

**IMPASSE FACT FINDING AND RECOMMENDATIONS
BEFORE ARBITRATOR PILAR VAILE, ESQ.**

IN THE MATTER OF INTEREST BASED
FACT FINDING BETWEEN:

BILLINGS FIREFIGHTERS LOCAL 521,

Union,

CITY OF BILLINGS, MONTANA,

Employer.

INTRODUCTION

Pursuant to Montana Code Annotated (MCA) § 39-31-308, and Article III of the collective bargaining agreement (CBA) between the International Association of Fire Fighters, Local 521 (Union) and the City of Billings (City), the Parties selected the undersigned from a panel provided by the Montana Board of Personnel Appeals to serve as an independent fact finder and make recommendations to the Parties as to resolution of the above captioned bargaining impasse matter.

This matter concerns the narrow issue of the proper cost of living allowance (COLA) wage increase to be provided in the fourth and fifth years of the current CBA, which runs from July 1, 2018 through June 30, 2023.

In-person presentations on the merits were made to the undersigned at 316 N. 26th Street, Billings, Montana (the Stillwater Building), on October 25, 2022. At this fact finding, both Parties were given the opportunity to present and respond to relevant oral and documentary representations, but no one testified under oath.

APPEARANCES & RECORD

For the Union

Cameron Abell
Toby Ballard

Tim Hoover
Jake Wilkins

Local 521 President
Service Field Rep. IAFF 7th District; Former Pres. Local 2457
Missoula Rural Firefighters
District Service Field Rep. IAFF 7th District
Secretary/Treasurer, Local 521

For the City

Karen Schexnider, Esq.	Assistant City Attorney
Carla Stanton	HR Director
Kevin Iffland	Assistant City Administrator
Chief Pepper Valdez	Fire Chief
Andy Zoeller	Finance Director

In addition to presentations and averments from the nine (9) bargaining representatives listed above, the undersigned received six (6) documents from the Union; and, from the City, a 26-page slide presentation with accompanying source data, current Fire Fighter base salary information from the City (“Pay Matrix” covering 2019-2020 and 202-2021 FYs), and U.S. Census data comparing Billings and other Montana locales’ median gross rent 2016-2020. The Parties understand and agree that the undersigned shall take the Parties’ presentations and documents largely at face value since unsworn and unauthenticated.¹ Neither State law nor the CBA specify the criteria for consideration in the event of impasse.

Before appearing before the undersigned, the Parties had proceeded through the following steps, pursuant to MCA § 39-31-307: (a) initial bargaining 2021 and 2022; (b) two mediation sessions in February and March 2022; and (c) a meeting with the City Administrator without the mediator in April 2022, where the Parties became deadlocked on the City’s final offer of a 3% wage increase. (Some additional offers were exchanged thereafter, as discussed *infra*, but neither’s position changed significantly.)

Under MCA § 39-31-309 and its companion Administrative Rule, ARM 24.26.1404, the undersigned sits in a solely advisory role, although her recommendations shall be made public after 15 days. If the undersigned’s findings and recommendations are not accepted by the Parties, they may elect to proceed to formal, binding arbitration under § 39-31-310, although that will obviously increase their costs still further.

¹ It was the City’s proposal to proceed in this informal manner and, although the Union expressed surprise, they did not object. An unfortunate consequence of this procedure is that the undersigned is necessarily left with a less-than-ideal record, given that documents and representations were not subjected to vigorous cross-examination, and underlying financial data and conclusions drawn therefrom were largely untested and/or unexplained.

ISSUE PRESENTED

The Parties did not offer any statements of the issue, which the undersigned frames as follows based upon the record before her:

What is the appropriate COLA that should be provided to bargaining unit members for the fourth and fifth years of the current CBA (and/or FY 2022 and FY 2023), which the City agrees shall be paid retroactively as well as prospectively?

