

Before
Rex H. Wiant
Arbitrator

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In the matter of interest arbitration)
 between)
City of Helena, Montana)
 and)
International Association of Firefighters)
Local 448)

For the Employer:

Michael Dahlem, Chief Spokesman and Attorney
James Fehr, Human Resources Director
Sheri Hall, Human Resources Specialist
Thomas Jodoin, City Attorney
Iryna O'Connor, Deputy City Attorney
Tim Magee, Administrative Services Director
Jason Baker, MSCOPFF/MSFA District 2 Representative Great Falls
Ron Alties, City Manager

For the Union:

Karl Englund, Chief Spokesman and Attorney
FredPippin, Local 448
Vince Williams, Local 448
Keith Simendenger, Local 448
Scott Moore, Montana Retirement Board

Jurisdiction:

The parties selected Rex H. Wiant to hear the interest arbitration between the City of Helena, Montana (hereinafter the "Employer") and the International Association of Firefighters Local 448 (hereinafter the "Union"). A hearing was held at the City/County Building on April 10, 2015. Both sides presented complete cases. All witnesses were sworn and all evidence was subject to cross examination. At the conclusion of the hearing it was agreed that both sides would have until April 17, 2015 to state their final positions (attached to this decision) and April 27, 2015 to file briefs on open issues. Final positions and briefs were received on appropriate days and the hearing was declared closed on April 27, 2015.

Statement of Facts:

The City operates a Fire Department to provide fire suppression and other emergency services to the residents of Helena. Thirty-two employees are represented by the Union and they negotiate under the Montana Code. Montana Code substitutes interest arbitration for the right to strike if the parties are unable to reach agreement. The parties held nine negotiation sessions (six interest based and three traditional), two mediation sessions and many informal discussions where they resolved most of the open issues. Factfinder David Stiteler held a hearing and issued a report on December 8, 2014.

Issues that remain open are the following: 1. Salary Spiking, 2. Paycheck Equalization, 3. Minimum Staffing, 4. Vacation Accrual Rate, 5. Basement and 6. Fourth Shift.

Helena is the capital of the state of Montana and county seat of Lewis and Clark County. It has approximately 28,600 residents and has a diverse economy based on: government, medical, education, mining, tourism and most recently retirement. It is a "first class" city according to Montana law. Other first class cities include: Billings, Bozeman, Butte, Great Falls, Kalispell and Missoula. The cities provide a natural comparability group cited by both parties, previous neutrals and endorsed by this

Arbitrator. It should be noted that Helena is sixth in population, with only Kalispell having fewer people.

Helena has the only professional fire department in the area and works with the other surrounding communities volunteer departments through Mutual Aid Agreements. It has two fire stations that are manned around the clock and provides service as required. Most employees are divided into three 24 hour shifts and the remaining few employees work a forty hour Monday-Friday schedule.

Montana's Arbitration for Firefighters Act lists the factors that the Arbitrator is to consider in making his decision in Section 39-34-103(5) of the Montana Code Annotated. They include any relevant circumstances including: comparability, interests of the public and financial ability, appropriate cost-of-living indices and other factors traditionally considered. The parties agreed that the Arbitrator would select either the Employer Position or the Union Position on each of the six remaining issues.

At several times in the hearing the Employer made comments that they could not afford the Union Position but never presented a direct ability to pay argument. With that assertion comes the burden of proof regarding this argument. Without evidence the ability to pay argument is given no weight by the Arbitrator.

This Arbitrator in making his decision examined all factors.

Issue 1. Salary Spiking.

Current Contract: None

Union Position: Employees should have the option of including insurance benefits in their taxable income. The result would be their salaries are increased and their retirement is increased.

Employer Position: No change.

Fact Finders Recommendation: Adopt the Union Proposal with three modifications:

1. Language should be modified to ensure that it satisfies the Internal Revenue Service and State requirements.
2. Other fixes be made so health insurance premiums be considered as compensation.
3. Effective date of July 1, 2017.

Discussion:

This is the first time this Arbitrator has faced an issue that a Union argues will raise its member's taxes. The idea behind it is the Firefighter Unified Retirement System (FURS) is calculated on the highest 36 months of compensation. By declaring the health insurance as taxable for the last three work years a firefighter can significantly raise his retirement.

The main argument from the Employer is that they would have to make their health insurance contribution convertible to cash. This ignores the larger issue of whether this action is legal. The Union argues that that Billings, Bozeman Great Falls and Missoula have made the change, but that does not make it legal. Nowhere in the exhibits is a letter, opinion, court case or other official document that says that this is legal.

The Union proposal recognizes that there will be problems by specifically including an arbitration provision. The Factfinder gave the parties one year to correct all the problems before it is implemented. The Arbitrator thinks there are many details that have to be worked out before it would be added to the contract.

This is nothing more than retirement by smoke and mirrors. A defined benefit plan payout may be increased by only three methods: contribute more (either by larger number of employees or larger dollar amounts), invest for a longer period of time, or invest more aggressively. The Union argues that the contribution for three years

by the employee will result in all the increased taxes and more returned in the first retirement year. This means the money contributed by the City and State (through a tax on insurance plans) to fund the retirement increase for all future years. Fact are little money is added to the fund and the plan is to grant the extended benefit for a contribution of as little as three years. The plan currently has an expected return of 7.75%. No change was proposed. An expert says the FURS plan can fund the request. The Arbitrator believes he is wrong. The plan is on solid financial footing when compared to most state pension plans because it has not strayed from a sound financial path. The proposal strays from the sound path. FURS is actually a small retirement plan, it will not take long before the folly of other cities will drain the reserves and put the entire plan at risk.

The Arbitrator adopts the Employer position of no change.

