

**IN ARBITRATION PROCEEDINGS PURSUANT TO
MONTANA CODE ANNOTATED 39-31-501 *et seq.***

In the Matter of the Interest Arbitration

between

ANACONDA POLICE PROTECTIVE ASSOCIATION,

and

ANACONDA/DEER LODGE COUNTY.

RE: Interest Arbitration; Arbitration No. 22-2011
(113-2011)

OPINION AND AWARD

of

**LUELLA E. NELSON,
Interest Arbitrator**

June 6, 2011

This Interest Arbitration arises between ANACONDA POLICE PROTECTIVE ASSOCIATION ("Association"), and ANACONDA/DEER LODGE COUNTY ("Employer"). LUELLA E. NELSON was selected to serve as Interest Arbitrator.

At a hearing held on April 19-20, 2011, in Anaconda, Montana, the parties had the opportunity to examine and cross-examine witnesses, introduce relevant exhibits, and argue the issues in dispute. The hearing was not transcribed. Both parties submitted the matter on closing oral argument. The parties consented to an extension of time for preparation of this Opinion and Award.

APPEARANCES

On behalf of the Employer:

Don K. Klepper, Ph.D
P.O. Box 4152
Missoula, MT 59806

On behalf of the Association:

Timothy J. McKittrick, Esq.
McKittrick Law Firm, P.C.
Strain Building, Suite 622
410 Central Avenue
P.O. Box 1184
Great Falls, MT 59403

In arriving at my Decision and Award, I weighed and considered the following criteria set forth in MCA 39-31-504(3):

- (a) the interest and welfare of the public;¹
- (b) the reasonable financial ability of the unit of government to meet the costs of the proposed contract, giving consideration and weight to the other services provided by the unit of government, as determined by the governing body of the unit of government;
- (c) the ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided;
- (d) the overall compensation presently received by the police officers, including direct wage compensation, holiday pay, other paid excused time, insurance, and all other direct or indirect monetary benefits;
- (e) comparison of the overall compensation of other police officers in comparable communities with similar populations in Montana and contiguous states;
- (f) inflation as measured by the consumer price index, U.S. city average, commonly known as the cost of living;²
- (g) the stipulations of the parties; and
- (h) other factors, consistent with subsections (3)(a) through (3)(g), that are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator may not use other factors if, in the judgment of the arbitrator, the factors listed in subsections (3)(a) through (3)(g) provide a sufficient basis for an award.

BACKGROUND

The Employer is a consolidated city/county government, one of two in Montana (the other is Butte/Silverbow County). The Association represents law enforcement personnel up to the rank of Captain, a bargaining unit that is currently budgeted for a total of 18.65 FTE's. The most recent collective bargaining agreement expired in June 2009; wages and benefits have been frozen pending settlement on a new contract. The Employer reached agreement with its other organized employees in 2009, in each instance including a wage increase of between 3 and 3.5% for each of the next two contract years.

All but five bargaining unit employees work 12-hour shifts, which results in a two-week schedule of three 12-hour work days followed by four regular days off ("RDO"), then three 12-hour days, then an 8-hour day, followed by three RDO's. Thus, for most of the affected employees, in any given two-week period,

¹ With rare exceptions, the criterion of "interests and welfare of the public" has meaning largely with regard to the other statutory criteria. This case is no exception.

² The parties stipulated that this criterion is not a factor in this case.

four out of seven work days fall adjacent to an RDO. The five exceptions work four 10-hour days each week; half of their work days fall adjacent to an RDO.³

Year to year, overtime costs run between \$50,000 and \$70,000. According to Guay, overtime costs decreased somewhat in the first year after adding additional patrol officers in FY 2007-2008 and 2008-2009, but later crept back up. Between July 1, 2009, and February 15, 2011, this bargaining unit worked 2,958.5 hours of overtime. In part, the overtime reflects the large geographic area covered and the difficult terrain in parts of that area, as well as the limited staffing for each shift allowed by a police force of this size.

