

In the Matter of Factfinding Between	)	
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	)	
International Association of	)	
Fire Fighters, Local 448 (Union),	)	
	)	
and	)	REPORT
	)	
City of Helena,	)	
(City)	)	
	)	
_____	)	

BEFORE: David W. Stiteler, Factfinder

APPEARANCES:	For the Union:
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	For the City:
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HEARING LOCATION: Helena, Montana

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## INTRODUCTION

The Union and the City are parties to a collective bargaining agreement with a term from July 1, 2011 through June 30, 2014. They began negotiating a successor contract early in 2014. Through the course of bargaining and mediation, they resolved all but six issues. They selected David W. Stiteler as the factfinder from a list provided by the Board of Personnel Appeals to issue a recommendation on the remaining issues.

During a hearing before the factfinder, the parties had the full opportunity to present information relevant to their respective positions. They made oral closing arguments, and agreed to waive the requirement that the factfinder issue his report within 20 days.

## FINDINGS OF FACT

### *Background*

1. The City is a first class city in Montana. The other first class cities are Billings, Missoula, Great Falls, Bozeman, Butte, and Kalispell. Billings is significantly larger (by about 40,000) than the next largest, Missoula. The City is the second smallest on the list, larger only than Kalispell and about 80,000 smaller than Billings.

2. Sean Logan is the City's fire chief, a position he has held about two years. He has been with the Department about 19 years, and was the Union's treasurer during a 2010 interest arbitration. Fred Stout is the president of the Union.

3. There are about 32 members in the Union's bargaining unit; 29 of those are in suppression. There is money in the budget to restore a firefighter position that was lost a few years ago.

4. The City's fire department has two fire stations. One is located next to the civic center and the other is on the east side of town.

The department has one ladder truck. Because of size factors, that truck is stationed at the eastside fire station.

5. The parties started bargaining a successor contract in February 2014. They were able to reach agreement on most of the issues in dispute. Six issues remain unresolved.

6. Among the issues resolved were wages, longevity, certification pay, an increase in minimum call-in pay, and acting pay for battalion chief. The wage agreement provides that wages will be based on the median level of comparable jurisdictions. The City calculates the cost of these economic agreements as \$94,604 over the three-year duration of the successor contract. The parties also agreed to several language issues.

7. The Union proposed four of the unresolved issues: (a) adding the dollar amount of the monthly health insurance premium to the employee's gross pay for calculating retirement benefits; (b) equalizing employee paychecks by dividing annual pay into 26 equal amounts; (c) adding a minimum staffing provision; and (d) basing the vacation accrual rate on hours worked.

8. The City proposed the remaining two unresolved issues: (a) removing language in the current agreement that gives employees the right to use certain City facilities (basement) for personal undertakings; and (b) adding language that would allow the City to hire 12-hour shift firefighters who would work from 9 a.m. to 10 p.m.

### ***Basement***

9. Appendix A, Prevailing Rights, includes the following provision:

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.

10. The City proposes to delete the Basement provision. The City also proposes to add the following language to Appendix A:

The City recognizes that in the past employees have used fire stations for personal undertakings, such as mechanical work on and washing of personal equipment. The removal of the basement section from prevailing rights carries over to fire stations and employees may not use either location for such personal undertakings.

11. There have been no liability claims against the City because of the Basement provision, nor have the City's liability insurance rates been adversely affected.

12. No other City employees have a similar right, either contractually or by practice, to use City facilities for personal purposes.

13. There have been citizen complaints about employees observed engaging in personal activities, such as washing a personal vehicle, at a fire station.

14. The amount of personal use of City facilities has diminished over time and is no longer as common as in the past.

### ***Paycheck Equalization***

15. The Union proposed adding the following language to the compensation section of the agreement:

All personnel's wages will reflect their regularly scheduled annual hours worked, with any additional regular pay and longevity divided equally into the 26 pay periods, with appropriate overtime worked added per pay period.

16. Before 2010, pay for City firefighters was equalized—that is, it was divided more or less equally into 26 installments.

17. In 2010, the parties went to interest arbitration over wages. One of the central elements of that dispute was whether hourly or monthly wages should be used for comparative purposes. The Union argued for hourly figures since the employees are hourly employees as a matter of law. The City argued that monthly figures should be used since that is how salary amounts appeared in their contract. Arbitrator Jeff Jacobs agreed with the Union, concluding that firefighters were hourly employees.