COLLECTIVE BARGAINING AGREEMENT

Article VI – Hours of Work and Compensation

B. Compensation

2. Wages

- b. July 1, 2018 – June 30, 2019 [FY 2019]: All hourly base wages shall increase by an amount equal to 2.9%.
- c. July 1, 2019 – June 30, 2020 [FY 2020]: All hourly base wages shall increase by an amount equal to 2.9%.
- d. July 1, 2020 – June 30, 2021 [FY 2021]: All hourly base wages shall increase by an amount equal to 2.9%.
- e. July 1, 2021 Cost of Living Adjustment (COLA) only will be renegotiated for COLA only for remaining two (2) years.

MONTANA CODE ANNOTATED (MCA)

Sec. 39-31-301, Representative of public employer

The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.²

² In this case, the Chief Administrator did not appear, but he was represented by his designee, the Assistant City Administrator.

Sec. 39-31-307, Mediation of disputes

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.

39-31-308, Initiation of factfinding--designation of fact finder

(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 factfinding.

39-31-309, Factfinding proceedings³

(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 hearings 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 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which the fact finder has been selected or appointed.

39-31-310, Submission of issues to arbitration

Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

³ See also Administrative Rules of Montana (ARM), Rule 24.26.1404, "Fact Finder", which is essentially identical.

FINDINGS OF FACT

Party and Background Information

The City of Billings is Montana's largest city, with a City population of about 117,000, and a Metro-area population of about 180,000. The City has approximately 1,000 employees. Eligible City employees fall into either the Firefighters, Police or Teamsters Union. Approximately 117 Billings Firefighters are represented by Local 521.

The Parties are in a mature bargaining relationship that dates back to approximately 1954, when the first contract was executed. The Fire Department's workforce is also relatively mature. Approximately two-thirds of the bargaining unit has been with the City for seven years or more. (City Slide at 4.)

The City operates under a fiscal budget running from July 1 to June 30, and CBAs follow that fiscal year. City services are funded almost exclusively through property taxes, which comprises 80% of City revenue. The City caps mil levy increases, which are rare, used only for Police and Fire services, and must be approved by public vote. Today the general fund levy is capped at 74 mils, and the public safety fund levy is capped at 110 mils (although, as a practical matter, all property taxes received from mil levies go to public safety, according to the City). Additionally, because property taxes are the City's primary revenue source, its revenues only increase when property taxes are assessed and collected. Residential and most commercial reassessment occur every two years, and collection lags 12 months behind that. (Infrastructure such as utilities, railroads and refineries are re-assessed annually.) The City reports that the tax base increases 2.5-2.9% on average but can fluctuate from 1% to 4%.

The Parties do not have a set practice regarding the duration of their agreements. However, both Parties sought to lock in their agreement to a five-year term with the current 2018-2023 CBA, due to statewide political uncertainties regarding Union sentiment on the Union's part, and a preference for longer-term planning on the City's part. At the same time, however, the Parties recognized that planning economic futures five years in advance is often difficult if not unrealistic, so they only agreed to scheduled wage increases for the first three years and they included a wage reopener for the fourth and fifth years (the issue before the undersigned).

For FYs 2019 through 2021, the Firefighters received a 2.9% increase to their base wage. The FY 2021 wage increase resulted in the following current hourly and annual base salary scale:

- Step 1, Probationary Firefighter:	\$20.9878/hour	\$50,203/year
- Step D (4) Firefighter [6 months]:	\$24.6929/hour	\$59,065/year
- Step E (5) Firefighter I [18 months]	\$25.9122/hour	\$61,982/year
- Step F (6) Firefighter II [30 months]	\$27.1670/hour	\$64,983/year
- Step G (7) Firefighter III [42 months]	\$28.5416/hour	\$68,270/year

(City's Pay Matrix, July 1, 2020-June 30, 2021.)⁴

Nationally, public safety hiring and retention is down. The City does not believe it is any worse in Billings and believes it may be better because Billings is appealing as the largest City in the State. However, there must be some concerns in this regard given what the City described as a tight labor market; the relative maturity of the current bargaining unit; and that much of the City's public presentation for a 2021 public safety mil levy increase, discussed below, that focused on the need for emergency personnel succession and transition training.

City COLA Wage Increases Generally

The City typically offers an annual wage increase or COLA that is at or near 3%. Moreover, City employees – including the Firefighters – have largely enjoyed steady wage growth over the rate of inflation for the past decade, since 2012.

