec.I) If the application is turned down then the applicant must resubmit the application annually, or if course is not offered annually then when it is offered, until the course is obtained. If the preceding criteria has been met then the course applications will act as the course until it is obtained and will not prevent the individual from being promoted. However if course application is not made then rank attained by waiver will be forfeited unless extenuating circumstances are determined to be present by the Chief.
4. Courses which are equivalent may be substituted in place of required courses. Any course substituted must be approved by the Chief or Assistant Chief. If equivalency course is approved for substitution it will be accepted for all personnel.
5. All required courses will be available at the Department with the exception of courses asterisked (*).
6. Any promotion prior to 6/30/90 will not be affected by this criteria.
7. New courses or changes in course requirements shall be accomplished through mutual consent.
8. Self study courses will be done by reading the book, doing the study guide if available or writing twenty (20) questions with answers (correct and incorrect) if not, and passing the test.

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- 9. All years of service are years with the Helena Fire Department.
 - 10. The Department will provide a set of books for all new employees, beginning 6/30/91, for each step as attained. The employee agrees to return the book after course is passed or to pay the purchase price of the text so that additional texts may be purchased for the Department.
- *Will be paid for by H.F.D. (if course is passed and one time only per person.)

FIRE SUPPRESSION

0 - 1 YEAR

- PROBATIONARY FIREFIGHTER
- ESSENTIALS (IFSTA)
- S.C.B.A. (IFSTA)
- STREET AND ADDRESS TEST (70% PASSING)

1 YEAR - 2 YEARS

- CONFIRMED FIREFIGHTER
- PUMPING APPARATUS (IFSTA)
- FIRST RESPONDER (IFSTA)
- FIRE STREAMS (IFSTA)

2 YEARS - 3 YEARS

- FIREFIGHTER I
- *EMERGENCY MEDICAL TECHNICIAN (NR)
- GROUND LADDERS (IFSTA)
- VENTILATION (IFSTA)
- RESCUE (IFSTA)

3 YEARS - 4 YEARS

- FIREFIGHTER II
- HOSE (IFSTA)
- FORCIBLE ENTRY (IFSTA)
- SALVAGE & OVERHAUL (IFSTA)
- WATER SUPPLIES (IFSTA)

4 YEARS - 5 YEARS

- FIREFIGHTER III
- FIRE INSPECTION & CODE ENFORCEMENT (IFSTA)
- FIRE SERVICE INSTRUCTOR (IFSTA)
- COMPANY OFFICER (IFSTA)
- FIRE CAUSE DETERMINATION (IFSTA)
- HAZARDOUS MATERIALS FOR 1ST RESPONDERS (IFSTA)

5 YEARS - 6 YEARS

- ENGINEER
- HAZARDOUS MATERIALS MANAGING THE INCIDENT (IFSTA)
- SAFETY (IFSTA)
- LEADERSHIP IN THE FIRE SERVICE (IFSTA)
- EXTRICATION (IFSTA)

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STANDARD

6 YEARS - 7 YEARS

LIEUTENANT

INCIDENT COMMAND SYSTEM (IFSTA)
GROUND COVER (IFSTA)
BUILDING CONSTRUCTION (IFSTA)
AIRCRAFT (IFSTA)

7 YEARS - 8 YEARS

CAPTAIN

PRIVATE FIRE PROTECTION (IFSTA)
INDUSTRIAL FIRE PROTECTION (IFSTA)
PUBLIC FIRE EDUCATION (IFSTA)
CHIEF OFFICER (IFSTA)

1. Any required courses for a lower rank which have not been completed will be done at the following rate and time to be eligible for promotion.
 - PROBATIONARY FIREFIGHTER: All courses completed prior to any promotion.
 - CONFIRMED FIREFIGHTER: All courses completed prior to any promotion.
 - FIREFIGHTER I: All courses completed prior to any promotion.
 - FIREFIGHTER II: All courses completed prior to any promotion.
 - FIREFIGHTER III: All courses completed by 6/30/92 with the exception of the E.M.T. course which will not be required.
2. If promoted prior to 6/30/92, any course which was required at previous rank for promotion to new rank must be completed by 6/30/92. (i.e., Engineer to Lieutenant, the courses that were to be done that year (5-6) must be completed) [.] If not rank attained will be forfeited.
3. Courses which are equivalent may be substituted in place of required courses. Any course substituted must be approved by the Chief or Assistant Chief. If equivalency course is approved for substitution it will be accepted for all personnel.
4. All required courses will be available at the Department with the exception of courses asterisked (*).
5. Any promotions prior to 6/30/90 will not be affected by this criteria.
6. New courses or changes in course requirements will be

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accomplished through mutual consent.

7. Self study courses will be done by reading the book, doing the study guide if available or writing twenty (20) questions with answers (correct & incorrect) if not, and passing the test.
8. All years of service are with the Helena Fire Department.
9. The Department will provide a set of books for all new employees, beginning 6/30/91, for each step as attained. The employees agree to return the book after course is passed or to pay the purchase price of the text so that additional texts may be purchased for the Department.

*Will be paid for by H.F.D. (if course is passed and one time only per person.)

Only the numbered paragraphs set forth above with respect to both Fire Prevention Bureau and Fire Suppression Bureau employees are in dispute, the parties having reached agreement on the training/course work to be completed at various stages of an employee's career.¹⁸

As regards the disputed provisions, the Union would reword Appendix "B" as follows:

FIRE PREVENTION BUREAU

1. Courses which are equivalent may be substituted in place of required courses. Any course substituted must be approved by the Chief or Assistant Chief. If equivalency course is approved for substitution it will be accepted for all personnel.
2. Courses which must be applied for in order to obtain the course, must be applied for so that they are attended the year that they are required. (i.e. N.F.A.)

¹⁸ For some reason, the parties' proposals, which include for the sake of completeness a recitation of the portions of Appendix "B" which are not in dispute, differ in that the Employer's omits the number of years set forth in connection with the various course requirements listed for each classification. Since these omissions appear to be accidental, I have not addressed them as an issue I have been called upon to resolve.

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STANDARD 5...

Fire Spec.I) If the application is turned down then the applicant must resubmit the application annually, or if course is not offered annually then when it is offered, until the course is obtained. If the preceding criteria has been met then the course applications will act as the course until it is obtained and will not prevent the individual from being promoted. However if course application is not made then rank attained by waiver will be forfeited unless extenuating circumstances are determined to be present by the Chief.

3. All required courses will be available at the Department with the exception of courses asterisked (*).
4. Any promotion prior to 6/30/90 will not be affected by this criteria.
5. New courses or changes in course requirements shall be accomplished through mutual consent.
6. Self study courses will be done by reading the book, doing the study guide if available and passing the test.
7. All years of service are years with the Helena Fire Department.
8. The Department will provide a set of books for all new employees, beginning 6/30/91, for each step as attained. The employee agrees to return the book after course is passed or to pay the purchase price of the text so that additional texts may be purchased for the Department.
9. To be promoted in the officer ranks must have one year in grade to be promoted to the next rank.

*Will be paid for by H.F.D. (if course is passed and one time only per person.)

FIRE SUPPRESSION

1. Courses which are equivalent may be substituted in place of required courses. Any course substituted must be approved by the Chief or Assistant Chief. If equivalency course is approved for substitution it will be accepted for all personnel.
2. All required courses will be available at the Department with the exception of courses asterisked (*).
3. Any promotions prior to 6/30/90 will not be affected by

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this criteria.

4. New courses or changes in course requirements will be accomplished through mutual consent.
5. Self study courses will be done by reading the book, doing the study guide if available and passing the test.
6. All years of service are with the Helena Fire Department.
7. The Department will provide a set of books for all new employees, beginning 6/30/91, for each step as attained. The employees agree to return the book after course is passed or to pay the purchase price of the text so that additional texts may be purchased for the Department.
8. To be promoted in the officer ranks must have one year in grade to be promoted to the next rank.

*Will be paid for by H.F.D. (if course is passed and one time only per person.)

The City would replace existing disputed contract language with the following provisions:

FIRE PREVENTION BUREAU

1. Courses which must be applied for in order to obtain the course, must be applied for so that they are attended the year that they are required. (i.e. N.F.A. Fire Spec.I) If the application is turned down then the applicant must resubmit the application annually, or if course is not offered annually then when it is offered, until the course is obtained. If the preceding criteria has been met then the course applications will act as the course until it is obtained and will not prevent the individual from being promoted. However if course application is not made then rank attained by waiver will be forfeited unless extenuating circumstances are determined to be present by the Chief.
2. Courses which are equivalent may be substituted in place of required courses. Any course substituted must be approved by the Chief or Assistant Chief. If equivalency course is approved for substitution it will be accepted for all personnel.
3. All required courses will be available at the Department with the exception of courses asterisked

(*) .

