

IN THE MATTER OF FACTFINDING
BEFORE FACTFINDER JEFF J. MINCKLER

BOPA No. 20200229:

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS,

and

CITY OF HAVRE, MONTANA,

Union,

Employer.

FINDINGS
AND
RECOMMENDATIONS

ISSUED DECEMBER 22, 2020

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ISSUES IN DISPUTE

Union:

Base wage rate for fiscal years 2017-2018 and 2018-2019.
Health insurance tier structure and contributions.
Callback time on all emergent ambulance transfers.

Employer:

Base wage rate for fiscal years 2018-2019 and 2019-2020.
Health insurance program and contributions.

HEARING

November 13, 2020, 10:00 AM MST, via Zoom videoconference

APPEARANCES

Union: Tim Hoover, IAFF District 5 Representative, Seattle, Washington
Employer: Jean E. Faure, Faure Holden, Great Falls, Montana

RECOMMENDATIONS

Base wage: Union's proposed 4.0% retroactive increase through June 30, 2019.
Health insurance tier structure and contributions: Union's proposed *status quo*.
Nonemergent callback: Union's proposal.

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1. INTRODUCTION

On March 5, 2020, I received an appointment by the parties above to serve as the sole factfinder to conduct a hearing and issue recommendations on the matters before me. I promptly contacted each party and each subsequently authorized me to determine all procedural matters, to arrange and conduct a hearing, and to issue recommendations. Because for many years I represented the City of Havre in labor relations matters involving the Firefighters' bargaining unit, both parties waived conflict of interest and all other possible objections relative to that past involvement.

The hearing was originally scheduled for June 5, 2020 in Havre, Montana, but was postponed twice due to concerns over the COVID-19 virus. It was eventually conducted via videoconference on November 13, 2020 beginning at 10:00 AM MST. Both parties were present and participated and argument, evidence and testimony were received after witnesses were sworn. Evidence was in the form of documents which were assessed on their relevance and reliability; and testimony which was assessed on each witness's capacity to observe, character and demeanor, bias, inconsistent statements, credible contradiction, and the reasonableness of his or her testimony.

At the conclusion of the hearing each party stipulated it had been given a full opportunity to present all the evidence it considered pertinent.

39-31-309(6), MCA allows a factfinder to attempt to mediate the dispute. After reviewing the history of negotiations and becoming convinced the parties had thoroughly explored options, I did not.

39-31-309(4), MCA requires a factfinder issue written findings of facts and recommendations for resolution of the disputes no later than 20 days from the end of the hearing. The parties requested the opportunity to file briefs by November 30, 2020, so in this case the required date for issuing my recommendations was December 29, 2020. However, due to a staff illness and a computer problem, the

1 parties agreed to extend the briefing deadline to December 2, 2020, making De-
2 cember 31, 2020 the date by which my recommendations are to be issued.

3 After conducting a hearing and reviewing all testimony, evidence and the briefs,
4 the following is issued.

5 2. ISSUES

6 The parties declared the following to be all of their unresolved final proposals:

7 From the Employer:

- 8
- 9 1. FY 2018-2019: 2.0% wage increase, not retroactive.
- 10
- 11 2. FY 2019-2020: 2.0% wage increase, retroactive.
- 12
- 13 3. Health insurance: Full payment of health and dental premiums for the
- 14 employee, with spouse and family plans available to those hired before
- 15 ratification.
- 16

17 From the Union:

- 18
- 19 1. Article 11 - Wages and other compensation: (i) (A) Wages: 4.0% increase
- 20 on base wage applied throughout the matrix in Addendum A, with all
- 21 applicable pay and benefits adjusted, retroactive to July 1, 2017.
- 22
- 23 2. Article 11 - Wages and other compensation: (ii) (New section after E) Non-
- 24 emergent Callback: Three hours of minimum callback time on all non-
- 25 emergent ambulance transfers, paid at time and one-half the employee's
- 26 regular rate of pay regardless if such constitutes overtime.
- 27
- 28 3. Article 31 - Duration of agreement: Expiration date of June 30, 2019.
- 29

30 3. POSITIONS

31 Employer:

32 Negotiations for a contract with a term beginning July 1, 2018 have been ongo-
33 ing since early 2018. In November 2019 the parties participated in mediation which
34 was unsuccessful. Negotiations continued until the Union petitioned for factfind-
35 ing.