ISSUES AND ANALYSIS

The parties' final offers included proposed changes to Articles VI (Working Conditions), IX (Health, Safety and Welfare), XI (Seniority), XIII (Grievance Procedure), and XIV (Compensation), as well as changes in the wage schedule and longevity pay; they agreed all other contract provisions would remain unchanged. By the time of the arbitration hearing the parties had reached tentative agreements on all disputed provisions except wages and longevity pay. The Association proposed wage increases of 5% per year for two years, with no change in longevity pay. The Employer proposed wage increases of 3.5% per year for two years, plus a 50-cent increase in longevity pay. Although the Employer's written final offer does not mention retroactive pay increases, the Employer has since clarified that its final offer includes retroactive pay. The Association's final offer specifically includes retroactive pay.

The parties costed out one another's proposals. Due to differences in methodology, their figures differ regarding the impact of their wage proposals. The Employer's methodology results in a difference of

³ The Employer asserts that a "pattern and practice" exists of taking sick leave in conjunction with other paid time off. It calculated that 63.77% of sick days between July 1, 2009, and February 15, 2011, were adjacent to other paid leave, including RDO's. This evidence, while an interesting mathematical exercise, sheds no light on the statutory criteria, nor is it statistically significant on the question of "pattern and practice." In a workforce in which four out of seven work days are adjacent to most employees' RDO, it is likely that well over 50% of sick days will also be adjacent to an RDO or other paid day off. That is particularly so if one includes instances of sick leave lasting more than one day. In a three-day work week, a two-day bout of illness will always fall next to an RDO; in a four-day work week, a two-day bout of illness has a 67% chance of falling next to an RDO. Even a one-day illness has a 67% chance of falling next to an RDO in a three-day work week.

approximately \$23,500 in the cost of the two parties' proposals over the two-year contract; the Association's methodology results in a difference of approximately \$28,900. Part of the difference arises out of a disagreement regarding the number of positions included in the calculations. The Association's calculations omitted positions that were vacated and replaced during 2008 through 2010, and used probationary rates for the officers who were hired as replacements for the years in which they were probationers. The Employer's calculations included all the budgeted FTE's in each year.⁴ The Association reduced or omitted cost figures for three bargaining unit members whose wages and benefits are partially or fully paid by other governmental units by contract with the Employer; the Employer included those figures. The Association also used different cost figures for longevity pay, FICA, unemployment, Workers Compensation, and Police Retirement for some bargaining unit members.

I will use the Employer's calculations of the cost impact from the parties' wage proposals. The budgeted FTE's were filled other than for any period required to hire replacements, and the officers who actually occupied those positions will receive retroactive pay for the period when they served. Using the Employer's calculations does not disadvantage the Association; if anything, it tends to reduce any concern over ability to pay, by decreasing the difference in the fiscal impact of the two proposals. The Employer calculates the cost of the wage and benefit proposals as follows:

Party Proposal	2009-2010 Increase	2010-2011 Increase	Total Increase
Employer	\$61,369.07	\$32,678.17	\$ 94,047.24
Association	\$72,058.50	\$45,488.41	\$117,546.91

ABILITY TO PAY

The City of Anaconda was a "company town" for the Anaconda Copper Company, which ran a large copper smelting operation near the edge of the city. In 1980, Anaconda Copper's successor closed the smelter and abandoned its open-pit copper mine in nearby Butte, leaving behind a Superfund site. The

⁴ According to the Employer, bargaining unit members who left will receive checks for retroactive pay, as has occurred with other bargaining units where retroactive pay was negotiated.

population of Anaconda has dwindled, from more than 35,000 in the 1960's, to around 20,000 in the 1980's, to its current population of less than 9,000. Between 2000 and 2008, Deer Lodge County lost 4.2% of its business establishments; this compares with a 17.2% increase state-wide. In 2009, 17.0% of Deer Lodge County's population was estimated to live in poverty; this compares with 15.0% state-wide. Average wages of \$28,576 placed it 32nd out of 56 counties in Montana in 2009. Deer Lodge County's unemployment rate as of February 2011 was 9.3%, the 43rd highest rate of unemployment out of 56 counties.