- 4. New courses or changes in course requirements shall be accomplished through mutual consent.
- 5. Self study courses will be done by reading the book, doing the study guide if available and passing the test.
- 6. All years of service are years with the Helena Fire Department.
- 7. The Department will provide a set of books for all new employees, beginning 6/30/91, for each step as attained. The employee agrees to return the book after course is passed or to pay the purchase price of the text so that additional texts may be purchased for the Department.

*Will be paid for by H.F.D. (if course is passed and one time only per person.)

FIRE SUPPRESSION

- 1. Any required courses for a lower rank which have not been completed will be done at the following rate and time to be eligible for promotion.
 - PROBATIONARY FIREFIGHTER: All courses completed prior to any promotion.
 - CONFIRMED FIREFIGHTER: All courses completed prior to any promotion.
 - FIREFIGHTER I: All courses completed prior to any promotion.
 - FIREFIGHTER II: All courses completed prior to any promotion.
 - FIREFIGHTER III: All courses completed by 6/30/92 with the exception of the E.M.T. course which will not be required.
- 2. Courses which are equivalent may be substituted in place of required courses. Any course substituted must be approved by the Chief or Assistant Chief. If equivalency course is approved for substitution it will be accepted for all personnel.
- 3. All required courses will be available at the Department with the exception of courses asterisked (*).
- 4. New courses or changes in course requirements will be

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accomplished through mutual consent.

5. Self study courses will be done by reading the book, doing the study guide if available and passing the test.
6. All years of service are years with the Helena Fire Department.
7. The Department will provide a set of books for all new employees, beginning 6/30/91, for each step as attained. The employees agree to return the book after course is passed or to pay the purchase price of the text so that additional texts may be purchased for the Department.

*Will be paid for by H.F.D. (if course is passed and one time only per person.)

It is clear from studying the parties' proposals with respect to Appendix "B" that, in most respects, they came very close to reaching accord. For example, they do not disagree with regard to the various training programs which both Fire Prevention and Fire Suppression employees must complete in order to attain specific rank. The parties also have agreed to delete the old numbered paragraphs 1 and 2 and to modify the old paragraph 8 of the additional Fire Prevention Bureau criteria. Similarly, it is clear from the documents provided me at hearing that they reached agreement to delete the old numbered paragraph 2 and to change the old numbered paragraph 7 applicable to Fire Suppression

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personnel.¹⁹

Thus, the only provisions concerning which the parties have failed to reach agreement appear to be the new Fire Prevention Bureau numbered paragraph 9 and Fire Suppression Bureau numbered paragraph 8 which the Union proposes to add. The Union argues those provisions, both of which require one year in grade before promotion to a higher officer rank, are necessary to ensure that officers promoted to higher rank are qualified. In support of this view, the Union notes that other City departments are subject to a similar requirement set forth in the job descriptions of assigned personnel. The Employer counters that such provisions, in fact, inhibit the Department's ability to pick the most qualified individual for promotion and could prove particularly detrimental in the event of multiple simultaneous promotion needs such as would

¹⁹ For reasons not explained to me, the Union's Proposal 11-C, dated June 7, 1996, as it regards Fire Prevention Bureau employees, retains, at numbered paragraph 4, the language previously contained in numbered paragraph 6 of their last Agreement which read, "Any promotion prior to 6/30/90 will not be affected by this criteria [sic]." Although this provision would appear no longer to be applicable, I cannot tell whether its continued inclusion in the Union's proposal was accidental or intentional. The same is true of the Union's continuation of the same language from numbered paragraph 5 of the parties' last Agreement in numbered paragraph 3 of their proposed Fire Suppression language placed in evidence before me. I also cannot tell whether the Union's failure to join the Employer in proposing to continue numbered paragraph 1 from the Fire Suppression requirements set forth in the parties' last Agreement into numbered paragraph 1 of that proposal for the new Agreement was accidental or intentional. However, because I infer from the parties' failure to mention these differences to me, either at hearing or in any closing written argument, that they are accidental, and because I do not wish to delay the issuance of these Recommendations for the time required to seek clarification from the parties, I shall treat with these differences as though they were accidental and ignore them. If my inference turns out to be incorrect, I stand ready to assist the parties to resolve any remaining disputes with regard to these provisions on the motion of either party.

be caused by the creation of a vacancy at the top of the chain of command or the establishment of a third fire station. In response to the Union's argument with regard to requirements in other City departments, the Employer notes these are merely probationary periods which would not prevent an employee from being promoted to yet a higher position prior to the expiration thereof.

I am of the view that the provisions proposed by the Union should not appear in the parties' new Agreement. Not only do I believe the Chief should have the flexibility to promote the most qualified individuals, regardless of their time in grade, this is another area of the parties' relationship regarding which there is simply no evidence of historic difficulty encountered in the absence of such language. In this connection, to the extent the Union also proposed the addition of these time-in-grade requirements in response to its aforestated concerns regarding favoritism, I believe Section 31 of the Agreement, which I intend to recommend be continued unchanged in substance, contains reasonable safeguards against such an occurrence at the recommendation level inasmuch as 67% of the overall score determining promotional list standing is made up of the longevity and written test factors and a 70% minimum written

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test score would continue to be required if my Section 31 recommendations are adopted. Accordingly, I shall recommend that the Union's proposed new Fire Prevention Bureau numbered paragraph 9 and Fire Suppression Bureau numbered paragraph 8 not appear in the parties' new Agreement.

New Section - Discipline

The Union proposes the following language for this new section of the Agreement:

- 1.) Employees may be disciplined or discharged for just cause. Discipline should be applied at a progressive and escalating levels to allow the employee proper notice of misconduct and an opportunity to improve performance. The level or degree of discipline imposed shall be appropriately based on the employee's prior record of service, length of service, severity of offense and prior record of discipline.
- 2.) Disciplinary action or measures shall include only the following:
 1. Verbal counseling,
 2. Written reprimand,
 3. Suspension without pay, and
 4. Discharge.
- 3.) Prior to the imposition of any discipline or discharge, the employee shall be provided a copy of the alleged violation and all relevant documents the Employer has in their possession. In addition, the Employer shall hold a pre-disciplinary hearing, in accordance with 7-33-4124 MCA, or no later than ten (10) days from the time the employee was notified of the alleged violation, if suspension or discharge are not contemplated. At this hearing the employee will be given an opportunity to present his side of the issue.
- 4.) The employee shall be entitled to have Union and/or legal representation present at any meeting held with the Employer to discuss potential disciplinary action against him.
- 5.) The Employer may suspend an employee with pay pending the final decision as to the appropriate discipline resulting

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from the Commission meeting, in accordance with 7-33-4124.

6.) The employee and the employee's Union representative with the employee's authorization shall have the right to inspect the full contents of his/her personnel file. No written reprimand or greater disciplinary document may be placed in the personnel file without the employee having been first notified of said complaint and given a copy, with a copy to the Union. An employee who disagrees with the validity of any complaint added to the file shall have the opportunity to challenge said complaint under the grievance procedure herein. The employee shall be required to sign the written reprimand or other disciplinary action acknowledging that they have read the contents of the document.

7.) The written reprimands will be removed from an employee's personnel file after one hundred eighty (180) days from the date said action was finalized provided that no further written reprimands have been issued within the one hundred-eighty (180) day time period. If another written reprimand has been issued within this time period, both written reprimands shall remain in the personnel file for an additional one hundred-eighty (180) days from the date of the latest written reprimand. In any event, the one hundred-eighty (180) days may be extended to three hundred sixty (360) days depending on the seriousness of the circumstances. If another written reprimand has been issued within the three hundred sixty (360) days time period then both written reprimands shall remain in the personnel file for an additional three hundred sixty (360) days from the date of the last written reprimand.

8.) It is the Employer's sole determination as to whether or not an employee suspended without pay may be allowed to forfeit vacation or compensatory time off in lieu of the suspension of pay.

The City would word this new section of the contract as follows:

All represented members of the Helena Fire Department are covered by this section.

For the purpose of this section the definition of a supervisor is anyone who has control over the movement of an employee, i.e. conducts performance evaluation, recommends hiring, discharge, promotion, etc.

A. VERBAL REPRIMANDS:

Supervisors have the authority to issue verbal reprimands for violation of City or department policies or for improper conduct. These reprimands should be documented in the

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employee's personnel file in the Personnel Office or as a minimum noted in a supervisor's file or journal. Documented verbal reprimands will be removed and returned to the employee after one year. A verbal reprimand would normally be given for a first offense violation or a minor infraction of the rules.