Issue 2. Paycheck Equalization.

Current Contract: None.

Union Position: Base pay shall be equalized across the 26 pay periods and overtime shall be added onto each check.

Employer Position: No change.

Fact Finders Recommendation: No change.

Discussion:

This issue goes back to an earlier arbitration done by Arbitrator Jeff Jacobs. That Arbitrator ruled that firefighters were hourly employees. This Arbitrator agrees with that ruling.

This proposal would require the Employer to pay an outside computer firm to write or amend their compensation program. It makes more sense for the Employer to be paying firefighters than paying tech geeks.

The Union does raise a real problem of how individual firefighters deal with widely varying checks. This is not unique to this Department. Every Fire Department that has a 24 on and 48 off schedule has the same issue. It is only exacerbated when the impact of the Kelley days is folded into the mix. No one is saying that anyone is being shorted, only that the pay varies from check to check and that creates hardship in household budgeting. Solving the household budgeting issue through education is the key to this problem.

The Arbitrator adopts the Employer position of no change.

Issue 3. Minimum Staffing.

Current Contract: None.

Union Position: Add a minimum of seven (7) firefighters per shift.

Employer Position: No change.

Fact Finders Recommendation: No change.

Discussion:

This is the most difficult issue to deal with in this hearing. The Employer averages 6.8 firefighters per shift. They used to average above 7 and made budget cuts that lowered the average. The Employer has agreed that they need to return to 7.

The Union rightfully argues the health and safety is directly tied to the number of men on a truck. This is not a debating society, the alarm sounds and the crew answers. It is important that they do so safely. Much to their credit, officers

recognize their limitations and fight some fires with one hand tied behind their backs. Their following of the "2 in and 2 out rule" is sound practice but may mean greater damage to buildings.

This issue is only made more difficult because of the changing mix of emergency calls. The numbers of calls are up while the numbers of fires are down. It is important that they send not only the right number but also the right mix of firefighters to each type of call.

Ordering minimum manning is a simple solution to a complex problem. It is not the right solution. That solution is not before the Arbitrator. The Arbitrator returns this issue to the parties to deal with. It is made even more complex because of the sixth issue of Twelve Hour Shifts. It is made only more complex by the changing nature of the city of Helena. The Fire Department will be just as important as those who built a fire tower over a century ago to call and signal mine fires. Twenty first century solutions will be called for twenty first century problems.

The Arbitrator adopts the Employer Proposal of no change.

Issue 4. Vacation Accrual Rate.

Current Contract:

Years	Days earned per year	Hours earned the first two pay
1 day-10 years	15	5
11 yrs-15 yrs	18	6
16 yrs-20 yrs	21	7
Over 20 yrs	24	8

Union Position: No change for support staff. Suppression staff:

Years	Hours earned per year	Hours earned the first two pay
1 day-10 years	140.47	5.85
11 yrs-15 yrs	168.29	7.01
16 yrs-20 yrs	196.66	8.19
Over 20 yrs	223.72	9.32

Employer Position: No change.

Fact Finders Recommendation: No change.

Discussion: The Arbitrator has spent more time studying this issue than any other one in this hearing. After reading and rereading the briefs and exhibits he has not been able to say he has a sound handle on this question. Each side has their writings that are like two ships sailing by each other in the night. None deal with the issues raised by the other.

For that reason he is sticking with the Montana Code. Section 2-18-612, M.C.A. clearly states the rate that the parties have included in their contract. It does say there is exception for school district employees. No exception is listed for firefighters. It does not say that employees in collective bargaining or who work more than 2080 hours in a year have any other options or gain additional leave time.

This is an issue that needs to be dealt with through the legislature. If they see fit to turn it over to collective bargaining than so be it. Until then the parties should stay with the law.

The Arbitrator adopts the Employer position of no change.

Issue 5. Basement.

Current Contract: 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.

Employer Position: Remove language authorizing firefighters personal use of City facilities during work time.

Union Position: No change.

Fact Finders Recommendation: No change.

Discussion:

Traditionally, firefighters were allowed to work on personal vehicles at the firehouse. In this case that work was done in the basement. The Employer has not provided a significant reason to change. There is no hardship or increased risk because it is rarely done. They have no numbers and only one firefighter could remember changing shocks on his truck however he could not remember how many years ago that occurred. This section of the contract is going the way of the dodo bird. No one uses it. It still is language that the parties negotiated and the Arbitrator is not aware of its background or possible quid pro quo history.

The Arbitrator Awards the Union Position of no change.

Issue 6. Fourth Shift.

Current Contract: None.

Employer Position: Up to three (3) firefighters may be assigned to a suppression shift of a twelve (12) hour peak demand schedule.

Union Position: No change.

Fact Finders Recommendation: No change.

Discussion: The most interesting issue put before the Arbitrator is the limited 12 hour shift. Traditionally firefighters have worked a 24 hour shift. The Union says they are not categorically opposed to the concept but questions of supervision, training and scheduling need to be dealt with through the Labor Management Committee. The Arbitrator agrees. It is clear that it is not the total solution but may be part of the solution.

The Employer proposal limits this to new hires. The Arbitrator can imagine cases where family and other responsibility may make a 12 hour shift desirable to more senior firefighters. It must be voluntary. It is more of an addition of staff at peak hours or to deal with specific problems than the replacement of firefighters.

After careful consideration there are too many questions that must be answered before this is ready to go into the contract.

The Arbitrator awards the Union Position of no change.

The Arbitrator has in good faith studied and ruled on each issues put before him. If because of some error or other omission, he has failed to make an award on a issue, he awards no change on that issue.

Sincerely,



Rex H. Wiant

Arbitrator

Dated on May 11, 2015 in Kansas City, Missouri.