36 For many years the Employer provided a contribution toward each participating
37 employee's health and dental insurance premium as well as for each covered family
38 member. In 2017 the Employer and its three bargaining units conducted a review

1 of the City's insurance program. Based on the desire of many employees to convert
2 some of the City's insurance contributions to wages, the City decided to fix its
3 contribution toward insurance premiums for existing employees and covered fam-
4 ily members. For employees hired after 2017, the City pays the full premium cost
5 for participating employees, but it pays nothing toward premium costs for family
6 members.

7 Two of the three bargaining units accepted these changes, but not the Firefight-
8 ers' unit which challenged the City's action in arbitration. The Union won, so the
9 City has continued to contribute all but \$52.95 for each participating firefighter,
10 all but \$246.50 for each firefighter selecting the two-party plan, and all but
11 \$328.75 for each firefighter selecting the family plan. The sum of these contribu-
12 tions equates to 4% of the Firefighters' unit's base wage. For 2018, the Employer
13 offered the Firefighters the 4% raise it gave all other employees plus an additional
14 settlement incentive. The total of the Employer's offer to the Firefighters' unit con-
15 stitutes a 6% package increase. The Union's proposal to continue the Employer's
16 insurance premium contributions at 2017 levels, plus the 4% wage increase of-
17 fered by the Employer, would equate to an 8% increase - about double what other
18 City employees received.

19 Montana statutes require an arbitrator to compare compensation provided by
20 the Employer with that of employees performing the same services for other em-
21 ployers, and the parties hereto have directed me to abide by that same require-
22 ment. Montana statutes classify its cities into Class 1 and Class 2, based on pop-
23 ulation, and the City of Havre's population of 9,500 makes it a Class 2 city. How-
24 ever, the city council of a Class 2 city with a population of between 9,000 and
25 10,000 has the option under statute to vote to be deemed a Class 1 city. The City
26 of Havre qualifies to exercise that option, which the Havre City Council has done.
27 This results in Havre being the only Class 1 city with a population under 20,000,
28 making it inappropriate to compare Havre with other Montana Class 1 cities.

29 The Union wishes to compare Havre firefighters with those of Kalispell, Mon-
30 tana, another Class 1 city. However, Kalispell has a population of about 25,000,

1 compared with Havre's 9,500. The Union is comparing Havre firefighters with a
2 city with a tax base of about double Havre's, with a city that is experiencing high
3 growth, and with a city that has a much higher cost of living. It would be more
4 appropriate to compare Havre with Montana's Class 2 cities. Additionally, Havre
5 differs from Kalispell in that Havre has combined its fire department with its am-
6 bulance service which makes about 1,400 service calls each year.

7 Analyzing the ability of the Employer to afford the Union's proposal must take
8 into account the method for funding the Fire Department. The Havre Fire Depart-
9 ment is funded 70% by the Enterprise fund which gets its revenue partly from
10 proceeds from its ambulance service and partly from tax revenues, and the re-
11 maining 30% by the general fund. For the period 2018-2019, the Fire Department
12 budget was \$1,067,000, of which \$348,000 or 33% was funded by ambulance ser-
13 vice proceeds, and \$719,000 or 67% was funded by tax revenues. Montana stat-
14 utes limit the City's ability to increase city taxes to whatever rate is supportive of
15 the City's conservative budgeting tradition, leaving requesting revenue to cover Fire
16 Department budget shortfalls from only Hill County taxpayers.

17 The Employer has explained to the Union that it cannot address wages without
18 also addressing insurance premium contributions as a package because paying
19 for each of the Union's proposals is not sustainable. For example, health insurance
20 premium costs increased by 4.2% in 2018, and will increase by 8% in 2021.

