

**BEFORE
PATRICK HALTER
FACTFINDER**

Factfinding Case No. 3-2015

In the Matter Between

**Local 8
International Association of Fire Fighters
AFL-CIO, CLC
(Local, Union)**

and

**City of Great Falls
Great Falls, Montana
(City, Employer)**

Appearances

For the Local:	Timothy J. McKittrick, McKittrick Law Firm David J. Van Son, President, Local 8 Ricky J. Walsh, IAFF Vice President, District 7
For the City:	Sara R. Sexe, City Attorney Gregory T. Doyon, City Manager Linda Williams, Human Resources Manager Stephen A. Hester, Interim (Acting) Fire Chief

Issues

Hire-Back Overtime
Compensatory Time Use
Wages

Hearing

March 13, 2015

Post-Hearing Briefs

April 13, 2015

Findings & Recommendations

May 05, 2015

BACKGROUND

Pursuant to Article 2 - Recognition in the Collective Bargaining Agreement between International Association of Fire Fighters Local 8 and City of Great Falls, Montana, the Local is “the sole and exclusive bargaining agent for the purpose of establishing wages, hours and other conditions of employment for all uniformed members beginning when assigned to a platoon but excluding the Chief, Assistant Chief, Fire Marshal and Deputy Assistant Chief.”

Local 8, a labor organization, and the City of Great Falls, a public employer, had a collective bargaining agreement (CBA) with a term of July 01, 2013 - June 30, 2014. On August 26, 2014 the Local and City commenced negotiations for a successor CBA and continued negotiations over wages, hours, fringe benefits and other conditions of employment at reasonable times on August 27, September 08, September 10 and September 29, 2014. There were a total of five (5) bilateral sessions. The City tendered its “last, best and final offer” to the Local on September 10 and on September 29 the Local presented its “last, best and final offer” to the City. No bilateral negotiations occurred after September 29, 2014.

On October 01, 2014, the Local requested mediation pursuant to MCA § 39-31-307.¹ Mediation did not result in a resolution of issues. After mediation the next step in the dispute resolution process, in accordance with MCA § 39-31-308, is factfinding.²

Factfinding commenced on March 13, 2015. At the outset of the hearing a discussion ensued, as requested by the Factfinder, on the chronology of negotiations, proposals exchanged and issues disputed. Based on the parties’ representations to the Factfinder, there are three (3) issues subject to findings and recommendations.

¹Montana Code Annotated (MCA) § 39-31-307. Mediation of disputes, states:

If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

²MCA § 39-31-308. Initiation of factfinding – designation of fact finder, states:

- (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate a factfinding.
- (2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated the fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.
- (3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

ISSUES

There are 3 issues. On September 08, 2014 the City packaged them into a single, whole proposal (referred to as the “package proposal”) whereas the Local proposed each issue separately.

Issue one involves Article 12 - Shift Schedule at § 12.9, Hire back. The Local proposes that a firefighter on hire back³ receive compensation at time and a half (1-1/2) or overtime; its proposal would be in effect beginning the last six (6) months of the CBA’s third year. The City’s package proposal is to maintain the wording in § 12.9 providing straight-time compensation.

Issue two is Article 16 - Holidays, § 16.3, Compensatory time usage. The City initially proposed to change some of the language in § 16.3, ¶ B. The Local countered with a proposal adding the ***bold italicized words*** - - displayed below - - to the current wording in ¶ B.

- B. Employees shall be granted usage of compensatory time at times that the manning of shifts is above minimum staffing levels, except for situations of ***emergencies requiring callbacks of additional personnel***, natural or man-made disasters, threats, or security issues ***as determined by the Fire Chief or his/her designee***.

Section 16.3 is included in the City’s package proposal and, as such, the 3 issues in the package are not subject to division.

Issue three addresses wages in Addendum 1 - Schedule A. Under its package proposal, the City offers the following wage increases during the term of the CBA:

Year 1 -	7/1/14 – 1.5%
Year 2 -	7/1/15 – 2% on base + .5% market adjustment
Year 3 -	7/1/16 – 2% on base + 1% market adjustment
Year 3 -	1/1/17 – 2% market adjustment

The Local accepts the City’s wage offer; however, the City’s package proposal is a whole proposal and not divisible by the Local to accept one parcel in the City’s package (wages) and reject another parcel in the City’s package (hire-back overtime).