18. At some point after the interest arbitration award, the City changed its method of paying firefighters to reflect hours worked in a given pay period. The result is that, because of the nature of firefighters' work schedules, paychecks may vary considerably from pay period to pay period. In one example, the difference between two paychecks for one employee was \$753.51.

***Vacation Accrual Rate***

19. The current contract includes the following language about vacation accrual:

2. Calculation of Vacation Leave Credits

Earned vacation leave credits are calculated as follows:

Years of Employment	Days Earned Per Year	Hours earned the first two pay periods of each month
1 day – 10 yrs	15	5
11 yrs – 15 yrs	18	6
16 yrs – 20 yrs	21	7
Over 20 yrs	24	8

Employees begin earning leave credits the first day of employment in a job, which has pre-scheduled hours to work.

20. The Union proposed amending the existing language so that it covers support staff—those bargaining unit members who work eight-hour days and for whom the normal work year is 2,080 hours. The Union further proposed adding the new language below covering vacation accrual for suppression staff whose typical work year is about 2,435 hours.

Earned vacation leave credits are calculated as follows:

Years of Employment	Hours Earned Per Year	Hours earned the first two pay periods of each month
1 day – 10 yrs	140.48	5.85
11 yrs – 15 yrs	167.57	7.02
16 yrs – 20 yrs	196.66	8.19
Over 20 yrs	224.76	9.3

Employees begin earning leave credits the first day of employment in a job, which has pre-scheduled hours to work.

21. Certain benefits for public employees in Montana are established by statute. These include holidays, vacation, and sick leave. The sick leave statute expressly defines the work year for purpose of accruing sick leave as 2,080 hours. The annual leave statute does not contain a like definition.

The statutory benefits were in place before the legislature adopted the law conferring the right to bargain on public employees. Because benefits such as vacation are among the topics that labor organizations often seek to bargain over, there has been some tension between the statutory benefits and employees' bargaining rights.

22. That tension has been addressed by several attorney generals' opinions since the public employee bargaining law was adopted. In 1979, then-Attorney General Mike Greely considered whether certain non-teaching employees were covered by the leave statutes. He held that they were, and further concluded that the leave statute "establishes maximum and minimum benefits which may not be varied through collective bargaining or other negotiation."

In 2010, then-Attorney General Steve Bullock held that a public employer may bargain contract language providing for 10 hours of holiday pay for employees who work a 4/10 schedule, concluding that such an agreement was not contrary to any statute. He reaffirmed, however, Greely's 1979 opinion that "where benefits are statutorily defined, they cannot be changed by collective bargaining."

23. Section 21 of the current agreement addresses work schedules. The subsection concerning suppression staff schedules includes this sentence: "Hours worked over 2080 will not be used as a basis for additional sick and/or vacation credit." That language was added in 2010 based on a Union proposal offered in response to the City's efforts to change the work schedule. The Union has not proposed deleting that language in conjunction with its vacation accrual proposal.

## ***Minimum Staffing***

24. The current contract contains the following provision that relates to staffing:

Section: 19

Section Title: Battalion Composition

Under the 24/48 shift, there are a total of three (3) battalions. Each battalion will be composed of a minimum of one (1) Battalion Chief, two (2) Captains, and two (2) Lieutenants.

25. The Union proposes to amend Section 19 by adding the following to the existing language:

Fire station staffing will consist of a minimum of three (3) personnel, one of which must be a Fire Officer. This will be the minimum staffing level in which a Station is considered open. In cases of reduced staffing, the Station not meeting the minimum staffing level will be closed until minimum staffing can be returned.

In addition, each daily shift will have an Officer-In-Charge (OIC), either Battalion Chief or Captain (in the absence of a Battalion Chief). This OIC will not count toward the Fire Station minimum staffing.

26. The minimum number of suppression personnel per shift has fluctuated over the years. Around 2000, it increased from six to seven. In 2008, the City decided not to fill a position vacated by retirement, which reduced the number back to six. There may be as many as nine on a shift, though most shifts are either six (40.6%) or seven (36.4%). City figures show that the average number of firefighters per shift was 6.8 over the past few years. The basic staffing during a shift is a battalion chief and two firefighters at one station and a captain or lieutenant and two firefighters at the other station.