21 The Factfinder must consider only the City's existing funding ability and he
22 cannot substitute his judgment for the City's budgetary analysis and philosophy.

23 Union:

24 Havre is the 8th largest city in Montana in the terms of population. The Fire
25 Department serves not only the 38 square miles that constitute the City of Havre,
26 but 1,347 square miles of Hill County in addition. The City also provides medical
27 transport to Great Falls, Montana, which is 115 miles south of Havre.

28 Contract negotiations with the Employer have been ongoing since early 2018,
29 and included a hold while an arbitrator decided a unilateral change in insurance
30 contribution issue, and an unsuccessful mediation. Havre firefighters are the

1 lowest paid of any of Montana's 7 other Class 1 fire departments, and the Union's
2 proposal for a 4% wage increase would still compensate Havre firefighters 15%
3 below the next highest Montana Class 1 fire department. Negotiations for a 2015
4 CBA ended in interest arbitration with Arbitrator Larney agreeing with the Union
5 that comparing Havre firefighters to other Montana Class 1 firefighters is appro-
6 priate given that the Havre City Council takes the voluntary initiative necessary to
7 be deemed a Class 1 city, and that under statute Havre is very close anyway to
8 being a Class 1 city anyway.

9 The Union also proposes a one hour increase in the call-out time provision in
10 Article 11, Section E, to properly compensate firefighters for the time required be-
11 fore and after making a transfer.

12 The Union's other proposal is for a contract term that expires on June 30, 2019,
13 because although the Union originally proposed a multiyear contract, the Em-
14 ployer has expressed a strong preference for a one-year contract.

15 4. ANALYSIS

16 The parties instructed me to use criteria provided by Montana statute for arbi-
17 trators when assessing each party's final position, and for each unresolved issue
18 to select as my recommendation the unmodified previously established final posi-
19 tion of one of the parties. The statutory criteria is contained in 39-34-103(5), MCA:

20 In arriving at a determination, the arbitrator shall consider any relevant
21 circumstances, including:

- 22 a. comparison of hours, wages and conditions of employment of the em-
23 ployees involved with employees performing similar services and with
24 other services generally;
- 25 b. the interests and welfare of the public and the financial ability of the
26 public employer to pay;
- 27 c. appropriate cost-of-living indices;
- 28 d. any other factors considered in the determination of hours, wages, and
29 conditions of employment.

30
31 This statute is unartfully drafted in that it begins formulating criteria with: "...
32 the arbitrator shall consider any relevant circumstances, *including* ..." [italics
33 added], which appears to make the itemization of criteria which follow as only
34 some of what may be considered. The statute ends: "any other factors considered

1 in the determination of hours, wages, and conditions of employment." Instead of
2 creating two separate "any other factors" categories, I believe these provisions are
3 operationally redundant and the intent is to provide an arbitrator, or the Fact-
4 finder in this case, the opportunity to consider "relevant factors" other than what
5 the statute itemizes. It is important to have a clear understanding of statutory
6 requirements, but in this case the "any other factors" provisions are moot because
7 I find the factors itemized in Sections a and b sufficient to allow appropriate con-
8 sideration of the proposals and arguments advanced by each party because there
9 was no proposal regarding "cost-of-living indices" or any other factor not embraced
10 by Sections a and b. Taking these two "relevant factors" in order:

11 a. Comparison of hours, wages and conditions of employment of the employees
12 involved with employees performing similar services and with other services gen-
13 erally:

14 Because of significant differences in how countries and U.S. state legislatures
15 structure their municipal governments for several purposes including taxation
16 and compensation, it is common and appropriate to confine wage and benefit
17 comparisons to municipalities in the same country and state in which the local
18 government exists. Montana has 363 separate municipalities with populations
19 between 109,577 in Billings and 10 in Silesia.¹ The vast differences between these
20 municipalities makes it is impossible to draft a variety of overarching regulations.
21 Because of this, based on population the State of Montana divides its cities and
22 towns into four classifications under 7-1-4111, MCA, and imposes differing regu-
23 lations based on these classifications:

- 24 (1) Every city having a population of 10,000 or more is a city of the first
25 class.
26 (2) Every city having a population of less than 10,000 and more than 5,000
27 is a city of the second class.
28 (3) Every city having a population of less than 5,000 and more than 1,000
29 is a city of the third class.
30 (4) Every municipal corporation having a population of less than 1,000 and
31 more than 300 is a town.