The Employer's General Fund balance was negative at the start of fiscal year ("FY") 2005-2006. It went into positive territory by the end of that fiscal year, to \$496,216, and has risen in each fiscal year since. The General Fund balance at the end of FY 2008-2009 was \$1,502,538. Public Safety fund balances have been less consistent. At the start of FY 2005-2006, the Public Safety fund balance was \$70,796; it had risen to \$98,456 by the end of that fiscal year and to \$115,271 by the end of FY 2006-2007, but dropped in the next two years, to \$82,737 at the end of FY 2007-2008 and \$25,079 at the end of FY 2008-2009. Budgeted expenses for Public Safety have been less than actual expenditures in recent years, requiring year-end transfers from other funds (primarily the General Fund) since at least FY 2007-2008.

In early 2011, the Employer implemented fees for certain police services that previously were provided at no charge, and increased other fees. Examples of new or higher fees included service of various documents, copies of reports, and booking fees. Those fees will be used to fund law enforcement operations.

NorthWestern Energy began constructing a new power generating station known as Mill Creek just outside Anaconda in 2009, and began operations at there in January 2011. Construction of Mill Creek increased the local tax base, and is expected to increase it further. The increase in the tax base decreased property taxes for residents and small businesses. By state law, the increase in taxable value from Mill Creek was offset by reducing the total number of mills the Employer could float, from 255.71 in FY 2009-2010 to 135.98 in FY 2010-2011. Revenues from floating mills are projected to drop from \$2,907,934 in FY 2009-2010 to \$2,411,741 in FY 2010-2011, a total of \$496,203. \$480,051 of this decrease will be offset by the Employer's share of revenues from Mill Creek, for a net revenue loss of \$16,152. County Executive Rebecca

Guay testified it remains to be seen whether Mill Creek will improve the Employer's revenues in future years, but that she is hopeful.

As part of the Mill Creek project, the Employer was required to develop water and sewer lines and other facilities to service the plant. A Tax Increment Finance Industrial District ("TIFID") was established; its revenues were expected to pay the cost of the bonds to finance the improvements, as well as to augment various funds in surrounding taxing jurisdictions. The Employer began receiving revenues from the Mill Creek TIFID in the 2010-2011 fiscal year ("FY"). Those revenues have been less than projected for that FY.

In summary, the picture painted by the evidence is of a governmental unit that struggled back from the brink of insolvency, and that shows both continuing steps to stabilize its finances and the potential for progress. Much of the potential for progress has been toward the end of the term of the contract in dispute, or remains to be realized. Had the parties reached agreement in 2009 in the ordinary course of bargaining, they would have based the wages for this contract on conditions and projections as they were at the time. The wages to which they agreed would have remained in effect despite subsequent economic changes, both positive and negative.

In proposing the mix of a 3.5% wage increase and a jump in longevity pay, the Employer acknowledged that it had the ability to pay the cost of that proposal, totaling \$94,047.24. On this record, it cannot be said that there is an absolute inability to pay the additional wages proposed by the Association; however, it is clear that doing so would be a significant increase in law enforcement payroll costs. This factor is not determinative as to the appropriate wage raise, but does point toward the Employer's proposal.

ABILITY TO ATTRACT AND RETAIN PERSONNEL

The most recent contract, whose term ran from July 1, 2007 to June 30, 2009, was signed in March 2009. The immediately prior contract, whose term ran from July 1, 2002 to June 30, 2006, was signed in May 2004. The delays in finalizing contracts have delayed implementation of changes, including in wages. Employees in this bargaining unit have not received a general wage increase since March 2009, when the 2007-2009 contract was signed.

Guay testified the Employer added one FTE to this bargaining unit FY 2007-08, and another in FY 2008-09; it has since maintained the 2009 staffing levels. Since 2006, seven officers have left for positions in other jurisdictions, some of which involved relocating or undertaking a lengthy commute from their homes in Anaconda. An eighth was offered a position in Butte, 30 miles away, but elected to remain with the Employer. Six others have left in other circumstances.

Each time the Employer has had occasion to hire in this bargaining unit since 2006, after administering written tests and interviews, the number of qualified candidates has exactly matched the number of vacancies.