## ***4th Shift***

27. The current contract contains two subsections in Section 21 addressing shift matters for suppression staff. The City proposes to add a third subsection as follows:

C) Firefighters hired after July 1, 2014 may be assigned to the suppression shift on a twelve (12) hour peak demand schedule from 9:00 a.m. (0900 hours) to 10:00 p.m. (2200 hours). The parties agree that this twelve (12) hour shift is for the mutual benefit of the employer and employee and will not be used as a basis for overtime claims. Hours worked over 2080 will not be used as a basis for additional sick and/or vacation credit.

28. The City reviewed its pattern of emergency calls over the past few years. The figures show that about 72% of the incidents were for rescue and emergency medical services. The figures further show that the largest percentage of incidents occur between 9 a.m. and 9 p.m.

***Insurance Benefit included in FURS Calculation (125 Plan)***

29. The current contract contains the following language regarding health insurance:

The City will contribute to health insurance premiums in the same amount as it contributes to the same plan for City employees not included in the bargaining unit. Employees will participate in the City of Helena's dental, vision and life insurance program at no cost to the employee.

30. The Union proposes to amend the above language by including language that would add the amount the City pays towards health insurance premiums to the employee's gross pay to increase the employee's pay for calculating retirement contributions by the City, the employee, and the State of Montana.<sup>1</sup>

31. Four of the six comparable jurisdictions provide this benefit to their firefighters. The benefit was put in place in the comparable jurisdictions after employees there agreed to pay freezes.

32. The current insurance premium paid by the City is \$673 per month. Adding that amount to employees' compensation would boost the annual salary for retirement calculations by \$8,076.

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<sup>1</sup> The proposed language is about two pages long. The parties have it already so no useful purpose is served lengthening this report by typing it in here.

The City's contribution rate to FURS is 24.67%. A compensation increase of \$8,076 would increase the City's FURS contribution by \$1,992.35 a year for each firefighter.<sup>2</sup>

## DISCUSSION

For the most part, the parties did not present their cases using the typical framework used in interest disputes. That framework includes such factors as the employer's ability to pay, comparability, attraction and retention of employees, and the cost of living. Other than some limited information about external and internal comparability on some of the issues, the evidence mostly addressed legal and technical matters. Their approach shapes my analysis here.

The parties agree that the other first class cities in Montana serve as appropriate comparables despite the wide disparity in population. For example, Billings is more than three times larger than the City. Four of the comparables have significantly higher populations, and none is within 10% of the City's population, above or below. Nevertheless, even though imperfect, the agreed-on comparables shape the analysis.

I would characterize three of the six unresolved proposals as major issues, two as relatively minor, and one as somewhere in between. I will address the issues I see as less significant first and the three major proposals last.

### ***Basement***

The City proposes deleting this section from Appendix A and adding language that would expressly forbid employees from using fire stations for private purposes, such as doing mechanical work on a personal vehicle. The City offers four arguments in favor of its position.

First, the City contends that allowing employees to use City facilities for personal purposes creates a potential liability issue that could cause the City's

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<sup>2</sup> The Union calculates the total cost to the City as \$63,755, based on 32 employees at \$1,992 a year. The City calculates its total cost as \$51,462; it did not provide an explanation for how it arrived at that number.

insurance premiums to increase. Second, the City argues that, if the public became aware of this contract benefit, it could make it more difficult for the City to garner public support for tax increases or bond issues. Third, the City asserts that the provision creates internal equity issues—no other City employees enjoy such a benefit and the City has denied employee requests for the right to use City facilities for personal purposes. Finally, the City contends that the provision may be contrary to a state law prohibiting a public employee from using "public time, facilities, equipment, supplies, personnel, or funds" for the employee's private business purposes.

The Union responds, in essence, that the City's proposal is a solution in search of a problem. The Union points out that there have been no liability claims or negative impact on the City's insurance. Information about citizen complaints is vague and anecdotal. That other City employees are not entitled to a similar benefit is irrelevant because of the differences between their work and schedules and firefighters' work and schedules. The Union also points out that private use of fire station facilities is at the discretion of the station officer and has been diminishing.

**Analysis.** The City's proffered explanations for the proposal are largely speculative. City advocates raised concerns about several things—increased insurance rates, loss of public support, potential legal issues—that have not occurred. Though it is not certain from the record exactly how long the basement language has been in the contract, it was clear that it was not a new addition. It has been part of the contract long enough for the City's concerns to be realized if those matters were likely to occur.

Coupled with the lack of evidentiary support for the proposal is the Union's acknowledgement that such facility use is subject to the discretion of the station officer.