¹ U.S Census Bureau.

1 The obvious question is if Havre firefighters are to be compared with what other
2 Montana municipalities compensate their firefighters, is it more appropriate to
3 compare Havre with all 363 Montana cities and towns, or just those employed by
4 cities of the same classification.

5 When negotiating for a contract in 2014, the parties opted for factfinding and
6 in February 2015 Factfinder Schramm found it appropriate to compare Havre
7 firefighters with other Montana Class 1 and Class 2 governments.² The parties
8 rejected Schramm's recommendations and invoked interest arbitration. In his de-
9 cision of December 2015, Arbitrator Larney concurred in part with Schramm's
10 analysis but compared Havre firefighters with just those employed by other Mon-
11 tana Class 1 cities,³ partly because Havre, with a current population of 9,791,⁴
12 would be a Class 2 Montana city under statute except the Havre City Council
13 continuously opts to use the exception provided by 7-1-4112, MCA in order to be
14 deemed a Class 1 Montana city:

15 (1) [E]very municipal corporation having a population of more than 9,000
16 and less than 10,000 may, by resolution adopted by the city council ... be
17 either a first-class city or a second-class city ...".
18

19 The City of Havre realizes benefits from being Class 1 such as the establish-
20 ment and operation of courts (Title 3), the operation of local government (Title 7),
21 taxation powers (Title 15), retirement systems (Title 19), health boards and other
22 health related issues (Title 50), and land use (Title 76). Havre firefighters also
23 benefit from the Council's decision in that Title 7, chapter 33, part 41 requires a
24 Class 1 city to have a fire department consisting of only paid employees while a
25 Class 2 city may augment a paid department with volunteers. Consistent with
26 that requirement, the Havre fire department is wholly comprised of paid employ-
27 ees.

28 I am persuaded by Arbitrator Larney's rationale when he determined that be-
29 cause the Havre City Council opted to be deemed a Montana Class 1 city, and

² Schramm factfindng recommendations of February 23, 2015.

³ Larney interest arbitration award of December 14, 2015, pp. 9-10.

⁴ U.S. Census Bureau.

1 because Havre's population is just 209 below the threshold of being mandated a
2 Class 1 city, it be deemed a Class 1 city for the purposes of comparing firefighters'
3 wages and benefits. Therefore, for the purpose of this recommendation I find it
4 appropriate and sufficient to compare the City of Havre with the other Montana
5 Class 1 cities.

6 The current list of Class 1 Montana cities, by virtue of either population or a
7 vote of their city councils under 7-1-4112(1), MCA are:

MONTANA CLASS 1 CITY	2019 POPULATION	CHANGE FROM 2018
Billings	109,577	133
Bozeman	49,831	1,394
Butte/Silver Bow	34,207	172
Great Falls	58,434	-317
Havre	9,791	82
Helena	33,124	566
Kalispell	24,565	646
Missoula	75,516	634
AVERAGE	49,381	414

Source: U.S. Census Bureau

8 Havre has a population of 20% of the average of all Montana Class 1 cities, and
9 its population grew from 2018 to 2019 by 20% of the average population change
10 for that period. Dealing for the moment with just wages, fixing Havre's firefighter
11 compensation at 20% of the Class 1 average would be as silly as suggesting Bo-
12 zeman's compensation should be 45% of what Billings pays its firefighters. Fur-
13 ther, a quick look at compensation for firefighters in Montana Class 1 cities indi-
14 cates an absence of any consistent correlation between a city's population and
15 rates of pay. The only logical and appropriate comparison is between the City of
16 Havre and the average of the entire group of Montana Class 1 cities, into which
17 the Havre City Council has opted to place itself.