To facilitate review and discussion in this report, the 3 issues will be referred to or described as hire-back overtime, “comp” time and wages.

³“The term ‘hire back’ means when the staffing level on a shift falls below the manning of (13) firefighters due to a firefighter being injured or sick, then the employer has a rolodex system whereby it calls the firefighter on the rolodex list and asks that firefighter to take the shift of that sick or injured firefighter. The firefighter has the option of whether or not he or she will take that shift. If the firefighter chooses not to take the shift, then the next person on the rolodex will be called and be given the opportunity. ... Hire backs differ from ‘call backs’ in the CBA. A call back is a firefighter who is called to work in an emergency situation. Call backs receive overtime pay under the CBA.” [Local Br. at 4]

SUMMARY OF LOCAL'S POSITION

This factfinding hearing is pursuant to MCA § 39-31-309.⁴ According to the Local, the only issue for the Factfinder is whether hire-back overtime should be submitted to arbitration as the parties agreed on comp time and wages. "The evidence is clear and convincing" that on September 10, 2014 the City "agrees to" the Local's counter to the City's proposal for comp time and the Local agreed to the City's wage offer. [Tabs 22, 23] Although the City argues it presented a package proposal, it "agreed" (past tense) to the Local's counter-proposal on comp time. "A piece of paper labeled 'package proposal' does not alter the fact of negotiation." [Br. at 10]

As for hire-back overtime, the Local's proposal for compensation at the overtime rate is a recurring proposal over the years in successive negotiations. In the Local's view, the City displays disrespect for firefighters by providing overtime for another 24-hour operation (police) but denying it for firefighters. Further disrespect for the firefighters is the City disclosing at the hearing that it under-funded the pension plan for firefighters by \$157,000; this violates "the rights of firefighters with regard to their pension." [Br. at 16]

Relevant considerations in an interest arbitration proceeding advanced by the Local for consideration in this factfinding over hire-back overtime are itemized under MCA § 39-34-103(5).⁵ For example,

⁴MCA § 39-31-309. Factfinding proceedings, states:

- (1) The fact finder shall immediately establish dates and place of hearings.
- (2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.
- (3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearing conducted by the fact finder. The fact finder may administer oaths.
- (4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve the findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.
- (5) When a party petitions the board to initiate factfinding, the cost of factfinding proceedings must be equally borne by the parties. When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties.
- (6) Nothing in 39-31-307 [Mediation of disputes.] through 39-31-310 [Submission of issues to arbitration.] prohibits the factfinder from endeavoring to mediate the dispute in which the fact finder has been selected or appointed.

⁵MCA § 39-34-103. Powers and duties of arbitrator for firefighters and public employers, states, in part, as follows:

- (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;

considering comparability of overtime provisions in CBAs for the City's employees, the Local notes that "[e]very union in the City of Great Falls, other than the firefighters, have an overtime provision in their CBAs." [Br. at 11] The state-wide survey conducted by the Acting Fire Chief supports the Local's proposal; fire departments across Montana provide overtime in their CBAs. IAFF Vice President Walsh covers the IAFF's District 7 (Alaska, Idaho, Montana and Washington) and is familiar with hundreds of CBAs. Walsh testified that in District 7 only Orca Island (WA) and Meridian (ID) do not provide hire-back overtime. Walsh testified that the City stands out as an "anomaly" on this issue in District 7.

Aside from comparing the firefighters to the City's other employees and to firefighters on a state-wide and District 7 basis, the Local states that it supported the City during the financial crunch caused by the failed electric-power business venture by accepting a wage freeze and agreeing to other financial concessions. The City's financial position has improved since that time - - 3 years past - - and its credit rating is not in disrepair as the City has funds valued at 16.5% of the general fund balance held in reserve to cover two (2) months of expenses.

Additionally, the City created a new, non-bargaining unit position (Deputy Fire Marshall); the new position will expense at \$84,000 annually whereas the Local's proposal for hire-back overtime is expensed at \$60,000 to \$64,000 annually. In other words, the Local's proposal is approximately \$20,000 less than the expense for the new position. This difference in expense between the new position and the Local's proposal is indicative of the City's financial ability to pay hire-back overtime.

The Local asserts that the City's budget is, in actuality, nearly \$100,000,000 annually whereas the City Manager testified the budget is approximately \$25,000,000 annually. Using the City Manager's dollar value, the Local's proposal for hire-back overtime is one quarter of one percent (.0026%) of the City's annual budget.