Though not a hard-and-fast rule, the party proposing a change to existing language generally has the onus of establishing the need for making the change. The information offered by the City in support of this proposal did not satisfy that

burden. Consequently, I will recommend that the parties retain the current language and not include the City's proposal in their agreement.

### ***Paycheck Equalization***

The Union proposes adding language that would require the City to return to its former method of paying firefighters in relatively equal paychecks. According to the Union, its proposal would not cost the City anything. More importantly, it would provide a measure of financial stability to firefighters by allowing them to know with reasonable certainty how much they will be paid every two weeks. Union advocates also suggested that the City implemented the current paycheck process in a fit of pique over losing the 2010 interest arbitration.

The City contends that the current payroll practice is more accurate, since it is required to calculate overtime and differential hours for each pay period under either approach. Of greater concern to the City is that equalizing paychecks means that employees sometimes would receive pay for hours not yet worked, which could create difficulties in recouping money if an employee leaves employment during the year. The City also points out that all other City employees are paid based on actual hours worked so their checks are not equalized.

**Analysis.** The Union's interest in returning to the prior paycheck process is understandable. It is no doubt difficult to manage a household budget when it is not known the amount of pay one will receive from pay period to pay period. The City's internal equity argument does not hold up because no other City employees have the widely varying work schedules of firefighters.

Nonetheless, I find the City's argument about payroll accuracy to be the most compelling point on this issue. The City inaccurately treated firefighters as salaried employees under its payroll system before 2010, even though firefighters are hourly employees. It is a fact of life that a firefighter's work hours vary from pay period to pay period. It is not unreasonable that their paychecks reflect their actual work hours

and vary as well. I will recommend that the parties not include the Union's proposal in their agreement.<sup>3</sup>

### ***Vacation Accrual Rate***

The Union proposes adding language that would increase the vacation accrual rate for suppression staff by basing it on the average number of hours in a work year. Work schedules for suppression staff include about 350 more hours than the standard work year of 2,080 hours, so they would end up accruing more vacation leave than department support staff or other City employees.

The City poses three objections to the proposal. First, the City calculates the cost of the proposal at \$19,390. That cost would be on top of \$94,604 in increases already agreed to for the bargaining unit (wages, longevity, certification pay, acting pay). No other City employee enjoys this benefit, and it would be contrary to City code.

Second, the City points out that the proposal is contrary to language in Section 21 of the agreement. The language in question was proposed by the Union in 2010 to protect the 24/48 schedule. The City asserts that the Union is renegeing on the promise made in that language by submitting this proposal.

Finally, the City argues that the proposal is contrary to law. According to the City, AG Greely's 1979 opinion, which has not been overturned or overruled, held that the statutory leave sections establish maximum and minimum benefit levels that may not be changed in negotiations.

**Analysis.** There is some logic behind the Union's proposal. It is clear that firefighters are hourly employees. They work a schedule that is unlike those worked even by other 24/7 employees. It would not be unreasonable to tie their vacation accrual rate more directly to the number of hours they work per year. For several

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<sup>3</sup> This proceeding is not the proper forum to resolve the question posed by the Union that the City changed the payroll process in retaliation for the Union's success in arbitration. That issue does not factor in my recommendation.

reasons, however, I am not convinced that including the proposal in the contract would be appropriate.

In support of its proposal, the Union produced a chart showing the accrual rate for firefighters in the other first class cities. That chart shows that under the Union's proposal, the City's firefighters would accrue vacation at a higher rate, albeit by a small amount, than those in any other city, especially in the first 15 years of employment. There is no justification in the information provided for such a significant jump in the vacation accrual rate compared to the comparables.

More importantly, while I do not agree with the City's contention that the proposal is clearly contrary to law, I am likewise not persuaded by the Union's claim that the law supports its position. None of the AG opinions or the Montana Supreme Court decision provided directly addressed the question presented here. The statutes could be read as the Union suggests, but they could as easily be interpreted as supporting the City's view. Reading the leave statutes as a whole, it would be a logical conclusion that the legislature intended a work year for leave accrual purpose to be 2,080 hours, whatever leave type is at issue.

In sum, the proposal is not supported by comparison to other first class cities. Nor would it be in the best interests of the parties to recommend inclusion of a provision where questions about its legality are unresolved. I am also troubled by the conflict between the Union's proposal and the language in Section 21. For these reasons, I will recommend that the parties not include the Union's proposal in their agreement.