B. WRITTEN REPRIMANDS:

Supervisors have the authority to issue written reprimands to employees who violate City or department policies or for improper conduct. These reprimands must be documented in the employee's personnel file in the Personnel Office. Documented written reprimands will be removed and returned to the employee after three years.

C. RESPONSIBILITIES:

It is the responsibility of the employee to request, in writing, the removal of documented reprimands at the end of the required period of retention. Such reprimands will be returned to the employee.

THE CITY RESERVES THE RIGHT TO IMPOSE THE APPROPRIATE PENALTY ON AN EMPLOYEE FOR A FIRST OFFENSE DEPENDING ON THE SEVERITY OF THE ACT. AN INDIVIDUAL COULD BE DISCHARGED WITHOUT BEING GIVEN AN ORAL OR A WRITTEN REPRIMAND FOR A FIRST OFFENSE.

D. ADVERSE ACTIONS: SUSPENSIONS (WITH OR WITHOUT PAY),
TERMINATION AND DEMOTIONS:

The City Commission has sole responsibility to impose penalties which would affect an employee's pay. Such penalties are imposed for serious offenses.

A department head shall initiate an adverse action for an employee and submit the proposed action to the City Manager in writing for approval of the City Commission. As a minimum the document will include the following:

1. Name of employee
2. Date of violation(s)
3. Details of violation(s)
4. Proposed penalty

In no case will any adverse action penalties be imposed by a department head or supervisor without approval by the City Manager and Commission.

The Human Resource Manager and the City Manager will be notified of any impending adverse actions as soon as possible. The Human Resource Manager is available to assist supervisors and department heads with disciplinary procedures and documentation.

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The parties' last Agreement did not contain provisions regarding the subject of discipline.²⁰ However, in 1994 the parties pursued to arbitration a dispute with respect to the issuance by the Chief of three General Orders covering the subject areas of Code of Conduct, grooming and uniforms on December 1, 1993. Pursuant to Arbitrator Kenneth J. Latsch's July 26, 1994, Arbitration Award and his May 25, 1995, Clarification of Arbitration Award requested by the parties, they determined that it would be efficacious to negotiate a disciplinary procedure for insertion into their next Agreement. Although there was some misunderstanding between the parties for a time during negotiations to the effect that the City believed the Union wanted a separate disciplinary procedure for each General Order initiated by the Department, it is now clear that both parties wish to insert a single disciplinary policy applicable to all infractions which might be committed by represented firefighters.

Moreover, while it might appear at first blush from a reading of their respective proposals above that the parties are far apart on their views, a closer inspection reveals to the undersigned that their goal is the same and that the

²⁰ It appears that this subject has never been covered in a collective bargaining agreement between the parties.

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mechanism by which they would attain that goal is very similar in substance. Thus each hopes to apply a fair and uniform policy aimed at notifying employees of performance and conduct shortcomings and assisting employees to correct those shortcomings.

The significant differences between their proposals can be found in the Union's specific reference to the just cause standard, its inclusion of specific references to certain rights guaranteed pursuant to state statutes and federal court decisions, a preference for a shorter useful life of written reprimands and the insertion of a provision regarding the potential use of vacation or compensatory time off in lieu of suspensions without pay. The Union would include these provisions in order to ensure the fair and equitable treatment of employees without infringing on management rights. The Employer, although not directly opposing reference to the just cause standard, would omit the various legal references because the rights they are aimed at protecting already exist under state and/or federal law, opposes the shorter useful period of written reprimands for fear that doing so would defeat effective progressive discipline efforts and expresses concern that the provision regarding vacation and compensatory time may violate state

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and/or federal law.

In all likelihood, if I or any other factfinder were required to devise a disciplinary policy from scratch, while it would appear much like the proposals of the parties in substance, different words would be used to describe the policy. I say that in an effort to make clear to the parties that I do not believe they or I should be overly concerned with the precise words used in their initial efforts at including disciplinary language in their Agreement. Rather, it is clear to me from their comments at hearing, as well as from the parties' written closing submissions, that they are principally concerned with arriving at a uniform policy which will accomplish the goal of correcting performance and conduct shortcomings. With that in mind, and with an eye to keeping the language as simple as possible, thereby avoiding potential ambiguity and future misunderstanding as to the meaning of the words used, I am inclined to recommend the following language for inclusion in the parties' Agreement which incorporates provisions recommended by both parties:

All represented members of the Helena Fire Department are covered by this section.

For the purpose of this section the definition of a supervisor is anyone who has control over the movement of an employee, i.e. conducts performance evaluation, recommends hiring, discharge, promotion, etc.

Employees may be disciplined or discharged only for

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just cause. Discipline will be applied at progressive and escalating levels to allow the employee proper notice of misconduct or performance shortcomings and an opportunity to improve. The level of discipline imposed will be based on the employee's prior record of service, length of service, severity of offense and prior record of discipline. For a serious first offense, an employee could be discharged without first being given a verbal or written reprimand.

A. VERBAL REPRIMANDS:

Supervisors have the authority to issue verbal reprimands for violation of City or Department policies or for improper conduct. These reprimands should be documented in the employee's personnel file in the Personnel Office or as a minimum noted in a supervisor's file or journal. Documented verbal reprimands will be removed and returned to the employee after six (6) months. A verbal reprimand would normally be given for a first offense violation or a minor infraction of the rules.

B. WRITTEN REPRIMANDS:

Supervisors have the authority to issue written reprimands to employees who violate City or Department policies or for improper conduct. These reprimands must be documented in the employee's personnel file in the Personnel Office. Documented written reprimands will be removed and returned to the employee after one year.

C. ADVERSE ACTIONS: SUSPENSIONS (WITH OR WITHOUT PAY), TERMINATION AND DEMOTIONS:

The City Commission has sole responsibility to impose penalties which would affect an employee's pay. Such penalties are imposed for serious offenses.

A department head shall initiate an adverse action for an employee and submit the proposed action to the City Manager in writing for approval of the City Commission. As a minimum the document will include the following:

1. Name of employee
2. Date(s) of violation(s)
3. Details of violation(s)
4. Proposed penalty

In no case will any adverse action penalties be imposed by a department head or supervisor without approval by the City Manager and Commission.

The Human Resource Manager and the City Manager will be notified of any impending adverse actions as soon as possible. The Human Resource Manager is available to assist supervisors and department heads with disciplinary procedures

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and documentation.

D. NOTICE TO EMPLOYEE AND UNION:

Prior to the imposition of any discipline or discharge, the employee will be advised of the alleged infraction. No written reprimand or greater disciplinary document may be placed in the personnel file of the employee without the employee and the Union first having been given a copy of the disciplinary document. Any employee who disagrees with the validity of any disciplinary action shall have the opportunity to challenge said action under the grievance procedure herein. The employee will be required to sign the written reprimand or other greater disciplinary document acknowledging that he/she has read the contents of the document. Any employee, and with said employee's authorization, his/her Union representative, shall have the right to inspect the full contents of his/her personnel file upon request made to the Employer.

I believe the language above satisfies the requirements of both parties. In my view, it neither impinges inappropriately on management's reserved rights nor ignores the protections ordinarily afforded to employees in most collective bargaining agreements. Significantly, it should be noted that I agree with the Employer that it is unnecessary to reference either the various Montana statutory provisions or the employee rights to pre-termination hearings and Union representation guaranteed to employees by the Supreme Court's decisions in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) and *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975), respectively. The recommended language also follows a path midway between the proposals of the Employer and Union with regard to the length of time verbal and written reprimands continue to stay active in an

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employee's personnel file, thereby tracking more closely with the majority of collective bargaining agreements it has been my experience to review over the years. It also places the onus on the Employer to remove verbal and written reprimands from employee files at the appropriate time and return them to the employee since, in my view, to use the words "will be removed" and then to require an employee to request that said action be taken signifies contradictory notions. Lastly, I agree with the Employer that the Union's suggested provision referencing vacation and compensatory time should not appear in the parties' Agreement. However, I do so for the reason that to allow a disciplined employee to trade accumulated vacation or compensatory time for suspension without pay defeats the corrective purpose which both parties have in mind for this disciplinary policy.