As for the 2-year trial period for the recently agreed-to and implemented 24-hour shift,⁶ the City acknowledged that firefighters work the same number of hours under the new shift schedule as under any other shift schedule including the old schedule.⁷ Using the criteria agreed upon by the City and the Local for evaluating the 24-hour shift with an audit conducted on a quarterly calendar, datum so far reveals no impact on safety or finances. This is further support for the Local's argument that the City has the financial ability to pay.

A recommendation for hire-back overtime is warranted given the comparability data and City's ability to pay.

(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.

⁶One 24-hour shift, followed by 48-hours off duty, followed by another 24-hour shift, followed by 96-hours off duty (24-48-24-96).

⁷Two 10-hour day shifts, followed by two 14-hour night shifts, followed by four days off.

SUMMARY OF CITY'S POSITION

The City's package proposal is consistent with its past practice in negotiations to bundle issues into a whole, single proposal. This is acceptable in collective bargaining as reflected in judicial decisions interpreting the National Labor Relations Act (NLRA). That is --

As we stated in *NLRB v. Tomco Communications, Inc.*, 567 F.2d 871, 883 (9th Cir. 1978):

Absent abuse *** it is perfectly legitimate for a party to retract a proposal before the other side has accepted it. It may do so because the offer was germane only to the context in which it was made *** or because it has further determined the relative bargaining strengths of the opposed sides. The law does not require that each offer and indication of possible acceptance be included in the final contract before a legal impasse is reached.

The proposal, as a package, was the result of hard bargaining-bargaining ... We must assume that the proposal ... was the result of compromise and that concessions may well have been tendered in some areas with the hope of securing agreement on those provisions which the Union chose to reject. 'To bargain collectively' does not impose an inexorable ratchet, whereby a party is bound by all it has ever said.⁸

The City possessed finite funds for collective negotiations with all bargaining units. When the Local rejected the City's package proposal on September 08, 2014, the City repackaged its proposal twice in an effort to reach agreement. During negotiations the City informed the Local that two (2) economic issues -- wages and hire-back overtime -- were linked together in the package. In other words, the Local could not "pick and choose" to its liking, discard any item it disliked and then return to the bargaining table on the discarded item(s). Notwithstanding the package and repackaged proposals by the City, the Local proceeded to separate the issues by accepting some -- wages and comp time -- and rejecting the other -- hire-back overtime.

Since the Local seeks to change the status quo for a hire back from the straight-time rate of pay to an overtime rate of pay, the burden of proof resides with it to justify the change reflected in its proposal. As set forth in a decision issued in an interest arbitration proceeding, the City states that the Local must establish with evidence that (i) the status quo or existing situation is unworkable or inequitable, (ii) a *quid pro quo* exists for the change and (iii) there is proof of a compelling need to change the status quo.⁹

Aside from the Local's burden of proof, the City relies on MCA § 39-34-103, Powers and duties of arbitrator for firefighters and public employers, which itemizes considerations, such as comparability and ability to pay, for use in evaluating the Local's proposals.¹⁰ The City argues that its financial ability to

⁸*National Labor Relations Board v. Pittsburgh-Des Moines Corp.*, 663 F.2d 956, 959-960 (9th Cir. 1981).

⁹*In Re the Arbitration Between the City of Kalispell and International Association of Fire Fighters, Local No. 547*, Case No. 09-0211.

¹⁰See fn. 5 at pp. 4-5.

negotiate wages is not limited to bargaining with the firefighters but encompasses other bargaining units as well. Also, there are unique circumstances present such as the 2-year trial for the newly implemented 24-hour shift schedule. Also, other terms relevant to firefighters' employment with the City (as compared to other municipalities) must be assessed in resolving this negotiation dispute.

The City does not have the financial ability to fund (i) the wage proposal and (ii) hire-back overtime. During negotiations the City informed the Local that wages and overtime were linked in the package proposal. The City offered the wage proposal contingent on hire backs continuing to receive straight-time compensation. Over the course of a 3-year CBA, the City's wage proposal is valued at \$262,472; another \$60,000 to \$64,000 annually would be required to fund hire-back overtime bringing the total cost of the economic proposals on wages and hire-back overtime in a range of \$322,472 - \$326,472 annually. Due to budgetary constraints, the City is without the financial ability to fund both wages and hire-back overtime.

