INTEREST ARBITRATION OPINION AND AWARD

OF

M. ZANE LUMBLEY

CITY OF BILLINGS, MONTANA,

and

LOCAL 521
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Issue: Cost of Living

Date Issued: July 15, 2002

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OPINION

PROCEDURAL MATTERS

The Interest Arbitrator was selected by mutual agreement of the parties pursuant to the procedure specified in 39-34-102 MCA. A hearing was conducted before the undersigned on June 14, 2002, at Billings, Montana. The City of Billings, Montana (hereinafter "City") was represented by Steven J. Lehman of the law firm of Crowley, Haughey, Hanson, Toole & Dietrich. Local 521 International Association of Fire Fighters (hereinafter "Association") was represented by Jamie Mertz and Bob Golubski, its President and Officer at Large, respectively.

At the hearing, the testimony of witnesses was taken under oath and the parties presented documentary evidence. No court reporter was present. Instead, the Interest Arbitrator tape recorded the proceedings in order to supplement his personal notes. The parties waived the filing of posthearing briefs, argued their respective cases orally at the close of hearing and agreed the Arbitrator would render a decision within thirty days in line with 39-34-103(4) MCA.

ISSUE

At issue is the appropriate cost of living adjustment (hereinafter "COLA") for the 2001-2002 fiscal year. The Association seeks 3.0% and the City offers 1.75%. The Interest Arbitrator is required by 39-34-103(4) MCA to select one or the other.

BACKGROUND

The parties have been signatory to a succession of collective bargaining agreements on

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behalf of City of Billings firefighting employees since the 1960s. The Agreement under which this proceeding arose was effective from July 1, 1999, through June 30, 2002. Article VI, Section B.1.a thereof provided:

> The Salary Schedule for fiscal year 1999-2000 represents a 3% COLA, the salary schedule for fiscal year 2000-2001 represents a 3% COLA and both parties agree to a wage opener for fiscal year 2001-2002.

Article VI, Section B.1.b then noted, in relevant part:

> The 2001-2002 base wages shall be negotiated with a wage opener between the City and the ASSOCIATION and shall become effective 7-1-01.

The Association reopened on March 15, 2001.[1] On June 12 it requested not only an 8.0% increase in base wages but also certain changes to other Article VI matters, including standby time, longevity pay, special assignment pay and special certification pay. The City resisted, arguing that only base wages could be opened, and offered an increase of 0.5% in base wages. The Association then withdrew its requests with respect to matters other than base wages and, on June 21, reduced its base wage request to 6.0%. The City increased its offer to 1.0% on June 27, the Association lowered its request to 5.25% on August 8, the City raised its offer to 1.5% on the same date and the Association eventually dropped its request to 4.75% on September 14.[2] When the parties could not reach agreement, factfinding was initiated.[3]

A factfinding proceeding was conducted by Factfinder Shelly C. Shapiro on January 9, 2002, and the Factfinder issued her recommendation for a 3.0% COLA on February 2, 2002.

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1 All dates hereinafter are 2001 unless otherwise specified.

2 One or more of these bargaining sessions occurred with a mediator in attendance.

3 By the commencement of factfinding, the City had increased its offer to 1.58%.

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Although the Association determined to adopt the Factfinder's recommendation, the City chose not to do so. Accordingly, this proceeding ensued. The Association continues to seek the 3.0% increase recommended by the Factfinder whereas the City increased its offer to 1.75% before the undersigned after performing certain recalculations recommended by the Factfinder.

RELEVANT FACTS

In addition to bargaining with the Association on behalf of the firefighting employees involved in this proceeding, the City negotiates with Montana Public Employees Association on behalf of its police employees and Teamsters Local 190 on behalf of yet another bargaining unit, the precise composition of which is not described in the record.[4] As the Factfinder noted in her recommendation, all employee groups, whether represented or not, were treated the same for cost of living purposes from at least the 1996-1997 budget year until the 1999-2000 budget year, i.e. each received a 3.0% increase. Moreover, all received fully-paid coverage under the City's self-insured health plan.[5] That remained the same for the 2000-2001 budget year except that police employees and the City modified their base wage approach to one identified as an annual "market adjustment."

As it prepared for fiscal year 2001-2002 wage negotiations, the City determined that its self-insured health care fund was approaching a financial crisis and it appointed a committee

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[4] The City also treats its unrepresented management employees as a distinct fourth group for purposes of compensation and benefits.

[5] The amount budgeted by the City for this purpose had increased steadily over the years. For the 2001-2002 year the amount budgeted was $435.00 per month for each Teamster, police and management unit employee and $485.00 per month for each firefighter.