Sections 12 and 20 - Salary Matrix and Hours of Work

Introduction

The Fire Department is divided into two sections, the Fire Suppression (or Combat) Bureau and the Fire Prevention Bureau. In Section 20 of the parties' last Agreement, the hours of work of Fire Suppression employees were set forth as 24 hours on duty, 48 hours off duty and a Kelly day off each

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8th and 9th shift. The result was that combat employees worked approximately 43.56 hours per week, which the parties calculated averaged 2,272.67 hours per year over a four-year span. Fire Prevention employees were assigned to one of three schedules, each of which averaged 40 hours per week, or 2080 hours per year. According to Section 12 - Fire Department Salary Matrix of the 1994-1995 Agreement, the following wages were paid to Fire Suppression employees in Fiscal Year 1995:

	Salary/Monthly (2,272.67 hrs) (7/1/94-6/30/95)	Salary/Hourly (2,272.67 hrs) (7/1/94-6/30/95)
Battalion Chief	2779	14.673
Captain	2648	13.982
Lieutenant	2518	13.295
Engineer	2416	12.757
FF III	2358	12.451
FF II	2292	12.102
FF I	2257	11.917
Confirmed FF	2225	11.748
Probationary FF	1767	9.330

The wages for Fire Prevention employees in Fiscal Year 1995 were as follows:

	[Salary/Monthly] (2080 hrs)	[Salary/Hourly] (2080 hrs)
Fire Marshal	3049	17.590
Deputy Fire Marshal	2648	15.277
Asst. Deputy Fire Marshal	2518	14.527
Fire Investigator	2416	13.938
Fire Inspector III	2358	13.604
Fire Inspector II	2292	13.223
Fire Inspector I	2257	13.021
Confirmed Fire Inspector	2225	12.837
Probationary Fire Inspector	1767	10.194

In the case of both bureaus, the hourly wage set forth in

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Section 12 was the wage used for overtime calculations.

During the parties' negotiations, both made a number of proposals with respect to wages after initially tabling that issue in order to await the results of the salary survey regarding represented employees for which the City had contracted with PSPC. As noted above, the study issued in December 1995 and was given to the Union on January 24, 1996.²¹ On February 28, the Union offered to adopt the wages recommended by the salary survey. Subsequently, however, on March 7, the City proposed that all Fire Suppression employees commence to work a new schedule in Fiscal Year 1997 consisting of 24 hours on duty, 48 hours off duty and a Kelly day every 6th day, which would lead to a work week of approximately 46.7 hours, or a work year of 2434.94 hours averaged over four years. In doing so, the City contended that the average hours worked by firefighters in the cities on which the survey had been based were much higher than the hours worked by Helena combat firefighters. The Union initially resisted discussing hours of work, asserting Section 20 of the Agreement had not been opened at the outset of negotiations. Eventually, on May 24, the Union agreed to waive the agreed-upon ground rules reached at the

²¹ All dates hereinafter are 1996 unless otherwise noted.

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outset of negotiations and to discuss hours of work. The parties determined that the new hours sought by the Employer amounted to a 7.14% increase over existing hours for Fire Suppression employees.

Even though the wage study arrived at prevailing market rates and recommended compensation for relevant positions for Fiscal Year 1996, the Employer proposed to the Union on June 5 that study wages for Fire Suppression employees be used for Fiscal Year 1997 and that, inasmuch as these employees were not yet working the increased hours sought, that Fiscal Year 1996 wages be 7.14% less.²² The City proposed that Fire Prevention employees be given varying wage increases in Fiscal Year 1996, 1997 and 1998 aimed at attaining the market wages determined by the study in Fiscal Year 1998.²³ Because the Employer's offer resulted in freezing the wages of Confirmed Firefighter and Firefighter I through III in Fiscal Year 1996 since their current wages were higher than the recommended Fiscal Year 1996 wages, it was rejected by the Union.

²² The Employer also offered to increase Fiscal Year 1997 wages by the amount of the cost-of-living allowance (hereinafter "COLA") provided to all other City employees.

²³ However, it offered to move the positions of Probationary Fire Inspector, Confirmed Fire Inspector and Fire Inspector I to what it believed market should be vis-a-vis the benchmark positions identified in the wage study in Fiscal Year 1996, to move Fire Inspector II to market in Fiscal Year 1997 and to accord these classifications only the COLA determined appropriate for other City employees for the remainder of the term of the Agreement.

The last offers made by the parties came in the second half of June, the Union's on June 17 and the Employer's on June 25. In its proposal, the Union offered to accept the Employer's June 5 presentation as it applied to those classifications which the Employer would not freeze if the Employer would agree to give 2.7% COLA in Fiscal Year 1996 to those positions which were frozen by the Employer's proposal.²⁴ This counteroffer proved unacceptable to the City. Instead, on June 25 the City offered 1) to split the proposed 7.14% increase as it applied to the four frozen positions into two parts consisting of 1.5% in Fiscal Year 1996 and the remaining 5.64% in Fiscal Year 1997 and 2) to add COLA to those four positions in Fiscal Years 1997 and 1998, said COLA to be the maximum of 1.5% or the amount approved for other City employees, until such time as market wages exceeded their wage. The Union rejected this offer.

The following table from Union Exhibit No. 2 illustrates the parties' wage positions as of the end of June 1996:²⁵

²⁴ Although Union Exhibit No. 2 makes reference to "2.5% for firefighters and higher for the officers in FY 96," I calculate in agreement with the Employer that the Union's proposal for Confirmed Firefighter through Firefighter III actually was for 2.7% in that year.

²⁵ As I understand it, the Employer used the asserted market wages from the wage study for Fiscal Year 1996, reduced them by 2.7% COLA 1996 to identify a Fiscal Year 1995 wage, applied its salary range technique with 5% steps to each classification, moved each incumbent to the next higher wage based on his/her Fiscal Year 1995 wage and finally increased each of these by 2.7% COLA to arrive at a Fiscal Year 1996 wage. In its view,
(continued...)

CITY WAGE PROPOSAL JUNE 25, 1996					UNION WAGE PROPOSAL #4-B JUNE 17, 1996				
RANK		FY 96	FY 97	FY 98	RANK		FY 96	FY 97	FY 98
BC		2935	3145	3145	BC		2964	3248	3329
CAPT		2812	3013	3013	CAPT		2801	3071	3148
LT		2696	2889	2889	LT		2650	2905	2978
ENG		2520	2700	2700	ENG		2483	2722	2790
FF III		2393	2528	2528	FF III		2422	2655	2721
FF II		2326	2457	2457	FF II		2354	2580	2645
FF I		2291	2420	2420	FF I		2318	2541	2605
CFF		2258	2385	2385	CFF		2285	2505	2568
PFF		2021	2165	2165	PFF		2000	2193	2248
FM		3166	3324	3490	FM		3166	3407	3667
DFM		2930	3076	3230	DFM		2790	3085	3393
ADFM		2751	2889	3033	ADFM		2620	2897	3187
F INV		2583	2712	2848	F INV		2583	2780	2992
FI III		2425	2547	2674	FI III		2425	2611	2809
FI II		2376	2495	2495	FI II		2376	2557	2621
FI I		2343	2343	2343	FI I		2343	2401	2461
CFI		2258	2258	2258	CFI		2285	2342	2400
PFI		2021	2021	2021	PFI		2000	2050	2101

On August 8 the City adopted its Fiscal Year 1997 budget. Among other things, the budget provided for 1) no COLA to any City employee, represented or non-represented, 2)

²⁵(...continued)
 this brought all employees to the market wages identified in the wage study except for Fire Prevention employees who were more than 5% from market. In view of this last point, certain Fire Prevention employees show continued wage increases in the Employer's offer in Fiscal Years 1997 and 1998 whereas others do not. Fire Suppression employee wages show the 7.14% (or 5.64% for Confirmed Firefighter and Firefighter I through III) increase in Fiscal Year 1997 for their anticipated increased hours of work but no increases in Fiscal Year 1998. No employee received COLA in Fiscal Year 1997 or Fiscal Year 1998.

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a delay in the hiring of the anticipated three new firefighters until March of 1997, 3) the proposed increase in combat personnel hours referenced above and 4) the elimination of a number of full-time and seasonal employee positions and services historically provided in departments other than the Fire Department. Although the record is replete with efforts the City intends to undertake, or already had undertaken by the time of the hearing herein, to increase revenues, including raising the property tax mill rate to the statutory limit, exploring additional City fees for selected services such as fire service and pawn fees, floating two new bond issues before the electorate to purchase new or repair existing firefighting equipment and to finance an open space plan, raising assessments relative to streets and electricity and increasing Enterprise Fund rates in areas such as water, wastewater and solid waste, the reason for the City's General Fund shortfall in Fiscal Year 1997 is not made totally clear in the record beyond its unwillingness in previous years to implement the maximum mill rate and the lower-than-expected gambling revenues experienced in Fiscal Year 1996.²⁶

²⁶ No claim of inability to pay and no budget information was provided the Factfinder with respect to Fiscal Year 1996.