The Employer's retention and hiring experience is worrisome. Losing 13 officers out of this small force in less than five years is substantial turnover; ideally, a hiring pool for their replacements would include the possibility of a choice among candidates. The Association's witnesses credibly testified to the negative impact on morale from the recurring delays in finalizing new contracts, resulting in lengthy wage freezes in each of the past two contracts, as well as the one at issue. However, it is not surprising for a small rural law enforcement department to find itself serving largely as a springboard for new officers. Longevity pay provides an incentive for experienced officers to remain rather than move to a new jurisdiction. This argues marginally for the Employer's proposal to address retention concerns, albeit the larger base wage increase proposed by the Association would also likely enhance the initial ability to recruit.

OVERALL COMPENSATION PRESENTLY RECEIVED

The record does not reflect significant impact from this factor in choosing between the two proposals for wages.

COMPARISON WITH COMPARABLE COMMUNITIES

The interest arbitration process does not have as its goal bringing wages in the subject jurisdiction to a level that equals or exceeds those of the comparators, nor even to one that represents the average wages of the comparators. Rather, if one has chosen comparators that reflect a fair cross-section of comparable jurisdictions, the interest arbitration process should maintain the subject jurisdiction's relative standing vis-a-

vis those comparators. In this regard, the result of interest arbitration should approximate the result the parties themselves would have achieved had bargaining led to a final agreement. Absent extraordinary and locally isolated changes in the subject jurisdiction's economy, one would not expect bargaining to result in wage increases so out of step with similar jurisdictions as to change relative standings significantly.

The parties offered different mixes of communities as comparators; the only overlap was that the Employer provided copies of contracts from three of the Association's proposed comparators. Particularly as an out-of-state arbitrator, the lack of agreement on comparators, or history of agreed-upon comparators, renders much of the comparator evidence almost unusable. In my own state of Oregon, I am often aware of local conditions that would make jurisdictions of similar size wildly inapposite as comparators. Examples of such conditions include nearby large government installations or tourist attractions; proximity to metropolitan areas; and good or bad times for a predominant economic activity (e.g., farming or timber) or for a large employer. The record does not contain the kind of evidence that would provide me with those tools for analysis of Montana jurisdictions or a logical choice among potential comparators.

I will, instead, take another tack. The only remaining disputed provision is the amount of the wage increase. This bargaining unit's wages are at or near the bottom of the wage scales of the Association's chosen comparators for each rank and level of experience. The Association argued that it should get closer to average. In negotiations, the parties had the opportunity mutually to determine whether it was time to change this bargaining unit's relative prosperity vis-a-vis other communities, one way or the other; they did not do so. I therefore will look primarily at the limited evidence of wage movement in 2009-2011, the period covered by the contract to be finalized in this interest arbitration.

The following table summarizes the wage movement information that can be gleaned from the comparators' contracts in evidence. Some of those contracts show only the wage scales for the term of that contract, not changes from the prior contract. I have taken into account the periods both immediately before and immediately after the 2009-2011 timeframe at issue. If wage movement could be not determined, the comparator is omitted.

Jurisdiction	Pre-2009	2009-2010	2010-2011	2011-2012
Butte-Silverbow			7%-8% (calculated from wage scales)	
Columbia Falls			2% (calculated from wage scales)	2% (calculated from wage scales)
Glendive	3.25%	3.25%	2.25%	2.25%
Havre		2% (calculated from wage scales)	3% for last 6 months (calculated from wage scales)	
Laurel	4.675%	4.375%		
Lewistown	4.5%	COLA (within range of 3-7%)	COLA (within range of 3-7%)	
Livingston		2.5%	2.5%	
Miles City		2% (calculated from wage scales)		
Montana HP		8%		
Whitefish		1-step raise (equal to CPI)		2-step raise, but wage freeze at 6/30/10 rates

In summary, except for larger jurisdictions such as the State of Montana and Butte-Silverbow, Montana jurisdictions have negotiated modest wage increases during the economic downturn of the past few years. This factor argues for the Employer's proposal, which is toward the high end of the range of recent wage increases among the smaller jurisdictions in evidence.