For example, there is the continuing overhang from the electric-power business venture. Specifically, the City maintained its bond rating with credit-rating firms by assuring such firms that it would achieve and preserve a reserve balance valued at seventeen (17) percent of its general fund balance. This reserve account covers 2 months of expenses. Although the City reached 16.5% it has not attained the 17%. At the end of FY 2014 the City anticipated an improvement in its fund balance but projected tax receipts in FY 2015 have not been realized. This highlights the problematic nature of attaining the 17% reserve balance and, simultaneously, obligating funds for hire-back overtime. Aside from the unrealized tax receipts, other unforeseen financial setbacks for the City are a \$30,000 repayment of block grant funds, an additional \$157,000 payment of acting pay for firefighters into the firefighters' pension plan as a result of an audit conducted by the State showing an inadvertent under-payment, and a \$1,200,000 potential liability which may surface due to a trial on a contract dispute where monetary payment for the City is not covered by insurance.

When considering compensation for firefighters, the City reviews wages for firefighters in Class 1 municipalities throughout the State with a focus for the City to maintain its position in the middle range. Before agreeing to hire-back overtime, other provisions in the CBA must be addressed. Specifically, provisions that require fixed manning (minimum staffing) and the 4-man platoon structure. The Local has, traditionally, objected to any discussions over those items. An alternative to hire-back overtime would be to add a firefighter in a "floater" assignment to increase available staff and reduce the number of hire backs. None of these alternatives were considered during negotiations as impasse was declared by the Local when it requested mediation.

The City is the only Class 1 municipality in Montana that has a minimum staffing clause in its CBA. The City has a 4-man platoon with a 42-hour workweek. This minimum staffing structure hinders flexibility in staffing compared to a 3-man platoon system that is scheduled for more weekly hours. Cities throughout Montana that are not Class 1, as well as those in the IAFF's District 7 advised by Mr. Walsh, supplement staffing at fire departments with part-time or volunteer firefighters. Those options are not available to a Class 1 municipality in Montana.

Firefighters are not similarly-situated to law enforcement personnel (police). Firefighters work a 24-48-24-96 schedule which is six (6) to seven (7) shifts monthly; police do not have a shift schedule similar to the firefighters. Aside from the differences between police and firefighters with shift schedules, there is the consideration of "alarm time" in the firefighters' CBA. The City states "alarm time" is similar to on-

call; however, firefighters on “alarm time” are not assigned tasks and the CBA requires that “all facilities for rest and rehabilitation are at their disposal” whereas there is no such provision in the CBA for police. Besides the financial considerations and alternatives to hire-back overtime, the parties are in the midst of a 2-year trial or pilot program to monitor the effects of the recently implemented 24-hour shift. Significant economic change, such as hire-back overtime, could skew the results of this pilot program. The City opposes changing payouts which affect overtime half way through the pilot program. The Local’s President acknowledged in testimony that there would be a financial impact with overtime pay and acting pay for hire backs needed due to sick leave.

Since 1982 a firefighter on hire back receives straight-time pay and earns overtime in accordance with the Fair Labor Standards Act (FLSA), e.g., overtime for the firefighter when he or she works more than 212 hours in a 28 day period. Since the Local failed to carry its burden of proof to change the status quo, the Local’s proposal for hire-back overtime should not be recommended.

FINDINGS

Factfinding is a process primarily reserved for collective bargaining disputes in the public sector although its genesis is rooted in the private sector where, since 1926 under the Railway Labor Act,¹¹ the President has been authorized to appoint factfinding boards in certain rail disputes and, dating from 1935 with the NLRA,¹² authorization exists for the President to establish a Board of Inquiry when a strike imperils national health or safety.

In the public sector there are approximately thirty-eight (38) states with public collective bargaining laws that provide for factfinding. Even in states where a county or municipality may not be subject to the state-wide public sector labor law, such as New Mexico, factfinding is a staple in the dispute resolution process. This broad spectrum use of factfinding demonstrates the inherent persuasive effect it possesses for resolving disputes on the basis of facts with written findings and recommendations.

Regardless of the genesis of factfinding in the private sector and its application in the public sector, factfinding requires the parties to identify issues in dispute and to present evidence and arguments justifying their positions to a neutral factfinder or panel. The factfinder evaluates the parties’ arguments and makes recommendations for the resolution of each issue in dispute.