Review of Wage Study

Before making a recommendation concerning the wages and hours of work for Fiscal Years 1996 and 1997, a review of, and several observations with regard to, portions of the December 1995 report developed for the City by PSPC are appropriate inasmuch as that document significantly influenced the direction the parties took with respect to the negotiation of wages after its issuance in December 1995.²⁷

The following comments, among others, appeared in the Summary of Findings set forth on page 1 of the report:

. . .

- 4. The 28 job classifications subject to this study have been reduced to 18 by merging some job titles and classes, even though two new job classifications have been recommended;
- 5. The City's pay practice for represented jobs is below the prevailing rates for 75% of the benchmark jobs surveyed;
- 6. The City's pay rates for benchmark represented jobs vary from somewhat below the prevailing rate (minus 2%) for Mechanics/Welders to significantly below the prevailing rate (minus 15%) for Laborer. With the exception of Firefighter, the Police and Fire Department benchmark classes were significantly below prevailing rates (see Table 4, page 8); and
- 7. The City's job evaluation point factor system used to assist in pricing non-benchmark jobs has these approximate weightings of factors:

²⁷ In the observations which follow it is not my intention to disparage either the efforts of, or the results obtained by, PSPC. However, I must attempt to satisfy my obligations to the parties to identify the extent to which I make use of the evidence presented and to explain why I do not make use of certain other evidence.

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% of Weighting	Factors
29%	Knowledge and Skill
45%	Decision Making
14%	Working Relationships
12%	Working Environment

It is a useful tool in slotting in newly-developed jobs and other non-benchmark jobs into a salary structure.

At page 6 of the report, PSPC noted:

A. Sources of External Data

The first steps [sic] in identifying a labor market was to identify a realistic pool of competitive employers who were selected based upon the following criteria:

- ◆ Public organizations within Helena
- ◆ Private companies within Helena
- ◆ Larger cities within Montana
- ◆ Cities of similar size within the Northwestern United States.

Accordingly, the City of Helena identified 18 employers to represent their labor market. This same list of employers was used in this study in order to facilitate the integration of this study with the non-Union classification and pay plan which has already been adopted.²⁸

As affects firefighters, the methodology employed in PSPC's study was to arrive at benchmark prevailing market rates for four positions, namely Seasoned Firefighter, Lieutenant, Battalion Chief and Fire Marshal.²⁹ What PSPC

²⁸ PSPC surveyed only sixteen of the eighteen employers identified by the City, finding on page 6 of its report that "... two of the organizations had no matches with the classes to be surveyed . . ." The employers who were surveyed are Butte, Kalispell, Billings, Great Falls, Missoula and Bozeman, Montana; Northglenn, Colorado; Lewiston, Idaho; Albany, Oregon; St. George, Utah; Walla Walla, Washington; Laramie, Wyoming; the State of Montana; Lewis and Clark County, Montana; ASARCO; and Montana Power.

²⁹ Even though PSPC developed benchmark data for the positions of Entry Level Firefighter (the equivalent of the parties' historic Confirmed Firefighter classification) and Fire Inspector (a combination of the parties' historic classifications of Probationary (continued...))

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determined in this regard is extracted from Tables 3 and 4 of its December 1995 report (except for the Helena hourly rates, which are taken from Section 12 of the parties' last Agreement):

Helena Job Title (Benchmarks)	Helena Rate		Prevailing Rate		Annual Variance	
	(Annual)	(Hourly)	(Annual)	(Hourly)	\$	%
Seasoned Firefighter	28,296	12.451	29,276	14.08	- 980	- 3%
Lieutenant	30,216	13.295	34,662	16.66	- 4,446	- 13%
Battalion Chief	33,348	14.673	37,743	18.15	- 4,395	- 12%
Fire Marshal	36,588	17.590	41,871	20.13	- 5,283	- 13%

PSPC then used the City's aforementioned job evaluation point factor system in pricing non-benchmark jobs, following historic "internal relationships" between job classes and applying "professional judgment" when job evaluation points and prevailing market rates did not correlate.¹⁰ The result of this last process, along with placement of classifications it would retain into salary ranges it believed appropriate and its recommendations with respect to pricing of the top step of each salary range, made up Table 7 of its report, reproduced here in relevant part:

¹⁰(...continued)

Fire Inspector, Confirmed Fire Inspector and Fire Inspector I through III), it did not recognize them as benchmarks in its various tables. The reason for this is not completely clear. Because PSPC recommends that Confirmed Firefighter assume a position near the low end of its suggested range for a new classification of Firefighter, it may be assumed that is the reason it does not use the data in its eventual Tables 9 and 10 recommendations. That does not explain its failure to use the data gathered for Fire Inspector, however, since it would retain that classification in a new form just as it would the classification of Firefighter.

¹¹ See wage study, p. 12.

TABLE 7 - ASSIGNMENT OF JOB CLASSES TO SALARY RANGES

Recommended Class Title	Job Evaluation Points	Benchmark Prevailing Market Rate	Recommended Range Placement	
			#	Top Step
Firefighter	540	29,276	133	29,354
Fire Engineer	570		134	30,088
Fire Inspector	570		134	30,088
Fire Lieutenant	715	34,662	139	34,042
Deputy Fire Marshal	850		140	34,893
Fire Captain	850		140	34,893
Fire Battalion Chief	910	37,743	143	37,576
Fire Marshal	1010	41,871	145	39,478

PSPC then devised seven steps for the salary range applicable to each classification, as was done in its classification and pay plan for non-represented employees, and illustrated these steps in Table 10 of its report:³¹

³¹ PSPC's explanation for taking the last step is set forth at pages 12-13:

One of the requirements of this study was to integrate this study with the present non-union classification and pay plan (see Table 10, pages 17 and 18). That plan uses a salary range structure with seven steps within the pay range and 5% difference between each step. The seven steps of 5% are labeled alphabetically A (minimum) to G (maximum). Employees proceed from A to B following satisfactory completion of probation.

Employees then proceed from B to G annually, based upon successful performance evaluation. Step G represents market value as determined by labor market prevailing rates and/or internal value using job evaluation.

The process of equating the prevailing labor market rate with the range maximum is workable since the job classes in this study have a flat (hourly or monthly) rate in that essentially everyone in the job class gets the same base rate. The only variances from this are rates that increase to a flat rate at the end of probation or in annual increments, i.e., a Firefighter I becomes a Firefighter II after one year and is currently paid a specific flat rate for that "job class".

We recommend extending the previously adopted salary range structure of A to G to the represented jobs. We believe this is appropriate, since the new maximums which are equated with prevailing market rates do not include the new longevity formula which is in addition to the base rate paid.

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TABLE 10 - RECOMMENDED FY96 BASE SALARY PLAN
 (Salary Range Order)

Salary Range		Step A	Step B	Step C	Step D	Step E	Step F	Step G	Job Class Title
133	/hr.	10,531	11,058	11,620	12,191	12,801	13,441	14,113	Firefighter
	/mo.	1,825	1,917	2,012	2,113	2,219	2,330	2,446	
	/yr.	21,904	23,000	24,150	25,357	26,625	27,956	29,354	
134	/hr.	10,794	11,334	11,901	12,495	13,121	13,777	14,465	Fire Engineer Fire Inspector
	/mo.	1,871	1,965	2,053	2,166	2,274	2,388	2,507	
	/yr.	22,452	23,575	24,753	25,991	27,291	28,655	30,089	
139	/hr.	12,213	12,823	13,465	14,138	14,845	15,587	16,366	Fire Lieutenant
	/mo.	2,117	2,223	2,334	2,451	2,573	2,702	2,837	
	/yr.	25,402	26,673	28,026	29,406	30,877	32,421	34,042	
140	/hr.	12,518	13,144	13,801	14,491	15,216	15,977	16,775	Deputy Fire Marshal Fire Captain
	/mo.	2,170	2,278	2,392	2,512	2,637	2,769	2,908	
	/yr.	26,037	27,339	28,706	30,142	31,649	33,231	34,893	
143	/hr.	13,481	14,155	14,862	15,605	16,386	17,205	18,055	Fire Battalion Chief
	/mo.	2,337	2,453	2,576	2,705	2,840	2,982	3,131	
	/yr.	28,040	29,442	30,914	32,459	34,082	35,785	37,575	
145	/hr.	14,163	14,871	15,615	16,395	17,215	18,076	18,980	Fire Marshal
	/mo.	2,455	2,578	2,707	2,842	2,984	3,133	3,290	
	/yr.	29,459	30,932	32,479	34,103	35,808	37,598	39,478	

PSPC then calculated the cost of implementing its plan:

TABLE 8 - ESTIMATED COST TO IMPLEMENT ILLUSTRATIVE
 PAY PLAN for FY 1996

Recommended Class Title	Total Points	Helena Rate	Benchmark Prevailing Market Rate	Recommended Range Placement # Top Step	# in Class	Current Total Payroll	Total Variance
Firefighter	540	28,296	29,276	133 29,354	15	424,440	-15,870
Fire Engineer	570	28,992		134 30,088	3	86,976	-3,288
Fire Inspector	570	28,296		134 30,088	1	28,296	-1,792
Fire Lieutenant	715	30,216	34,662	139 34,042	3	90,648	-11,478
Deputy Fire Marshal	850	31,776		140 34,893	1	31,776	-3,117
Fire Captain	850	31,776		140 34,893	3	95,328	-9,351
Fire Battalion Chief	910	33,348	37,743	143 37,576	3	100,044	-12,684
Fire Marshal	1010	36,588	41,871	145 39,478	1	36,588	-2,890

The total amount required to fund the "variances" disclosed in Table 8 in Fiscal Year 1996 was \$60,470.