STIPULATIONS OF THE PARTIES

The parties have stipulated to inclusion of their tentative agreements in the 2009-2011 contract, with no other changes beyond the wages that remain in dispute. The text of the tentative agreements is set forth in the Award portion of this Decision and Award. Those stipulations do not impact the analysis of the appropriate wage increase.

OTHER TRADITIONAL FACTORS

No evidence exists of other traditional factors that would affect the amount of the wage increase.

SUMMARY

No single factor overwhelmingly supports either party's wage proposal. However, on balance, the statutory factors point toward the Employer's wage proposal. This is particularly so in view of the difficulties with retention (addressed by an increase in longevity pay, which encourages trained officers to remain in the community) and the modest wage increases negotiated in communities of similar size. I therefore will award the Employer's wage proposal, retroactive to the start of the 2009-2011 contract.

The two year contract term will expire in less than a month. I strongly recommend that the parties work together to negotiate a successor contract soon, utilizing the resources available to them to reach agreement on disputed provisions through mediation and factfinding. Prompt agreement on a successor contract likely will reduce the adverse impact on morale to which several witnesses testified, arising out of the lengthy delay in finalizing this contract.

AWARD

The final agreement will include the Employer's proposal of wage increases of 3.5% in each year of the two-year contract, plus an increase of fifty cents in longevity pay, retroactive to July 1, 2009. By stipulation of the parties, the tentative agreements are included in the final agreement.⁵ Italics (*abc*) mean new or changed language from the prior contract. Strikethrough (~~abc~~) means deletion from the prior contract. Except as set forth below, all other provisions of the prior contract remain unchanged.

⁵ I have corrected obvious typographical errors in the stipulated tentative agreements provided to me. In particular, in Article XIV, the "Overtime and Call Out" provisions were erroneously numbered as paragraph "A" rather than "B;" within paragraph C, the new subsection 3 was erroneously numbered 2. Those corrections do not affect the substance of the tentative agreements. I have included the Employer's calculation of the wage scales that result from the award of its wage proposal, without doing the calculations myself. If those calculations are erroneous, the wage rates awarded are those that result from applying a 3.5% annual increase to the wage rates that were in effect as of July 1, 2008.

ARTICLE VI: WORKING CONDITIONS

A. WORKDAY – WORKWEEK – SHIFT ROTATION

~~7. **LAKE PATROL:** The Lake Patrol shall remain as a prerogative of the Employer. The Employer may promulgate a policy to formulate the basis upon which the patrol is conducted. It is recognized that this is a unique position and, therefore, is not subject to various provisions of this Agreement such as no split shifts, methods of dispatch, call outs, and the manner in which the shift is operated. The provisions regarding holidays, vacations, leave, grievance procedure, etc., shall continue to apply to Lake Patrol.~~

ARTICLE VI: WORKING CONDITIONS

C. PAST PRACTICE

~~4. Time and one-half for all employees who work a holiday;~~

ARTICLE VI: WORKING CONDITIONS

E. ADMINISTRATION OF THE AGREEMENT

~~The Employer agrees to provide copies of this Agreement and any amendment or supplement hereto to each of its managerial and supervisory employees, and to conduct such educational programs among them as is necessary to ensure that they fully understand the provisions of the Agreement. The Association agrees to assist in such educational programs if requested to do so by the Employer. The failure of subordinates of the Employer to have been advised or to understand the provisions of the Agreement shall not constitute an excuse for non-performance or non-compliance of the Agreement by the Employer.~~

The Employer agrees to provide copies of this agreement and any amendments or supplement hereto to each police officer.

ARTICLE IX: HEALTH, SAFETY AND WELFARE

A. HEALTH AND ACCIDENT INSURANCE

The Employer shall pay the same amount provided on behalf of other County employees toward the cost of a health insurance plan for its employees, spouse and/or dependents. For the term of this Agreement, the Employer shall contribute ~~five hundred and five dollars (\$505.00)~~ *Five Hundred Thirty-Six Dollars (\$536.00)* per full-time bargaining unit member per month.