This factfinding proceeding follows mediation and collective, bilateral negotiations where “[t]he obligation [to bargain] does not compel with party to agree to a proposal or require the making of a concession.”¹³

Under Montana law, findings and recommendations to resolve a negotiation impasse coincides with, if not enhances and promotes, the State’s Policy in public sector labor relations.

¹¹45 U.S.C. § 151.

¹²29 U.S.C. § 177.

¹³MCA § 39-31-305. Duty to bargain collectively - - good faith.

In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.¹⁴

In accordance with the public policy for “friendly adjustment of all disputes between public employers and their employees” coupled with each party’s reference to and reliance on the powers and duties of an arbitrator under MCA § 39-34-103 to consider comparability, ability to pay and other relevant employment items, “written findings of fact and recommendations for resolution of the dispute” are rendered in this factfinding proceeding as required by MCA § 39-31-309(4). Comparability, financial ability to pay and other pertinent employment items such as demonstrated need are commonly recognized as the standards in factfinding and interest arbitration.¹⁵

With respect to the evidence and arguments for wages and comp time, there are none on the merits of a particular proposal by either party because the Local accepted the City’s wage offer and the City accepted the Local’s counter-proposal on comp time. These findings comport with the items in the City’s proposal dated September 10, 2014. If the City intended to propose less than the wage offer extended to the Local on September 10, then the less or different offer was not placed squarely before the Factfinder at the hearing or in the City’s post-hearing brief. Considered singularly or as a package, the wage offer and comp time counter-offer are recommended. The wage offer recognizes the firefighters’ contributions during the financial distress caused by the business venture into electric power and the comp time proposal should facilitate contract administration and enforcement of terms in the CBA.

As for hire-back overtime, the City’s proposal to maintain the status quo with straight-time pay is recommended. The Local is the moving party on this issue; the burden of proof resides with it to establish a demonstrated need for change in the status quo. The record shows that the status quo is functional as designed; it yields a sufficient number of hire backs when needed and there is no indication of turnover or recruitment disadvantages in fire related to or caused by the status quo.

The Local’s argument that firefighters are the only employees with the City that do not have an overtime provision in their CBA is attractive but only partially accurate. The argument is accurate as there are articles titled overtime in the CBAs for Plumbers and Fitters Local No. 41 (Article 9), Montana Public Employees’ Association, Inc. (Article 21), Public Employees Crafts Council (Article 9) and International Brotherhood of Electrical Workers Local Union No. 233 (Article 10). The argument is also accurate in noting that there is no article in the CBA for firefighters titled overtime.

There are, however, negotiated provisions addressing overtime under different scenarios in all of the CBAs. For the CBAs noted above, the negotiated overtime provisions mirror terms in the FLSA for payment of overtime for any time the employee works that exceeds forty (40) hours in a week. There are sections under these articles or sprinkled in other articles that provide overtime when the employee is on standby or call back.

¹⁴MCA § 39-31-101. Policy.

¹⁵*Public Sector Interest Arbitration and Fact Finding: Standards and Procedures* (LexisNexis Labor and Employment Arbitration, 2nd ed. 2006).

For the firefighters, the parties negotiated an overtime provision in Article 12 - Shift Schedule at § 12.6 for call back which the Local describes as “a firefighter called back to work in an emergency situation.” The parties also negotiated to resolution and placed in the CBA another overtime provision in 1982 whereby a firefighter receives overtime in accordance with terms of the FLSA, i.e., exceed 212 hours in a 28-day period. This FLSA term for firefighters is different than the FLSA term in the other CBAs; the FLSA recognizes differences in working conditions for different occupations. At the same time the City and firefighters agreed to this overtime arrangement they further agreed to a provision requiring a specified minimum staffing level. This represents a *quid pro quo* arrangement or trade-off commonly encountered in collective bargaining.

The Local states that police receive overtime and firefighters do not. Uniformed services personnel perform essential public safety functions in a 24-hour operational environment. Even with the commonality of a 24-hour operation within a para-military structure, police and fire are suffused with different customs and traditions that reflect the problematic nature for assessing comparability of provisions in their CBAs.¹⁶ Representative of the differences between the uniformed services are shift arrangements as well as different negotiated terms for overtime.