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In view of all the evidence before me, I believe there are major shortcomings associated with the wage study which preclude other than certain of its raw data being given great weight. In the first place, I am troubled by the recommendation that the City modify its job titles and reduce the number of classifications from the eighteen appearing in the expired Agreement to a total of eight which do not reflect the historic mix of classifications over which the parties have bargained. As the Union points out, no information has been supplied as to precisely how the "professional judgment" of PSPC was applied to the suggested changes and the formulation of the numerous tables reflecting those changes.²²

Secondly, the wage study recommends salary matrices which extend far beyond the agreed-upon three-year term of the parties' next collective bargaining agreement. As a result, certain of its premises, most notably the annual progression in 5% steps through the suggested salary range for a given classification, at best would have questionable

²² This also makes the analysis and consideration of the wage study by a factfinder or interest arbitrator, for whose judgment the parties have bargained jointly, extremely difficult.

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impact on other aspects of the parties' relationship¹³ and at worst would seem to have little meaning.

Moreover, Executive Summary paragraph A8 on page 1 of the report contains an erroneous assumption, which assumption is built into PSPC's estimate of the cost to implement its plan appearing in Table 8, to the effect that all incumbents in the various new classifications will be paid at the top step of their salary range. It fails to take into consideration that many of the classifications into which employees currently fall would be modified by PSPC's recommendations and that top step placement of all the individuals then appearing in the resulting classifications would lead to widely varying wage increases for current employees.¹⁴ This would result in an abrogation of the historic internal relationships between classifications which the parties have crafted so carefully over the years.

Additionally, although PSPC asserts it equates the prevailing labor market rates with the maximum salary

¹³ Thus, for example, while I am aware of the Employer's use of a 5% increment in its June 25 wage proposal, there is no showing either by the Employer or in the wage study of the way in which such increases are intended to mesh with the progressions shown in Appendix "B".

¹⁴ It will be recalled the wage study recommends the combination of a number of existing classifications into new ones, i.e. Probationary Firefighter through Firefighter III into Firefighter, Probationary Fire Inspector through Fire Inspector into Fire Inspector and Fire Investigator, Assistant Deputy Fire Marshal and Deputy Fire Marshal into Deputy Fire Marshal.

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applicable to each salary range, its recommended salary matrices do not do so. Instead, the following describes, for each of the benchmark positions, the market rate and the top step of the appropriate pay ranges recommended in the report:

<u>Classification</u>	<u>Market Rate</u>	<u>Top Step</u>
Battalion Chief	37,743	37,576
Lieutenant	34,662	34,042
Firefighter	29,276	29,354
Fire Marshall	41,871	39,478

The reason for the disparity in rates is not clear from the report.

The usefulness of the wage study is also substantially reduced because it does not take into consideration the hours worked by employees of any of the surveyed organizations.³⁵ Although it likely was not asked to survey hours worked inasmuch as the Employer had not made its proposal for increased hours to the Union at the time the study had to have been commissioned, the failure to take into consideration hours worked in the firefighting community renders the recommendations³⁶ which flow from such a study largely useless, especially in a situation like the present,

³⁵ Because the wage study did not survey hours worked and therefore provides no information on that issue, it is possible only to determine mathematically from Table 3 contained therein that the hourly "prevailing labor market rates" for benchmark positions were arrived at by using 2080 hours.

³⁶ The recommended Fiscal Year 1996 salary plan contained in Tables 9 and 10 of the report similarly assumes 2080 hours of work per year.

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where an increase in hours is on the table along with wages.³⁷

In addition, because the Employer did not dispute the Union's claim that the weighting of job evaluation point factors set forth in Executive Summary paragraph A7 on page 1 of the report are not followed by the City as the report alleges, the value of PSPC's recommended rankings and amalgamation of positions in the Employer's system would seem to be called into question.³⁸

Most importantly, however, I cannot agree with the use of the comparables selected for the study and I shall address this vital consideration next.

Discussion of Comparables

I am of the opinion that the most reliable way to approach the question of comparability is to follow the direction generally taken by other public sector factfinders and interest arbitrators of selecting for comparison other ".

³⁷ The Employer, of course, recognized this fact and took the hours worked by its Fire Suppression employees relative to surveyed firefighters into consideration in the comparison of wages set out in Exhibit A attached to its written position statement delivered to the undersigned at hearing. It is the data from that exhibit along with the data from the Union's survey, as both apply to the cities I find comparable below, which I intend to use in arriving at my wage recommendations.

³⁸ For example, the precise extent to which this factor impacted on PSPC's decision to place Fire Engineers and the suggested new class of Fire Inspectors at the same range, thereby altering the historic decision of the parties to pay the Engineer a higher annual wage than any of the Inspector classifications, is not at all clear.

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. . governmental entit[ies] of comparable size, in the same economic and political region" Labor and Employment Arbitration, Bornstein and Gosline, Eds., (Denaco, Contrib.), Matthew Bender (1991), § 61.02[1], page 61-6. In following that advice, I believe it is clear that the most reliably comparable employers represented in the record before me are the other Montana Class 1 cities of Billings, Bozeman, Butte, Great Falls, Kalispell and Missoula.³⁹ Although I could expand the list beyond that point, e.g. by including Montana Class 2 cities, in doing so I would begin to move away from the point of greatest comparability. And, of course, that expansion would open the door to a consideration of other of the employers for which I have been provided some evidence via the wage study. That would take me back to square one, namely using evidence from employers farther down the generally recognized scale of comparability and regarding

³⁹ It will be noted I have not included the Class 1 cities of Anaconda and Havre in averaging comparables even though they also appear in the Montana State Council of Professional Firefighters survey set forth in Union Exhibit No. 2. There are two reasons for this decision. The first is that they are not included in the employers surveyed by PSPC and thus to compare an average which includes them with the figures arrived at by PSPC would not be meaningful. Secondly, perhaps because of their small populations (estimated at 10,229 in the case of Anaconda and 10,059 in the case of Havre as of July 1, 1994, according to Montana Department of Commerce figures), which barely exceeds the population of Class 2 cities, the salaries paid to firefighters are simply out of line with those in the remaining Class 1 cities surveyed and would skew the averages improperly. While I recognize, at the other extreme, that Billings pays several classifications substantially more than other cities surveyed, it also pays several classifications less, thereby merely demonstrating a different apportionment of available dollars among its firefighting employees. Lest the Employer assume automatically that omitting Anaconda and Havre unfairly slants the averages toward the high end, it should be pointed out that it has the opposite effect on average hours worked.

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which I have little information with which to test their true measure of comparability.⁴⁰ Accordingly, I intend to use only the wages and hours of the aforementioned Montana Class 1 cities in my analysis in the belief their use will lead to the most meaningful result. Moreover, because of the shortcomings of the wage study already identified, I shall use the data provided in Union Exhibit No. 2 and Employer Exhibit A⁴¹ in arriving at my view of the wages suggested by the marketplace for Fiscal Years 1996 through 1998.⁴²

What my analysis of the information provided in Union Exhibit No.2⁴³ and Employer Exhibit A with respect to the six cities I have found comparable tells me is that in Fiscal Year 1996 combat firefighters worked an average of 43.26 hours per week, or 2249.52 hours per year, in comparable

⁴⁰ This applies not only to the other cities which PSPC used in arriving at its firefighter recommendations but to those other general groupings it identified, i.e. other public organizations and private companies in Helena.

⁴¹ This necessarily will lead to a consideration of raw data from specific cities gathered by PSPC, the reliability of which I have no reason to question.