ARTICLE XI: SENIORITY

A. For part-time employees, seniority will be determined on a prorated basis. A .5 FTE employee will require two years of service to equal 1.0 FTE. Seniority means the length of continuous service within the Law Enforcement Department since the employee’s last date of hire, said seniority to be used for accrual of benefits, scheduling of vacations, and the leaves.

ARTICLE XIII: GRIEVANCE PROCEDURE

- A. ~~Employees selected by the Association to act as Association Representatives shall be known as "Stewards." The names of four (4) employees selected as Stewards and the name of other Association Representatives who may represent employees shall be certified in writing to the Employer by the local Association and the individuals so certified shall constitute the Association Grievance Committee. A Grievance Committee Chairman shall be selected by the Committee.~~
- B. ~~No employee at any stage of the grievance procedure shall be required to meet with any Administrator without Association representation.~~
- C. ~~A grievance shall mean a complaint by an employee that there has been a violation, misinterpretation or misapplication of the provisions of this Agreement or of established grievance procedure by the Employer.~~
- D. ~~Departure from the established grievance procedure by the Employer shall cause the grievance to proceed to the immediately following step. Departure from the established procedure by the Association shall, at other than the first step, cause the grievance to proceed to the immediately following step. Departure from the established procedure by the Association at the first step shall nullify the grievance.~~
- E. ~~Any action taken by the Employer or any action of the Employer which causes an employee(s) harm, either financially, physically or with respect to employment status, that is subsequently found to have been inappropriate, shall be promptly corrected and the employee(s) shall be furnished retroactive relief to the extent of the injury suffered.~~
- F. ~~The parties herein agree that informal discussion can be beneficial and is encouraged; however, if the absence of or inability of such discussion to resolve a problem exists, any grievance or dispute which may arise between the parties, including the application, meaning, or interpretation of this Agreement shall be settled in the following manner:~~

STEP I: ~~Any employee who is a member of the bargaining unit who believes his/her rights have been violated shall report the fact in writing to a Steward within ten (10) working days of the aggrieved. The Grievance Committee shall meet within five (5) working days from receipt of the grievance. At least three (3) members must be present to form a quorum. The Grievance Committee will decide if the grievance is justified or not.~~

- A. ~~If the Grievance Committee decides the employee's grievance is not justified, the Chairman shall notify the employee to that effect. The employee may appeal to the Association as a whole within ten (10) working days, and the Association membership will decide the justification of the grievance at the next scheduled meeting by referendum vote.~~

~~Should they decide the grievance is justified, the Grievance Committee shall proceed with the grievance procedures.~~

- B. ~~If the Grievance Committee decides the grievance is justified with or without the presence of the aggrieved employee, they shall take up the grievance or dispute with the employee's department head, or appropriate authority, within five (5) working days.~~

~~The department head, or appropriate authority, shall attempt to adjust the matter and shall respond in writing to the Grievance Committee within five (5) working days.~~

~~**STEP II:** Should the reply of the Department Head, or appropriate authority be unsatisfactory, the Grievance Committee shall, within five (5) working days from the due date of the response from the department head, take up the matter with the City-County Chief Executive. The Chief Executive or his/her designee will discuss the facts of the case with the Grievance Committee and shall submit his/her decision in writing to the Grievance Committee within ten (10) working days.~~

~~**STEP III:** Should the reply of the City-County Chief Executive be unsatisfactory, the Grievance Committee shall, within ten (10) working days from the date of the City-County Chief Executive's response, appeal such decision to the Commissioners. The Commissioners or their designee and the union will meet within ten (10) days to schedule an appeal hearing. The Commissioners will render their decision in writing to the Grievance Committee after their next regularly scheduled meeting.~~

~~**STEP IV:** If the reply of the Commissioners is unsatisfactory, the Association shall notify the Commissioners within five (5) days of its decision to submit this controversy to arbitration. Thereupon, within ten (10) working days after such written notice is delivered to the Chief Executive, the Chief Executive and the Association shall jointly request the Board of Personnel Appeals, Department of Labor and Industry, State of Montana, to supply both parties with an identical list of names and addresses of five (5) persons who have indicated a desire to provide service as arbiters.~~