However, that is just a generalization and there are outliers. For example, the Billings Police Department dramatically restructured their wage scales effective July 2022, leading to very different wage treatment from other City employees, for two years of their new contract.⁵ (City Slides, at 2-3.) Additionally, only a 2.5% increase was provided in July 2012, when the City was still in recovery from but moving beyond the 2008 financial recession; and some “catch up” occurred in July 2015 and 2016, when the City provided a 3.2% wage increase. (Id. at 2.)

⁴ Annual salary is obtained by multiplying the base hourly rate by 2392 hours.

⁵ Wanting to reorganize their pay scale down from 23 years to 20 years, the Police agreed to a four-year CBA under which they gave up longevity pay and agreed to the following: no wage increase in the first year; a 4.8% increase in July 2022; and a 3% raise in the final two years. (City Slides at 2.)

Generally, though, a 2.9% or 3% COLA has evened out macroeconomic fluctuations and mutually benefitted both Parties over the longer term. For instance, the City represents that it is common to see something like 4% inflation in one year followed by 1% inflation the following year; but that a consistent +/- 3% COLA wage increase is easier for it to structure and plan for from a budgetary perspective. The City notes that one year a bargaining unit member might receive a COLA smaller than inflation but that in another year their COLA will exceed inflation. In fact, the City's slide presentation indicates that for the past decade (or since July 2012) annual wage increases have regularly outpaced annual inflation, sometimes quite significantly, until 2021 and 2022. (City Slides at 2-3.) As the City notes, the CPI-U (Consumer Price Index – All Urban) had not been above 3% since 2017, before the current CBA, the pandemic, and the ensuing issues with supply chains, tight labor markets, rising fuel costs related to geopolitical instability, etc.

As to Firefighters, the general pattern of a decades' long period of respectable wage growth is reflected in the documents, as is the general pattern of a +/- 3% wage increase. (City Slides at 2-3, 5.) As part of this pattern, the Parties agreed in 2018 to a 2.9% wage increase for FY 2018-2019, FY 2019-2020, and FY 2020-2021. However, inflation – which was running behind wage increases from 2012 through 2020 – ballooned in 2021 and did not drop significantly through most of 2022. (*Id.* at 3, showing 7% CPI-U in 2021 and about 6.5% in 2022; see also Union Tabs 3-4 and discussion below.)

Because two-thirds of the bargaining unit has been with the City for seven years or more, a large percentage of the bargaining unit has, on average, experienced significant wage growth over inflation, the last few years notwithstanding.

However, shorter term employees have not benefitted to the same extent, and the very newest employees – whose ranks the City and taxpayers intentionally increased in the last few years, as addressed next – will have experienced flat, negative, or even sharply negative wage growth. City Slides at pages 5-13 illustrate the annual compression of wage growth versus CPI-U from a 10 to 2 year look back period assuming 3% COLA. Depending on where you stand, a bargaining unit member could feel very different about their City wage experience, with those employed in the last three years “feel[ing] the pinch more”, as the City acknowledged and summarized.

Approximately 9% of the Firefighters has one year or less in tenure, and about 25% has two to seven (2-7) years in tenure. (City Slides at 4.) (Of this latter group, a miniscule portion has

two (2) years of tenure, and the rest is divided more or less equally between three to six (3-6) years, although there are less with five (5) years than in the other groups. (Id.)

Asked by the undersigned if it were feasible to grant a greater wage increase solely to the lowest paid and hardest pinched Firefighters, the Union opposed the idea because it would erase or collapse the step increases that currently reward and compensate for experience and longevity.

2021 Public Safety Mil Levy

In 2021, the City obtained 60% voter approval for a 7.1% public safety mil levy increase, after extensive outreach and discussion. At the time, Billings population had grown from 98,554 to 110,000 from 2006 to 2020. At the same time calls for service for fire and police had also increased significantly over the years. (City Slides at 15, showing police calls for service increased 71% from 56,363 to 96,473 calls; and fire calls for service increased 65.9% from 11,022 to 18,284 calls.)