18 (1) Wages: Part of the Employer's stated objection to the Union's wage proposals
19 center on the increase it provided to its other employees. However, the Employer
20 otherwise argues it is inappropriate for the Factfinder to compare one Havre

bargaining unit with another.⁵ Additionally, I have no way of knowing if when establishing wage increases for its other employees the City of Havre compared its positions to other Montana public employers, so I maintain the only meaningful comparison is between Havre firefighters and those employed by other Montana Class 1 cities. Only the Union provided data on that point:

MONTANA CLASS 1 CITY	BASE WAGE
Billings	\$25.66
Bozeman	\$23.02
Butte/Silver Bow	\$26.29
Great Falls	\$25.40
Havre	\$18.45
Helena	\$25.86
Kalispell	\$22.11
Missoula	\$26.91
AVERAGE =	\$24.21

Based on this data, Havre firefighters are paid 76% of the Montana Class 1 average, and to equal that average hourly wages for Havre firefighters would need to be increased by \$5.76 or 31%.⁶ Of the two proposals for a base wage increase, the Union's proposed 4% increase for the contract term which ends on June 30, 2019 is closer than the Employer's proposed 2% increase for the same period.⁷

(2) Health insurance contributions: The parties are also at odds regarding the Employer's contribution toward health and dental insurance premiums. In July of 2018, the Employer initiated a new system of providing insurance premium contributions. The Employer initially imposed the change on the Firefighters' unit, but the Union asserted a unilateral change in a mandatory subject of bargaining. Arbitrator MacIntyre agreed and ordered a reversal on August 22, 2019. Since then, the Employer has contributed for the Firefighters' unit all but \$52.95 for each employee electing single coverage, all but \$246.70 for those electing two

⁵ Employer's brief, p. 5, ¶ 17, ll. 6-8: "... In any event, the reference to any health insurance premium issue with the Police Union is irrelevant to this Fact Finding".

⁶ Including data from Havre to obtain averages means any change for Havre skews the average.

⁷ The Union's proposal is to apply the 4% proposed increase "in base wage as applied throughout the matrix". I presume this refers to how an increase on the base of the matrix ripples mathematically through all of its steps and lanes. Without having data sufficient to populate the matrix for Havre or any other Montana Class 1 city, I am able to work only with the base.

party coverage, and all but \$328.75 for those electing family coverage. The Union proposes maintaining that arrangement, which would currently result in the participating firefighters and the Employer contributing:

UNION'S PROPOSAL (<i>status quo</i>)					
	PREMIUM	EMPLOYEES' SHARE	PERCENT	CITY'S SHARE	PERCENT
EMPLOYEE ONLY	\$869.80	\$52.95	6.1%	\$816.85	93.9%
EMPLOYEE & SPOUSE	\$1,736.80	\$246.70	14.2%	\$1,490.10	85.8%
EMPLOYEE & FAMILY	\$2,397.80	\$328.75	13.7%	\$2,069.05	86.3%

Source: Employer's evidence⁸

The current aggregate annual cost of the Union's proposal to the Employer would be:

ANNUALIZED AGGREGATE COST OF UNION'S PROPOSAL (<i>status quo</i>)					
	PREMIUM	EMPLOYEES' SHARE	CITY'S SHARE	PARTICIPANTS	CITY'S ANNUAL COST
EMPLOYEE ONLY	\$869.80	\$52.95	\$816.85	8	\$78,417.60
EMPLOYEE & SPOUSE	\$1,736.80	\$246.70	\$1,490.10	3	\$53,643.60
EMPLOYEE & FAMILY	\$2,397.80	\$328.75	\$2,069.05	4	\$99,314.40
AGGREGATE ANNUAL TOTAL =					\$231,375.60

Source: Employer's evidence

The Employer's proposal for its firefighters is the same program it currently provides its other employees.⁹ It would result in a different contribution structure for the firefighters which would pay all of the employee's premium and a different split in contributions for the premium for coverage of spouses and children, depending upon the employee's date of hire:

⁸ As indicated, the raw data used to produce some of these charts is from the Employer's exhibits, but the annualized totals differ from the Employer's calculations. The discrepancy may be for any number of reasons including the nature of the Employer's proposed retro and non-retro increases, but taken with all other factors the differences are not sufficient to have a major impact on determining which party's proposals to recommend.