~~The Association and the Chief Executive shall within five (5) working days of the receipt of such lists, meet and by alternately striking names from the list select the arbiter by requesting the services of the last name remaining on the list.~~

~~The arbiter shall be requested to render a decision within thirty (30) calendar days and such decision shall be final and binding upon both parties. The arbiter shall have no authority to alter in any way the terms of this Agreement. The arbiter shall notify both parties of his/her decision in writing. All expenses incurred in the grievance procedure, including but not limited to attorney fees and reasonable expenses, shall be paid by the losing party. The arbiter shall be advised that in the event of a split decision on the grievance, that the arbiter shall divide the cost of the arbitration between the Employer and the employee. The arbiter shall be expressly informed of this provision.~~

~~G. It is understood by both parties to this Agreement that an appointed authority may replace any titled position mentioned in the above stated grievance procedure, providing that such appointee shall have full authority to act in the capacity of the person(s) being replaced.~~

~~A. *Before filing a written grievance, the employee and/or the union shall discuss the problem with the supervisor and/or the employer within fourteen (14) days of first knowledge that a grievance exists. Any grievance or misunderstanding which cannot be settled between the Employer and the employee must be taken up with the Employer by the Business Representative of the Union, or anyone designated by the Union within thirty (30) days of the alleged infraction.*~~

~~B. *The parties agree that any differences involving the interpretation of this Agreement, which cannot be settled among themselves, may be submitted to arbitration upon request of either party. The written notice to proceed to arbitration must be submitted to the other party within five (5) days after agreement is reached that it cannot be settled between the parties.*~~

- C. *The party desiring such arbitration shall give to the other party written notice, as specified above, that the matter is to be submitted to arbitration and shall specify the question or questions to be arbitrated. The parties will use the Board of Personnel Appeals, State of Montana, to obtain a list of five (5) names to arbitrate the dispute. The arbitration hearing shall be conducted within forty-five (45) days after the arbitrator is selected, unless the selected arbitrator is unavailable.*
- D. *The arbitrator shall have authority only to deal with the differences between the parties involving the interpretation of this Agreement and shall not have authority to alter or add to the terms of this Agreement or the wage scales, which are a part hereof.*
- E. *The fees and expenses of the arbitrator shall be shared by the losing party.*
- F. *All decisions of the arbitrator made within the scope of the submission and within the authority of the arbitrator as defined in this Article, shall be final and binding on the Employer and the Union.*
- G. *Time limits as defined in this Article may be extended by mutual agreement between the parties, but not otherwise. Saturdays, Sundays, and Holidays are not considered days.*
- H. *Failure to abide by the specific time limits provided in this procedure by either the Employer or the Union, at any step, unless mutually agreed otherwise in writing, shall automatically result in the position of the party violating such limits, being considered as null and void and the position of the opposite party being fully upheld.*
- I. Scope

This Agreement constitutes the entire Agreement between the parties, and no verbal statements or past practices shall supersede any of its provisions.

ARTICLE XIV: COMPENSATION

B. OVERTIME AND CALL OUT

- 4. *All officers will receive a Twelve Dollar (\$12.00) meal voucher after four (4) hours of overtime.*

C. TRAINING

Employees will be required to attend any first aid training and CPR, and shall be compensated at one and one-half (1 ½) time the employee's regular rate of pay, *consistent with the overtime provisions of this agreement* unless the training occurs during the employee's shift.