While there was no single “explosion” in calls for service, the numbers reflect a steady and substantial increase. As part of its outreach, the City says, it essentially “promised” to provide enhanced services with this levy, including – among other things – the hiring of 10 Firefighters as part of Medical Response Team (MRT) staffing. (City Slides at 16; see also 18-19.)⁶

Members of this new-hire cohort who successfully passed their six-month probationary period are now among those lowest paid Firefighters about which the Union is most concerned.

The Union notes that compensation for Firefighters, Police, etc. is usually very well received by the public if the Union rallies around it. The last mil levy increase before this one was in 2004. The City had put a public safety mil levy on the ballot in 2016 but that vote failed – the Union believes that is because IAFF did not rally around that measure, due to bad relations at the time between Local 521 and City management.

⁶ Among other things, the plan or pitch also called for the hiring of 28 full-time police, including 14 sworn and 14 civilian employees; three (3) attorneys and four (4) other staff for the legal department; a full-time judge and staff; and three (3) code enforcement officers. (Id.)

Other Relevant City Financial Information

The City has Moody's Investors Service credit ratings of Aa2 and Aa3 on existing debt. These debt ratings are, respectively, the third and fourth highest ratings for long-term corporate obligations), (Un. Tab 6, IAFF Analyst Report at 9.)

As noted in the IAFF Analyst Report provided by the Union, the "GFOA [Government Finance Officers Association] recommends, at a minimum, that general-purpose governments, regardless of size, maintain an unrestricted fund balance in the general fund of no less than two months or 16.67% of regular general fund operating revenues or regular general fund operating expenditures." While higher balances can be justified in cases of heightened economic uncertainty, "if a local government determines a high reserve is essential, it should be able to justify the level it wants to maintain." (*Id.* at 5.)

The author of the report was not present. Besides being hearsay, the Report is not a very easy-to-read document for a non-accountant. The undersigned primarily takes from it the following.

- (a) The Analyst believes the City has – and has historically had – unrestricted general fund or "reserve" balances that far exceed the GFOA recommendations. The Analyst estimates that the City held a General Fund reserve of 63.2% as of December 2020 (FY 2021).
- (b) Additionally, the City has – and has historically had – a very healthy asset to liability ratio in the General Fund. For FY 2021, the asset/liability ratio was at 27.87, meaning assets of \$27.87 for every \$1.00 in general fund liabilities.
- (c) In contrast to the General Fund, the separate Public Safety Fund is typically spent down and left with minimal reserves. Additionally, while its assets exceed liabilities, they do not do so significantly (this fund has an asset/liability ratio of 1.72).
- (d) The City has significant other governmental fund types⁷, that are also very healthy, and the City has an overall or "total fund balance" of 86%, as of December 2020. Although "assets are not necessarily transferable between funds", overall fund health is still a

⁷ By way of comparison, these are the total fund balances as of 12/31/20: General Fund, \$33,457,280; Public Safety Fund, \$1,769,739; American Rescue Plan (\$3,879); and "Other Governmental", \$94,680,526.

positive factor in the favor of the Union's position. Overall or total governmental fund type asset/liability ratio is 6.12.

(Id. at 3-8.)

The undersigned does not fully understand all the financial charts without explanation from the author, and she is also wary of accepting all its claims and averments absent sworn testimony subject to cross-examination. Nonetheless, the Report appears to indicate that:

- “Billings’ general fund balance increased over 49% from FFY20 to FY21” (see “Talking Points” page of Report); and
- the City had a General Fund balance of approximately \$11 million from actual revenue/transfers-in minus actual expenditures/transfer-out for FY 2021 (see Report at 5.)

This balance is greater than the cost of the Union's proposals, even if applied to the other bargaining units (see below).

Nonetheless, it must be noted that in other years it appears the balance has been much smaller (such as only about \$2.5 million in 2017 and possibly -\$500,000 in 2012). (Id.) At the same time, it must also be remembered that operating expenses such as wage increases are recurring irrespective of any fund balance.