### ***Minimum Staffing***

The Union proposes language that would require a minimum staffing level at each station of three personnel, including a fire officer. As written, the proposal would require the City to close a station when staffing falls below that level. According to the Union, this is not an effort to dictate staffing levels for the

Department as a whole, but rather a proposal aimed at protecting the safety of employees and members of the public.

The City objects to the proposal on legal, financial, and practical grounds. The City contends that the proposal is either a permissive or a prohibited subject as an interference with the City's statutory right to manage the department. In addition, the City's estimate of the cost, due to increased overtime, would be over \$78,000. On the practical side, the City points out that the requirement of closing a station would mean increased response times. It would also cause problems because Station 1 does not have the space for the ladder truck if Station 2 were closed, and Station 2 does not have sufficient quarters to house extra firefighters if Station 1 were closed.

**Analysis.** The parties dispute the nature of the Union's proposal. The Union claims it concerns safety and is thus mandatory for bargaining. The City asserts it concerns management rights and is therefore prohibited or at best permissive.

Factfinding—or for that matter, interest arbitration—is not the forum to resolve disputes about whether a proposal must be bargained. The public employee bargaining law contains a mechanism to hash out such questions.<sup>4</sup>

The factors I found most persuasive were the practical ones. The City raised several practical concerns, and the Union offered no persuasive rebuttal to them.

The proposal would require the City to close a fire station if there were fewer than three employees on a shift at a station. There is no reasonable dispute that closing a station would result in longer response times to calls. Increasing response times is not in the interest of the public, especially considering that the overwhelming majority of calls are for emergency medical services.

The impact would be particularly problematic for incidents on the east side. A short staff would require closure of Station 2, even if the shortage was at Station 1 because Station 2 is not large enough to house relocated staff.

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<sup>4</sup> Apparently, neither the Board of Personnel Appeals nor Montana's courts have ruled on this issue. Or if they have, neither party cited any relevant case law.

Shifting staff to Station 1 has other consequences. The City has one ladder truck. That truck is located at Station 2, at least in part because there is not room for it at Station 1. If Station 2 were closed, firefighters would not have ready access to the ladder truck. In a call necessitating the ladder truck from the west or central parts of the City in particular, the response time would be lengthened even further. This too would not be in the interest and welfare of the public.

In sum, while I appreciate the Union's safety concerns, I do not believe its minimum staffing proposal is an appropriate way to address the issue because of its negative impacts. I will recommend that the parties not include this proposal in their agreement.

#### ***4th Shift***

The City proposed new language that would give it the right to hire new firefighters as 12-hour shift employees. According to the City, the proposal would improve staffing during periods of peak demand. The City emphasizes that its proposal would not affect any existing staff, nor would it eliminate the current 24/48 schedule.

The Union does not reject the proposal out of hand. Rather, the Union suggests that the issue be relegated to the labor-management committee for further discussion and consideration. The Union's position is that there are too many unanswered questions about the how the City's proposed 12-hour shift would work and its impact on current employees.

**Analysis.** The City's proposal is intriguing. If implemented, it conceivably would address interests of both parties—the Union's interest in staffing levels at fire stations (at least during the 12 hours of peak demand) and the City's interest in increased staffing flexibility.

The flaw in the proposal is that it is essentially theoretical. There is apparently money in the budget to restore an FTE that was unfunded a few years ago. Aside from that, however, the City has no plans to hire additional firefighters. Without

funding for enough 12-hour firefighters to cover the necessary shifts, the proposal is an empty promise.

That fact weighs against the proposal. Coupled with the questions about implementation that remain unanswered, I am persuaded that it would not be prudent to recommend inclusion of the proposal in the parties' contract at this time.

Although I will not be recommending the proposal, it is apparent from this proposal and the Union's minimum staffing proposal that the parties have a shared interest in taking steps to improve staffing. It would further that shared interest for the parties to continue their discussion of this topic once the contract is settled. For that reason, I will recommend that both the minimum staffing concept and the 4th shift concept be referred to the parties' labor-management committee for further consideration. Hopefully, moving this important interest from the more adversarial arena of collective bargaining to a more cooperative, problem-solving arena will lead to development of a concept that satisfies both parties' interests and that both parties can support.

#### ***Insurance Contribution Included in FURS Calculation (125 Plan)***

The Union proposes to include the City's health insurance premium contribution amount as compensation for purposes of calculating an employee's retirement benefit under FURS. As written, the Union proposes that the change be effective retroactive to July 1, 2014, though the Union would not insist on that. The Union points out that four of the comparables—Billings, Great Falls, Bozeman, and Missoula—include this benefit in their contracts with firefighters. The Union also acknowledged that it would be willing to agree to have the proposal rolled in over a two-year period.