⁴² I shall then apply the Employer's ability to pay arguments to those wages as they relate to Fiscal Years 1997 and 1998.

⁴³ Information was not provided for all requested classifications at all six cities in the Union's survey. I have averaged what information appears in Union Exhibit No. 2, which I have corrected in several minor respects based on my scrutiny of the collective bargaining agreements from surveyed cities provided as part of the Union's September 25, 1996, submissions.

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cities⁴⁴ and that the surveyed classifications worked for the following wages which I also have converted to monthly figures:⁴⁵

<u>Classification</u>	<u>Study Midpoint Annual/Monthly</u>	<u>Union Survey Annual/Monthly</u>
Confirmed/"Entry Level" FF	27,514 / 2293	27,255 / 2271
FF I	----	25,942 / 2162
FF II	----	27,435 / 2286
FF III	----	28,676 / 2390
"Seasoned FF"	29,480 / 2457	----
Firefighter First Class	----	29,452 / 2454
Engineer	----	31,424 / 2619
Lieutenant	32,980 / 2748	29,234 / 2436
Captain	----	32,111 / 2676
Battalion Chief	35,173 / 2931	35,266 / 2939
Fire Marshal	38,531 / 3211	37,723 / 3144

What that means is that the City's Fire Suppression employees worked 1.03% more hours in Fiscal Year 1996 than their counterparts in comparable cities. Thus I cannot agree with the Employer's assertion to the contrary. It also appears that Helena firefighters, in Fiscal Year 1996, worked for wages generally below their counterparts in comparable cities. Whereas the wage study suggests this was the case in amounts ranging from 3% to 8.4% below other firefighters, the

⁴⁴ It is assumed that fire prevention employees worked 40 hours per week in the cities in question as they did in Helena.

⁴⁵ In order to understand the full panoply of positions surveyed, I have set forth survey results for every position surveyed by the Union or shown in Employer Exhibit A as "midpoints per study" (determined by averaging the mean of the minimum and maximum salary ranges for each classification in the comparable cities) without regard to whether PSPC would recommend retention of the classification or whether it is a classification historically used by the parties. The lone exception to this approach is Fire Marshal which the Employer did not include in Exhibit A attached to its written position statement; its midpoint was taken directly from the wage study. The classifications in quotes are those which were coined by PSPC and used by the Employer in Exhibit A.

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HELENA FIREFIGHTER SURVEY

Union's survey shows Helena firefighter wages varied from 7.8% below to 4.4% above their contemporaries, as the following table demonstrates:⁴⁶

<u>Classification</u>	<u>Helena Wages Compared to Study Midpoints</u>	<u>Helena Wages Compared to Union Survey</u>
Confirmed/"Entry Level" Firefighter	- 3.0%	- 2.0%
Firefighter I	----	+ 4.4%
Firefighter II	----	+ .3%
Firefighter III	----	- 1.3%
"Seasoned Firefighter"	- 4.0%	----
Firefighter First Class	----	- 3.9%
Engineer	----	- 7.8%
Lieutenant	- 8.4%	+ 3.4%
Captain	----	- 1.0%
Battalion Chief	- 5.2%	- 5.4%
Fire Marshal	- 5.0%	- 3.0%

Therefore it cannot be said that most Helena firefighter classifications are paid more than their counterparts in comparable cities. In fact, it appears that the only classifications which either survey found to be paid more, other than Lieutenant pay which I intend to address below, are Firefighter I and II by only 4.4% and .3%, respectively, according to the Union's survey.⁴⁷

⁴⁶ It appears the significant disparity between the wage study midpoints and the Union's survey is a result of the use in the latter of the average wages paid to all occupants of a particular classification in the cities surveyed, many of which, unlike the Employer, appear to have individuals in the same classification receiving different basic rates of pay. This is not surprising given the use of salary ranges for all surveyed positions by most of the cities studied by PSPC, the three exceptions being Kalispell for one position, Butte for five positions and Missoula for all surveyed positions.

⁴⁷ Firefighter III, when viewed in the light of the comparables I have selected, appears, contrary to the Employer's view, to be underpaid whether compared to other Firefighters III, Seasoned Firefighters or Firefighters First Class.

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Fiscal Year 1996 Wage Recommendation

I recommend the following wages for Fiscal Year 1996:

<u>Classification</u>	<u>Monthly Wage</u>
Battalion Commander	2935
Captain	2801
Lieutenant	2650
Engineer	2550
Firefighter III	2425
Firefighter II	2338
Firefighter I	2291
Confirmed Firefighter	2281
Probationary Firefighter	2021
Fire Marshal	3166
Deputy Fire Marshal	2801
Assistant Deputy Fire Marshal	2650
Fire Investigator	2550
Fire Inspector III	2425
Fire Inspector II	2376
Fire Inspector I	2343
Confirmed Fire Inspector	2281
Probationary Fire Inspector	2021

I arrived at these wages in the following fashion. I began by adopting the Employer's offer generally because 1) the Employer proposed a wage increase for every classification, 2) its proposal for all but Confirmed Firefighter, Firefighter I through III and Confirmed Inspector exceeded the 2.7% COLA figure the parties themselves had attempted to utilize and 3) the increases it suggested comported in some fashion with my differential analysis of comparables above. Then I looked for classifications which, in light of my analysis of comparables, seemed to require modification.

The most obvious in that category are those relating to

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Confirmed Firefighter and Firefighter III, each of which lagged behind comparables and thus was deserving of an increase greater than 1.5%, especially considering the slightly longer hours already worked in comparison to firefighters in other jurisdictions. By increasing Firefighter III by the same amount the Employer proposed for Fire Inspector III, this also preserved the historic pay equity between those two classifications. Similarly, by increasing both Confirmed Firefighter and Confirmed Fire Inspector by the same 2.5%, which my figures show Confirmed Firefighter lags behind employees of comparable cities, that same historic equity between those two positions was preserved.

The recommended continuation of equity between Captain and Deputy Fire Marshal and between Lieutenant and Assistant Deputy Fire Marshal required significant lowering of the wages proposed by the Employer for the two Fire Prevention classifications, neither of which appears justified by any evidence in the record, to the amounts proposed by the Union for Captain and Lieutenant, the increases in both of which are more modest than suggested by the Employer and thus more

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in line with the market of comparables I selected.⁴⁸ On the other hand, because it appears that the Engineer classification is significantly underpaid in comparison to the same classification at comparable cities, I recommend an increase of approximately 5.5%, an amount greater than either party has proposed, to bring that classification up to market, and would continue the pay equity between that position and Fire Investigator.

The only historic pay equities I have not recommended continuing are those between Firefighter I and Fire Inspector I and between Firefighter II and Fire Inspector II because, while the parties agree on the wage for the two Fire Inspector classifications, my review of comparables indicates that Firefighter I and II, particularly the former, have been outpacing their counterparts elsewhere. I therefore recommended the Employer's proposed increase of 1.5% for Firefighter I and a 2% increase for Firefighter II.

Although I also have no evidence to demonstrate the necessity for the substantial increases the Employer proposes for both probationary classifications or the 6.9% increase it

⁴⁸ In this connection, because it appears there is no true Lieutenant in the Missoula unit and it is not possible to equate directly a Lieutenant in the Kalispell unit with the City's Lieutenants, I have determined to average the midpoint found by PSPC with the average of the Missoula and Kalispell wage shown in Union's Exhibit No. 2 in order to arrive at a comparable Lieutenant's wage. That wage is \$2587 per month.

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proposes to accord the Fire Investigator, I have no reason to question them in view of the Union's agreement that all are deserving of sizable increases.

I calculate the cost of the recommended increases to be approximately \$34,044, as compared with the \$60,470 recommended by PSPC, the approximately \$32,832 the Employer proposed and the approximately \$33,432 the Union proposed.⁴⁹

Fiscal Years 1997 and 1998 Recommendations

By way of brief reiteration, the City proposes to increase Fire Suppression hours of work to 46.7 hours per week, or 2434.94 hours per year, commencing with Fiscal Year 1997, in return for which it would increase wages by 7.14%, the equivalent of the increase in hours of work.⁵⁰ The Employer would provide for no increase in the wage of any Fire Suppression employee in Fiscal Year 1998. For Fire Prevention employees it proposed increasing the wages of employees by approximately 5% in Fiscal Years 1997 and 1998 except for the classifications of Fire Inspector II which it

⁴⁹ I have attempted only approximations because a number of employees were transitioning in Fiscal Year 1996 from one classification to another, as indicated on the parties post-hearing documents submitted in response to my request for additional information with respect to the longevity issue.