The City does not challenge the general assertion that it enjoys a robust and healthy budgetary outlook, with good Fund reserves, both standing here today and casting back over the past decade. The City also does not challenge any of the specifics of the Union's Analyst Report. However, the City argues generically that it cannot afford the Union's proposed COLA increase because it must give the same increase to employees within other bargaining units, as a matter of equity. It notes that other bargaining units accepted a 3% or less increase on average while battling 7% inflation in December 2021 and 8.2% inflation in January 2022.⁸ The City also indicates that the hefty fund balances in recent years were driven in large part by non-recurring federal stimulus funding.

Lastly, the City's presentation also suggests it requires a 6-month or 50% reserve, rather than the usual recommendation of a two-months or 16.67% reserve discussed in the Union's

⁸ The Police are discussed in Note 5. The Teamsters accepted the 3% wage increase for a three-year contract.

Analyst Report. This is because the City only collects taxes two times a year, so it must have funds to carry over during that lag time.

Offers and Counteroffers

After early initial negotiations, a tentative agreement of 3% for FYs 2022 and 2023 was rejected by Local 521's membership in September of 2021.⁹

In December of 2021, the Parties met again, and the Union raised the 2021 Western Region CPI-U, which reflected a 6.6% inflation rate for Seattle. The City countered that the Western Region's CPI-U is not an accurate fit because it covers much larger urban areas such as Seattle, which it asserts has a higher inflation rate than Billings.

When the Parties met again in January 2022, the City offered a 0% increase for the fourth contract year, and a 6.1% increase for the fifth year. The Union countered with a 3% increase effective July 1, 2021 and a 6.1% increase effective July 1, 2022. (Un. Tab 2.)

The City returned with an offer of 3.3% effective July 1, 2021 and 3% effective July 1, 2022. The Union then presented its last best offer of 3% for FY 2022, and a 5.8% increase for FY 23. (Un. Tab 2.)

Additionally, at some point before appearing before the undersigned, the Union also evidently raised the recent and historically high Social Security Administration (SSA) COLA increase of 8.7%. (Un. Tab 5.)

The City costs the Union's various proposals for the undersigned as follows:

- 3% COLA for Firefighters, total fiscal impact FY22-FY23: \$1,051,278
- 6% COLA for Firefighters, total fiscal impact FY22-FY23: \$2,102,556
 - o 6% COLA for ALL OTHER City Employees, total fiscal impact FY22-23:
 - \$5,388,300 for additional or non-IAFF
 - \$7,490,856 including Firefighters
- 8% COLA for Firefighters, total fiscal impact FY22-FY23: \$2,803,409

⁹ Only 33 people voted in this election, which was held over two consecutive nights. City and Fire management report that they heard from several Firefighters that they did not vote because they were sure the tentative agreement would pass. The vote was held according to the Union's bylaws and constitution, and the undersigned infers the majority of voters were those lowest paid employees feeling the pinch the hardest. The undersigned also notes that the Union recently voted in new membership.

- 8% COLA for ALL OTHER City Employees, total fiscal impact FY22-23:
 - \$7,184,401 for additional or non-IAFF
 - \$9,987,811 including Firefighters

(City Slides at 20-24.)

Inflation and Its Impact on Bargaining Unit Members

Average urban inflation as of July 2021 was 7%; and as of July 2022 it was 6.44%. (City Slides at 2-3.) Inflation for the seasonally unadjusted 12-month period ending September 2022 was 8-8.2%. (Un. Tabs 3-4, CPI.) This latter figure includes 11.2% inflation in food; 19.8% inflation in energy (including 58.1% increase of fuel oil prices, 15.5% increase in electricity, and 33.1% increase in piped utility gas); and 14.6% inflation in transportation costs. (*Id.*) The Union also points out the SSA's recent historic 8.7% COLA increase to its beneficiaries (Un. Tab 5), and further argues that Billings' inflation is 0.8% over the national average, so is approximately 9.5% using the SSA number.

The Union asserts that its lowest paid members¹⁰ are struggling to pay their monthly bills, and to buy groceries such as fresh vegetables, and that some cannot or could not obtain decent housing in Billings within their salaries. For example, one or more resorted to living in a travel trailer for a period; one had to move their family into a small two-bedroom apartment in a bad neighborhood; and some are rooming together. The Union asserts this is very damaging to employee morale and presents serious hiring and retention issues.