The City asserts out that such a program is expressly prohibited under PERS and TRS, raising an internal equity concern. Although it concedes the plan is not unlawful under FURS, the City argues that the proposal is actuarially unsound because employees would receive retirement benefits far in excess of contributions to

the system. In addition, the City notes that the City's 125 plan would have to be amended before the beginning of a plan year (July 1) to allow such an option, making retroactive implementation illegal. According to the City, the proposal is also flawed in seeking to limit inclusion of the insurance contribution only for retirement calculations, because administrative rules requires that such contributions be treated as compensation for all purposes; that would increase the City's costs in calculating other forms of pay, such as differential.

**Analysis.** The Union's interest in this proposal is obvious—treating the insurance contribution as compensation for pension calculation purposes has the potential of significantly increasing employees' retirement benefit. The City's objections focus mainly on actuarial and technical issues.

The actuarial concerns are well founded. If the retirement calculation compensation for a 17-year firefighter is increased \$8,076 per year for years 18 through 20, that firefighter could retire with a pension increase of over \$4,000 per year. That increase would be the result of the significant boost in compensation for those three years, but the firefighter would receive the increased pension amount for his/her life. Paying a lifetime of increased retirement benefits when that increase has only been funded for three years could have negative impacts on the actuarial soundness of FURS over the long term. The information provided at hearing was that 13 of the City's firefighters are within three years of retirement eligibility.

The Montana Public Employee Retirement Administration stated its concern with such programs in an article in its January 2012 newsletter and in response to questions about the Union's proposal posed by the City's representative. In the article, MPERA cautioned employers to make sure that, in order to comply with the Internal Revenue Code, they treated insurance contributions as compensation for all purposes, not just retirement calculations. MPERA also explained that the practice could undermine the financial stability of a retirement system because the higher payout that results has not been properly funded.

On the other hand, as the Union points out, FURS stands apart from other public employee retirement plans in Montana in one important way. Unlike other systems covering local government employees, the State of Montana pays a large percentage of the contribution rate to FURS. The money for the State's contribution comes from a special tax on fire insurance that was established to create a fund for the benefit of firefighters.

The evidence also shows that FURS is in good shape actuarially. The system is currently funded at about 72%, but projections indicate that with expected return levels, the funding level will reach 117% in 15 years.

Another factor favoring the Union's proposal is the fact that four of the comparable cities offer this benefit to their firefighters. Adding this provision to the parties' agreement will help the City retain its overall comparability ranking.

Finally, the working career of a firefighter typically does not last as long as other professions due to the nature and demands of the job. Increasing retirement benefits addresses the shorter period for earning pension credits.

I am mindful of both the actuarial risks of imposing increased costs on FURS without corresponding funds and adding increased costs to the City for funding its portion of the proposal. I also agree that the City's technical concerns about implementation must be addressed.

Nonetheless, I am persuaded that a form of the Union's proposal should be included in the parties' agreement, mainly because the bulk of the contribution rate will come from a source of funding that was intended to benefit firefighters. I will recommend that the proposal be adopted with modifications.

#### **RECOMMENDATION**

Having considered the whole record, I recommend that the parties' bargaining dispute be settled on the following terms:

The Union's paycheck equalization proposal and the City's basement proposal should not be included in the successor collective bargaining agreement. Neither is

justified based on the information provided, and neither should stand in the way of resolving the dispute.

The Union's minimum staffing proposal and the City's 4th shift proposal also should not be included in the successor contract, but both should be referred to the parties' labor-management committee for continued discussion. The parties have a shared interest in increasing staffing, and moving those issues to the labor-management forum will allow sufficient time to explore a mutually agreeable solution to that shared interest.

The Union's vacation accrual proposal should not be included in the successor agreement. Legal concerns trump any equitable arguments. This issue needs either a legislative fix or a definitive opinion from the attorney general or courts.

The Union's FURS proposal should be included in the successor contract, with these modifications. First, the language should be modified to ensure that it satisfies Internal Revenue Code and State administrative rules requirements. Though other fixes may be necessary, at a minimum that means that the proposal must be modified to provide that the health insurance premium addition be considered compensation for all purposes, not merely retirement. In addition, the proposal should be modified to reflect an effective date of July 1, 2017.

Respectfully issued this 8th day of December, 2014.



David W. Stiteler  
Arbitrator