⁵⁰ The only exceptions to this proposal are Confirmed Firefighter through Firefighter III, which it would increase only 5.64% since it offered to move 1.5% into Fiscal Year 1996 for those employees.

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asserts would reach market after a 5% increase in Fiscal Year 1997 and Probationary Fire Inspector, Confirmed Fire Inspector and Fire Inspector I which it would freeze at Fiscal Year 1996 levels.⁵¹

At the factfinding hearing, the Union did not oppose the increase in hours proposed by the City. Instead, it agreed that if hours are increased, an equivalent increase in wages in return for working the longer hours is appropriate. However, it seeks an additional 2.5% COLA in Fiscal Year 1997 and the same or other COLA based on the increase in the appropriate Consumer Price Index (hereinafter "CPI") in Fiscal Year 1998, contending such augmented wages are necessary if its members are to maintain their current standard of living.⁵²

I am persuaded the Union's proposal, but for the aforementioned Fire Prevention wages just discussed in footnote number 52, is eminently reasonable. The use of some

⁵¹ It is not clear whether the Employer believes those classifications will reach market wages in that year or whether it was anticipated there would be no Probationary Fire Inspectors, Confirmed Fire Inspectors and Fire Inspectors I in Fiscal Year 1997 and no Fire Inspectors II in Fiscal Year 1998. Because of the way the Fire Prevention salary matrix depicted in Employer's Exhibit B attached to its written position statement and also contained in Union Exhibit No. 2 is constructed, that is at least a possibility, albeit an unlikely one that was not mentioned at hearing by either party.

⁵² Although the depiction of the parties' late June 1996 proposals shown on page 57, SHRPA, tracks the Union's avowed approach with regard to combat employees, it inexplicably proposes wages for Fire Prevention employees which range from 2.5% to 10.6% in Fiscal Year 1997 and from 2.5% to 10% in Fiscal Year 1998.

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cost-of-living multiplier based on a relevant CPI is the traditional approach to wage factfindings and interest arbitrations. Indeed, I am advised to consider cost of living by 39-34-103 MCA. It is worth noting in this connection that wage increase for members of the Union have lagged just behind increases in the CPI since 1987, with the cumulative CPI amounting to 39.3% and the cumulative wage increases of Helena firefighters reaching only 33.5% during that period. The Union's proposal is also reasonable in view of the fact City Fire Suppression employees already work longer hours than their counterparts in other cities, which Union Exhibit No. 2 demonstrates has been the case since at least 1987. Lastly, as was determined in the discussion above with respect to Section 26 - Longevity, Helena firefighters receive substantially lower longevity pay than firefighters in comparable Montana cities and will continue to do so even if my recommendation with respect to that issue is adopted. Accordingly, if it were not for the Employer's ability to pay arguments, I would not hesitate to recommend an approach for Fiscal Years 1997 and 1998 approximating the Union's proposal but for the exceptional increases for certain Fire Prevention employees referenced in footnote 52.

However, in view of the Employer's ability to pay

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arguments which convince me it is facing hard times, I must take a different approach. Without question, the City has taken a number of steps, many of which I am sure were not easy, in an effort to survive Fiscal Year 1997. These have been outlined earlier and will not be repeated here. However, one bears closer scrutiny because it directly concerns the Fire Department and its personnel.

That consideration was the decision by the City Commission to include in the Fiscal Year 1997 budget the three anticipated new firefighters but to bring them on board on March 1, 1997. While the addition of new firefighters undoubtedly would assist in filling manpower needs and make the jobs of everyone in the Department easier, I question the decision to hire new employees in the face of a shortage of funds with which to reward existing employees in even the most meager fashion for their continued service, particularly where, as here, there is no showing in the record that the need for such new employees is critical, i.e. so necessary as to adversely affect the interests and welfare of the public if not satisfied.

If the City were to forego the hiring of the new firefighters for the duration of Fiscal Year 1997, that would free up \$24,252 at the wage rates recommended for Fiscal Year

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1996.⁵³ That amount is nearly exactly the cost of a 2.5% COLA to the entire unit, based on an approximate annual payroll of \$960,000⁵⁴ in Fiscal Year 1995 base wages. Even if one assumes adoption of my recommended Fiscal Year 1996 wages, which would cost the Employer approximately \$1200 over and above its proposed wages for that year and would increase the annual Department base payroll to roughly \$994,000, the remaining approximately \$23,000 in savings would fund a 2.3% COLA for the entire unit. Thereafter, by continuing to delay the hiring of the three employees until November 1, 1997, the Employer could fund a similar COLA for Fiscal Year 1998.⁵⁵

Accordingly, it is my recommendation that the lesser of the U. S. Department of Labor's National Consumer Price Index (CPI-U) for the preceding year or a 2.3% COLA be applied to

⁵³ This assumes, of course, that the hours which would be worked by the new employees are not currently being worked by existing employees on overtime. Not only was I not advised of any such occurrence, there could hardly be a savings for the City to realize by delaying the new hires in any event if the funds are being spent on overtime.

⁵⁴ This figure, which is derived from the longevity documents sent me by the City after the close of hearing, is approximately \$65,000 larger than the estimate arrived at by PSPC and thus may not be completely accurate. If PSPC's figure was more accurate, the impact of my COLA recommendations which follow is decreased.

⁵⁵ Even if one assumes my recommendation with respect to increased longevity pay is adopted, which increase could also come out of the savings to be realized from delaying the new hires, sufficient funds would remain for the payment of a 2% COLA in both Fiscal Years 1997 and 1998. Moreover, this recommendation does not even take into account the substantial savings to be realized by the Employer which flow from the fact that even if the parties adopt my Fiscal Year 1997 recommendations regarding wages and hours of work, the 7.14% increase in hours and wages cannot take place until approximately halfway through the fiscal year.

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the entire unit for Fiscal Years 1997 and 1998 in the event my longevity pay recommendation is not adopted or that the lesser of the U. S. Department of Labor's National Consumer Price Index (CPI-U) for the preceding year or a 2% COLA be applied to the entire unit for Fiscal Years 1997 and 1998 in the event my longevity pay recommendation is adopted.⁵⁶

SUMMARY

My recommendations may be summarized as follows:

Section 1 - Formal Recognition: I recommend the Employer's proposed language appear in the parties' new Agreement;

Section 8 - Prevailing Rights: I recommend the Union's proposed language appear in the parties' new Agreement;

Section 9 - Rules and Regulations: I recommend the Employer's proposed language appear in the parties' new Agreement;

Section 12 - Fire Department Salary Matrix: I recommend that the wages set forth on page 72 of this decision for Fiscal Year 1996 appear in the parties' new Agreement, that a 7.14% wage increase be applied to the wages of all Fire Suppression employees in Fiscal Year 1997 commencing on the date Fire Suppression employees begin to work the 7.14% increase in hours and either that a 2.3% COLA be applied to the entire unit in both Fiscal Years 1997 and 1998 in the event my recommendation for increased longevity pay is not adopted or that a 2% COLA be applied to the entire unit in both Fiscal Years 1997 and 1998 in the event my recommendation for increased longevity pay is adopted;

⁵⁶ I agree with the Employer that the appropriate CPI to use is the CPI-U because of the timing of its publication which allows the Employer to apply it and still meet its budget deadline.

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appearing in Section 17 of the parties' last Agreement be continued in the parties' new Agreement;

Section 20 - Hours of Work: I recommend that the hours of work of Fire Suppression employees be increased from 2272.67 hours per year to 2434.94 hours per year in Fiscal Year 1997;

Section 26 - Longevity: I recommend an increase in longevity pay commencing with Fiscal Year 1996 from \$8.00 to \$8.67 per month for each year of service, as clarified by footnote 15 of these Recommendations;

Section 31 - Promotions: I recommend that the language from Section 31 of the parties' last Agreement be continued into their new Agreement, except that paragraph 6 thereof be written as follows:

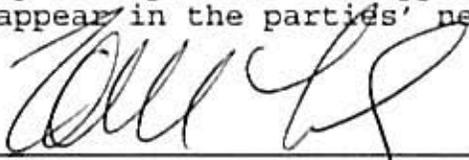
To be promoted, applicant also must meet all criteria listed in Appendix "B" for promotion.

Appendix B - Incentive Programs: I recommend that the Union's proposed new Fire Prevention Bureau numbered paragraph 9 and Fire Suppression Bureau numbered paragraph 8 not appear in the parties' new Agreement; and

New Section - Discipline: I recommend that the language incorporating certain proposals by both parties and appearing on pages 49-51 of this decision appear in the parties' new Agreement.

December 24, 1996

Snohomish, Washington



M. Zane Lumbley, Factfinder