Against this, the City expresses doubt that Billings inflation has ever been higher than national inflation. The City also provided U.S. Census data showing Billings has the second highest rent of six Montana communities, coming in second behind Bozeman (the State's second largest City, with a population of about 54,500. (U.S. Census median gross rent, 2016-2020.) The City also argues that Social Security COLAs have lagged behind inflation since 2015, and the

¹⁰ Probationary Firefighters, although not yet members of IAFF Local 521, will fall into the same boat given that they are paid approximately \$3.50 to \$4.00 less than basic Firefighters. By way of comparison, other bands involve a jump of only \$1.20-\$1.30 or so. (CBA p. 46, and "Pay Matrix" for subsequent years provided by City.)

unprecedented increase was required to catch up social security benefits to inflation. (City Slides 3 and 25-26.)¹¹

The undersigned takes notice that Billings' "median gross rent, 2015-2020" is lower than the national median, at \$923/month versus \$1096/month. See https://planning.maryland.gov/MSDC/Documents/American_Community_Survey/2016-2020/US_ACS_2016-2020.pdf at p. 12. She also takes notice that Billings has a cost of living that is only 93% of the national average, while Bozeman's is 125.3% of the national average. See https://www.bestplaces.net/compare-cities/bozeman_mt/billings_mt/costofliving

Lastly, to better understand where inflation may be headed now in late 2022 and looking forward, the undersigned takes notice that the Federal Open Market Committee (FOMC) reported on September 21, 2022 that 2022 inflation will likely average at 5.4%, and that inflation is estimated to decline in 2023 to 2.8% (although other Agencies predict it will range from 2.9-3.5%). See <https://knoema.com/kyaewad/us-inflation-forecast-2022-2023-and-long-term-to-2030-data-and-charts>

PARTY POSITIONS

The City, which presented first, states, avers, and argues as follows:

The proposed 3% COLA for each of the two years is proper. As illustrated in the slide presentation, the average Firefighter has enjoyed big wage growth, and 3% is what has been accorded at other times and to other bargaining units now, on average.

Market comparisons are largely irrelevant because those were already covered five years ago, when the current CBA was negotiated. At the same time, any internal comparisons need to note the difference between the seven-year or plus employees and the three-year or less employees; and acknowledge that more senior Firefighters have enjoyed ten years of rising wages on average.

¹¹ The City also presents data suggesting that Billings Firefighter wage growth in 2021 and 2022 would far exceed both COLA and Social Security if a 3% COLA were assumed each year, although this is contradicted by other charts acknowledging that 2021 and 2022 inflation – whatever the exact rate is used as a benchmark – exceeds 3% quite significantly. (Compare City Slides 2-3 and 25-26.)

The fact finder should also consider the equities and negative morale effect of giving a disproportionate COLA increase to Firefighters when the Police and Teamsters accepted less. Additionally, after prices or inflation level off, future negotiations will turn on this decision.

The Union states, avers, and argues as follows:

Firefighters with the lowest time in service are hurting financially, as they struggle to pay for groceries, decent housing, and other essential goods and services during the past two years of historic high inflation.

It is unconscionable that essential front line emergency workers such as firefighters cannot afford decent housing or food. However, the City disregards the fact of historic inflation, and these Firefighters' hardship; and the City instead seeks to continue the status quo of a 3.0% COLA, which is financially painful to the lowest paid Firefighters. This is unacceptable and will leave these new and vulnerable workers "in the hole" for a long time to come. While it is great that more senior Firefighters have enjoyed wage growth over the past decade, that cannot justify the harm being currently imposed on those with the least time in service.

Additionally, the Union's Analyst Report shows that the City can afford the requested wage increase of 6.0% or more, for FY 2022 and 2023. The City's general fund has very low liabilities to assets, and it has generally operated with a large surplus. However, even if the surpluses decline somewhat going forward, more likely than not the public will vote to approve a mil levy increase to fund future emergency worker wages, if needed.