- 3. *One (1) extra personal leave day will be granted for any officer who passes a POST Certified Physical fitness Test. APPA agrees that the members will take POST Test on off hours at no overtime expense and the personal leave day can only be used when no overtime is caused.*

ADDENDUM "A"

HOURLY RATES

POSITION

July 1, 2009 – June 30, 2010

Captain	\$17.82 \$ 19.10/hr
Lieutenant	\$17.26 \$ 18.50/hr
Sergeant	\$16.81 \$ 18.01/hr
Patrolman	\$16.40 \$ 17.57/hr
Probationary Patrolman	\$13.37 \$ 14.32/hr

July 1, 2010 – June 30, 2011

Captain	\$18.45 \$ 19.77/hr
Lieutenant	\$17.87 \$ 19.15/hr
Sergeant	\$17.40 \$ 18.64/hr
Patrolman	\$16.98 \$ 18.18/hr
Probationary Patrolman	\$13.84 \$ 14.82/hr

LONGEVITY

Captain	\$ 25.00 \$25.50 month/year
Lieutenant	\$ 22.50 \$23.00 month/year
Sergeant	\$ 20.00 \$20.50 month/year
Patrolman	\$ 17.00 \$17.50 month/year



LUELLA E. NELSON - Interest Arbitrator

WITNESSES FOR THE ASSOCIATION

Jerrold Haxby
Ryan Eamon
Cody Hanson
Stephen Ernsberger
Kent Reisenauer
John Sullivan

WITNESSES FOR THE EMPLOYER

Rebecca Guay

EXHIBITS

Joint

- 1 Collective Bargaining Agreement 2007-2009

Employer

- 1 Employer payroll FY 2010-2011
- 2 Employer proposal cost-out
- 3 Average hourly rate w/o Employer-mandated contributions
- 4 Average costs of Employer contributions per hour per employee
- 5 Average hourly compensation rate, including benefits, etc.
- 6 Cost of contractually mandated benefits
- 7 Average overtime by gender
- 8 Law Enforcement leave analysis
- 9 2008 County Business Patterns
- 10 Percent change in County business patterns 2000-2008
- 11 County business patterns for selected jurisdictions (“comparators”)
- 12 Area of Montana Counties
- 13 Poverty and household income estimates for Montana counties
- 14 Poverty and household income estimates for Deer Lodge County
- 15 County unemployment rate rankings
- 16 Bar chart of the comparators’ unemployment
- 17 Quarterly census of employment and wages, 2009
- 18 County comparators from #17
- 19 Distribution of Floating Mill and Mill Creek TIFID revenues
- 20 Montana Citytown Government expenditures by function
- 21 County average FY expenditures by function
- 22 Tax revenue distributions for Employer
- 23 Tax revenue distributions for Employer for each final offer
- 24 Law enforcement funds and General Fund revenue 2006-11
- 25 Law enforcement funds and General Fund expenditures 2006-11
- 26 Subsidy to police from general fund
- 27 Cost-out of Association proposals

- 28 Law Enforcement Department comparisons with comparators and some cities
- 29 Klepper Company work for Employer
- 30 Management's response to proposals on Clerical Teamsters

Association

- 1 Collective Bargaining Agreement 2007-2009
- 2 Amended Association final offer
- 3 Employer final offer
- 4 Job listing from Montana State Hospital
- 5 Community, Counseling, and Correctional Services ("CCCS") START new prison facility
- 6 Montana State Prison description
- 7 Web page print-outs from CCCS youth offender facility in Galen
- 8 Contract history, work
 - A Amounts paid to Klepper
 - B Amounts paid to Delham
- 9 County Commissioner's meeting minutes
- 10 County Commissioner's meeting minutes
- 11 Police Officer monthly schedules July 2008 through April 2011
- 12 Print-outs of information on NorthWestern Energy and Mill Creek plant
- 13 County financial statements 2006-09
- 14 Fund balances January 2009 through March 2011
- 15 Expenditure budget report for multi-year actuals
- 16 Expenditure budget report form 2010-2011
- 17 Police Department hiring pools, departures
- 18 Newspaper article on police raising fees, resolution 11-07
- 19 Cost-out of Employer's proposal
- 20 Other collective bargaining agreements
- 21 Census information
- 22 Wage rate information by population, from Montana DOLI
- 23 Resolution 10-33
- 24 Wage and benefit study for 2009
- 25 Wage and benefit study for 2010
- 26 Large map of Anaconda-Deer Lodge County
- 27 Side by side comparison of disputed articles
- 28 Haxby's diploma
- 29 Course description for Business Information Systems curriculum