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comprising members from all its employee groups to study the matter.[6] The committee recommended that all employees commence making contributions into the health care fund in an effort to maintain its financial viability. This recommendation was adopted by the police and Teamster bargaining units.[7] However, it was rejected by the firefighters who chose to require the City to continue to fully pay for their health care coverage in line with Article VII, Section B.1.a of their Agreement. Based on the acquiescence of the Teamster and police units in the City's request that they begin paying a portion of the cost of their health care coverage, and the determination that unrepresented management employees would do the same, the City negotiated with Teamsters Local 190 a 3.9% cost of living increase and applied it to management employees as well for fiscal year 2001-2002.

DISCUSSION AND ANALYSIS

The City seeks to preserve the relative purchasing power of all its employees and contends that it is reasonable to include in its calculations here the value of the health care contributions being made by other employees to assure that result. In support of that argument, it asserts it properly assessed the financial status of its self-insured health care coverage and applied appropriate cost of living data to its offer. Finally, the City believes the recommendation of the Factfinder should not be adopted since it amounted to a compromise without support in the record.

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[6] A representative of the City's retired employees, who pay the entirety of their health care premiums, also sat on the committee.

[7] Contributing employees choose from three levels of coverage referred to as Plans A, B and C, and may choose whether to cover only themselves or additional family members. Depending on the elections made, their premium may range from a credit of $40.00 per month to a contribution of $115.29 per month.

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The Association argues it should not be bound by what the other employee organizations agreed to and that it is inappropriate for the City to include health care considerations in its wage proposals since only wages were ripe for reopening according to the Agreement. It also notes that it has adjusted its request to coincide with the Factfinder's recommendation, a view it asserts was based properly on the parties' history. Lastly, the Association disputes the accuracy of a number of the City's calculations with respect to the relative purchasing power of its employees.

Having now had the opportunity to consider carefully the entire record in this matter, I have determined to agree with the City that fiscal year 2001-2002 base wages should be increased by 1.75%. The discussion which follows will address only those considerations I found controlling.

Stripped of all its rhetoric, the dispute in this case is a narrow one. That is the resolution of the central argument concerning the propriety of the City's approach of considering the employee contributions toward health care coverage being made by other City employees. While the Association is correct that Article VI, Section B.1 of the Agreement permits a unilateral reopening of only the issue of base wages, that simply means the City could not force the Association to bargain over the making of employee health care contributions during the term of the Agreement. However, that does not insulate the Association from the City's use of that cost in its comparison of the value of its treatment of other employees. Nor can I ignore that value. 39-34-103(5) MCA requires me to consider, *inter alia*, the "hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally" and "any other factors traditionally considered in the determination of

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hours, wages, and conditions of employment" in reaching my decision. The value of health care contributions clearly falls within both areas of consideration. Moreover, it is beyond cavil that I am obligated by the same section of the statute to consider "the interests and welfare of the public and the financial ability of the employer to pay" in arriving at my decision. Without question, although the City candidly noted it would not be bankrupted by an order to adopt the Association's requested COLA, its ability to maintain self-insurance coverage and the fact it is undeniably dipping into reserves to do so are relevant to that consideration. Thus it was appropriate for the City to include the amounts its other employees have agreed to pay toward their health insurance coverage in its calculations and its offer to the Association.

I am also satisfied that, although I, too, might have calculated the precise value of the contributions made by other employees differently and thereby come up with a slightly different offer on behalf of the City, I believe the City's offer is fairly supported by its calculations. Moreover, the Association concedes it did not perform any calculations in support of its ultimate request for 3.0% but rather chose to adopt the Factfinder's recommendation. While certainly it is tempting to the Interest Arbitrator to adopt that recommendation, as well, it is not among the considerations required by 39-34-103 MCA. Instead, I am charged with the responsibility for making my own "just and reasonable determination."

Lastly, I am convinced, and indeed the Association does not contend otherwise, that the City's use of the West Region CPI-U for its 2001-2002 deliberations was proper. In fact, it provided a higher COLA result, namely 3.9%, precisely the amount negotiated with the Teamsters and given to management employees, than would have been realized from use of the National CPI-U for the same period, 3.4%, which historically had been used. Accordingly, the

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In sum, I adopt the City's 1.75% COLA offer for the 2001-2002 year and shall so award.

AWARD

It is the Award of the Interest Arbitrator that fiscal year 2001-2002 base firefighter wages should be increased by 1.75%.

M. Zane Lumbley, Interest Arbitrator

July 15, 2002 (corrected 7/18/02 as to date only)
Date

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