DISCUSSION AND ANALYSIS

I. Relevant Standards or Criteria

It is the impasse fact finder or arbitrator's role to identify "what would be, in light of all the relevant facts and circumstances, a fair and equitable answer to a problem which the parties have not been able to resolve themselves". See Elkouri & Elkouri: How Arbitration Works (6th

Ed.) at 1358-61. In theory, impasse arbitration or fact finding should be a matter of last resort, because it substitutes the neutral's opinion for that of the parties who are most familiar with their situation. Id. at 1349. Some believe it can also have a "narcotic effect" in which the parties' ability to reach a voluntary agreement thereafter continues to deteriorate. Id. at 1350. However, it is still fundamentally a "weighing and balancing processes." Id. at 1403.

Generally, the neutral has "broad arbitral discretion" regarding both the selection and weighing of relevant factors, unless that is determined by statute. Id. at 1359. Here, as noted above, neither State law nor the CBA give guidance on the criteria to be used in evaluating parties' bargaining proposals at impasse, even as to the weight or role of the Parties' last, best offers.

Typically, the neutral will be weighing and considering "the same [factors] that are used by the parties in their negotiations". Additionally, impasse neutrals are reluctant to eliminate historical differentials or implement drastic changes, and the most widely used standard for evaluating offers or positions in interest arbitration is "without question" the "prevailing practice standard". Elkouri at 1402, 1407, 1412-13, 1419. Ability to pay is also typically one of the most important factors in public sector impasse arbitration, along with public amenability to raise taxes. See Elkouri at 1429, 1433-36. Issues of inflation are often relevant and considered but, in contrast, they are far less likely to be dispositive. Id. at 1423. Other traditional standards or criterion that could be relevant here include hiring and retention, competition, maintenance of take-home pay, past practice and bargaining history, pre-arbitration negotiations, and the public and/or tax-payer interest. See, e.g., Elkouri at 1363, 1433-42.

Finally, as to the burden of proof, it is the undersigned's practice in impasse matters in which it is not dictated by the CBA, to impose the burden equally on both parties in the first instance, and to shift the burden of production of highly persuasive evidence on the Party seeking unusual provisions or variance from any prevailing practices and patterns. See, e.g., Elkouri at 1359, 1420 and accompanying notes.

II. Weighing and Balancing the Issues Most Concerning to the Parties

As a matter of arbitral economy and efficiency, Party reliance and basic fairness, it is often the undersigned's preference to hold the Parties to their last, best offers. See Gary Long and Peter Feuille, Final-Offer Arbitration: "Sudden Death" in Eugene, 27 Ind. and Lab. Rel. Rev. 2 (Jan.,

1974), pp. 186-203 (implementing the last best offer system provides a stronger incentive to the parties to narrow their differences in the first place, to present reasonable offers for arbitration). However, the Parties' various offers here largely just reflect their respective entrenched positions and the undersigned does not find them or the last best offers to be particularly persuasive beyond suggesting a possible range of reasonableness.

Turning to the information provided, the undersigned observes that the clear pattern of practice between the Parties and within the City generally is an approximate 3% annual wage increase. Well-established internal patterns can be entitled to great consideration absent "compelling or extenuating circumstances". Elkouri at 1421-22. However, here the undersigned finds that there are compelling and extenuating circumstances.

Compelling circumstances are based upon the combination of (a) the extraordinarily high inflation that has been going on for the past few years, (b) the disparate hardship it is imposing on the most junior employees, and (c) that some of the hardest hit Firefighters were intentionally recruited very recently because of ongoing concerns about the City's ability to adequately address the growing community's rising service calls.

It is true that all employees are facing historic inflation, which is not entirely controlling; and that approximately two-thirds of the Firefighters have enjoyed steady wage growth over the past decade that met or exceeded inflation. Nonetheless, the evidence is unrebutted that the most recently hired Firefighters – who were hired under an express or implied promise of adequate wages – have for the duration of their career had a wage that has failed to keep up with inflation. Also unrebutted was the need to retain and hire more Firefighters. Moreover, the language of the CBA arguably signals (and possibly strongly) that the Parties intended the raise for the fourth and fifth years to be responsive to actual inflation, by its repeated references to "COLA".