Firefighters are scheduled for a 24-hour shift (Article 12) whereas police are scheduled for an 8-hour, 9-hour or 10-hour shift (Article 7). The CBA for the Great Falls Police Protective Association provides overtime for law enforcement personnel such that, with some exception, they “may accumulate overtime hours without restriction” (Article 8) whereas the CBA for firefighters provides overtime in accordance with FLSA terms (Article 12).

The CBAs for fire and police provide overtime for call back. The Local states an employee is on call back for an emergency situation. At least with respect to an emergency situation, call back displays similarity to “alarm time” where the firefighter is required to be at the station for an emergency situation. During “alarm time” the City states that a firefighter does not have assigned tasks and, as the City and Local agreed to in Article 12.1.E, “all facilities for rest and rehabilitation are at their disposal.” There is no comparable provision in the CBA for police. The differences in substantive terms of the CBAs for police and fire for overtime and call back and alarm time reflect the differing requirements for the positions in each group and services rendered. The CBAs conform to the uniquely situated demands imposed on each group in a 24-hour operational environment.

The Local seeks to change the status quo for hire back compensation with overtime paid to a firefighter volunteering to fill in as a hire back. The hire back would not be subject to the 212 hour threshold; overtime would be paid for every hour the firefighter serves in a hire back capacity. IAFF testimony described Great Falls as an anomaly across the Pacific Northwest and within Montana by not paying overtime for hire backs. This is a persuasive argument standing alone. Completion of that comparative argument, based on the evidentiary record in this proceeding, is that the City is an anomaly with the inclusion of mandatory manning levels in the CBA. The City did not dispute that it is the only City in Montana not paying overtime for hire backs and the Local did not dispute that the firefighters’ CBA is the only CBA with contractually mandated staffing requirements.

¹⁶*Labor-Management Relations in the Public Sector* (LRP Publications 1999): Chapter 20, Police and Fire Services.

The Local views hire-back overtime separate and apart from staffing and the City views hire-back overtime through the lens of other communities and municipalities without the contractual requirement. Alternative arrangements were not discussed during negotiations.

The City linked wages and hire-back overtime in its package proposal. As noted, the Local considers the items separately. The approximate annual expense of \$60,000 - \$64,000 for hire-back overtime, the Local states, is one quarter of one percent of the City's budget. Calculated within the context of the whole budget, one quarter of one percent is not sizable; however, not all of the funds in the budget are available to fire services as there are competing demonstrated needs among departments and the CBAs for other bargaining units. Even with fire services there are competing needs. Hire-back overtime is a recurring, variable expenditure at a rate established by Federal law and not subject to negotiation in the same manner as wages. The City's wage proposal, accepted by the Local, is approximately \$262,472; the Local's proposal for hire-back overtime constitutes another 23% to 24% on top of the wage proposal. This is coupled with other financial considerations, which were not exposed as embellished or fabricated, of the \$1,200,000 potential liability for the contract dispute and the lesser than projected tax receipts realized in FY 2015.

The landscape of this dispute is reflected in the relief and trade-off each party seeks from the other. The Local seeks hire-back overtime and, in essence, states that providing it aligns the City with other cities and communities in the State and IAFF District 7 whereas the City seeks flexibility in manning along the same lines as other cities in the State. In other words, there is a *quid pro quo* present for further collective negotiations between the parties that aligns the Local and City with the prevailing practices in the State. Until such time as the parties resolve this dispute through negotiations, the status quo remains in effect for hire-back overtime and contractually mandated, minimum staffing.

RECOMMENDATIONS

The recommendation for each issue follows:

Issue One: Hire-Back Overtime

Article 12, § 12.9: Recommend the current wording.

Issue Two: Comp Time

Article 16, § 16.3: Recommend the wording below.

- B. Employees shall be granted usage of compensatory time at times that the manning of shifts is above minimum staffing levels, except for situations of emergencies requiring callbacks of additional personnel, natural or man-made disasters, threats, or security issues as determined by the Fire Chief or his/her designee.

Issue Three: Wages

Addendum 1 - Schedule A: Recommend the increases below.

Year 1 - 7/1/14 – 1.5%
Year 2 - 7/1/15 – 2% on base + .5% market adjustment
Year 3 - 7/1/16 – 2% on base + 1% market adjustment
Year 3 - 1/1/17 – 2% market adjustment

All evidence and arguments have been considered in rendering the findings and recommendations.

Patrick Halter /s/

Patrick Halter
Factfinder

Signed on this 5th day
of May, 2015