Balanced against these facts, is that the amount and rate of inflation is generally transient and therefore rarely controlling. Additionally, it was not shown that the City would always be able to fund an identical FY 2022 and FY 2023 raises of 6% or 8% for all City employees without recourse to a new mil levy increase. These facts are not sufficiently compelling to outweigh those in favor of a greater than 3% COLA increase, but they do urge moderation in considering the Union's proposals.

First, the undersigned agrees that giving all Firefighters a COLA increase equal to that year's inflation of would be excessive when balancing the City's and public's interests. However,

it is evident that an increase over 3% is required for the least paid to have an equitable salary with which to maintain a decent standard of living that the public rightly expects for its recently hired emergency personnel. Moreover, the undersigned is persuaded by the Union's argument and treatise authority, that any wage increase to the lowest paid Firefighters must be granted to the entire IAFF Local 521 bargaining unit. The undersigned accepts that to do otherwise would be damaging, because it would disrupt and erode the Firefighters' stabilized pay structure, and devalue the benefits of seniority, longevity, and experience. Cf. Elkouri at 1419.

Second, the record does not reveal any positive barrier to a greater than 3% raise for FYs 2022 and 2023. It is evident from the City's recent contract with the Police that raises may vary by bargaining unit, and that doing so therefore does not present inherently insurmountable obstacles. Additionally, the record indicates the City definitely has the ability to pay for this Firefighter wage increase, and likely even has the current ability to pay for a similar wage increase for other City employees although the undersigned was not persuaded an across-the-board raise would be necessitated. See Elkouri at 1432 (failure to specifically plead inability to pay "may be considered sufficient to establish ability to pay up to the maximum demanded by the Union"). The record also indicates that if a modest increase over 3% creates budgetary difficulties down the road, an additional mil levy increase for Firefighters or other emergency personnel has a high likelihood of success before the voters. Id. at 1430 (temporary inability to pay is not as important as longer-term capacity, and inability to pay is even less important when the matter involves a substandard wage because of the duty to pay a fair wage even when receipts are down).

Third, notwithstanding the ability to vary wages between bargaining units and the general ability to pay, the undersigned agrees that it would be contrary to morale and therefore public interest to have too great a disparity between comparable bargaining units. At the same time, the future is largely unknown but there are good indications that the worst of the recent inflation may abate much quicker than initially forecasted.

Taking all of the foregoing into consideration, with due and proper weighing and balancing of the various factors and interests, there is strong indicia that the Firefighters' pay should be increased by 3.5% for FY 2022 and by 3.3% for FY 2023. More specifically, the undersigned infers that a wage increase between 3.3% and 4.1% for each FY reflects where the Parties would have landed had they each been able to move off their entrenched positions; but that a figure at the higher end is not supported because of the relatively sparse information on the impact of the current

inflationary crunch on individual bargaining unit numbers and on retention. Using a different rate for each year reflects that inflation was higher in FY 2022, but that it is still quite high. The modified rates may not bring the lowest paid employees to a base pay that is equal to the current cost of living, but it will mitigate the present harm, and hopefully boost their morale sufficient to avoid hiring and retention difficulties over the next year or so as they and everyone else continues to “tighten the belt” and/or inflationary conditions improve.¹²

Nothing in these findings of fact and recommendations should be interpreted to speak to conditions beyond FY 2023, or to create a new prevailing standard between the Parties. The undersigned also strongly cautions and encourages the Parties to accept this recommendation, even if it could not be calculated with scientific exactitude, as the value of the case does not appear to warrant additional litigation or arbitration expenses.

RECOMMENDATION

For the foregoing reasons, the undersigned recommends that the bargaining unit members receive a COLA of 3.5% for the fourth year of the CBA (FY 2022) and a COLA of 3.3% for the fifth year of the CBA (FY 2023).



Signed this 14th day
of November 2022

Pilar Vaile, Esq.
Fact Finder

¹² There is some allure to the idea of using one-time or non-recurring bonus payments to ameliorate conditions of the lowest paid employees. However, the Parties did not appear particularly receptive to the idea at the hearing/presentation, and the record lacks the data from which to value or cost such bonuses, including whether they would be selective, across-the-board, graduated based on need, etc.