⁹ The Havre Police unit lodged a challenge to how the Employer applied its new insurance program to its Officers. According to Mayor Solomon's testimony, the issue involves grandfathering and the Employer asserts in its brief (p. 5, ¶ 17) that the particular details of that challenge make it not applicable to this matter. The Union made no rebuttal.

EMPLOYER'S PROPOSAL					
TIER	PREMIUM	EMPLOYEES' SHARE	PERCENT	CITY'S SHARE	PERCENT
EMPLOYEE ONLY					
Hired before 2017	\$869.80	\$0.00	0.0%	\$869.80	100.0%
Hired after 2017	\$869.80	\$0.00	0.0%	\$869.80	100.0%
EMPLOYEE & SPOUSE					
Hired before 2017	\$1,736.80	\$376.80	21.7%	\$1,360.00	78.3%
Hired after 2017	\$1,736.80	\$867.00	49.9%	\$869.80	50.1%
EMPLOYEE & CHILDREN					
Hired before 2017	\$1,526.80	\$345.80	22.6%	\$1,181.00	77.4%
Hired after 2017	\$1,526.80	\$657.00	43.0%	\$869.80	57.0%
EMPLOYEE & FAMILY					
Hired before 2017	\$2,397.80	\$620.80	25.9%	\$1,777.00	74.1%
Hired after 2017	\$2,397.80	\$1,528.00	63.7%	\$869.80	36.3%

Source: Employer's evidence

- 1 The current aggregate annual cost to the Employer of its proposal would be:

TIER	ANNUALIZED AGGREGATE COST OF EMPLOYER PROPOSAL				
	PREMIUM	EMPLOYEE'S SHARE	CITY'S SHARE	PARTICIPANTS	CITY'S ANNUAL COST
EMPLOYEE ONLY					
Hired before 2017	\$869.80	\$0.00	\$869.80	2	\$20,875.20
Hired after 2017	\$869.80	\$0.00	\$869.80	6	\$62,625.60
EMPLOYEE & SPOUSE					
Hired before 2017	\$1,736.80	\$376.80	\$1,360.00	1	\$16,320.00
Hired after 2017	\$1,736.80	\$867.00	\$869.80	2	\$20,875.20
EMPLOYEE & CHILDREN					
Hired before 2017	\$1,526.80	\$345.80	\$1,181.00	1	\$14,172.00
Hired after 2017	\$1,526.80	\$657.00	\$869.80	0	\$0.00
EMPLOYEE & FAMILY					
Hired before 2017	\$2,397.80	\$620.80	\$1,777.00	2	\$42,648.00
Hired after 2017	\$2,397.80	\$1,528.00	\$869.80	1	\$10,437.60
AGGREGATE ANNUAL TOTAL =					\$187,953.60

Source: Employer's evidence

- 2 The Employer's proposed structure and contributions would significantly reduce
- 3 its current total annual insurance premium expenditures for the Firefighters' unit.
- 4 To accomplish this, a portion of what the Employer currently contributes would
- 5 be shifted to the firefighters which would result in a reduction of \$52.95 in
- 6 monthly contributions for some, but an increase of as much as \$1,199.25 per
- 7 month for others.

8 No doubt the Employer is keen to standardize its health insurance structure

9 and premium contributions across all of its employees for efficiency, cost savings,

10 and to reduce whipsawing. But the Havre firefighters' base wage is so far below

11 those of other Montana Class 1 cities and would remain so even if the Union's

12 wage proposal is adopted, that absent an examination of the impact on the

1 Employer, it is not equitable to assist the Employer's efforts by recommending the
2 Firefighters' unit adopt the structure and contribution requirements applicable to
3 the other City employees. Additionally, it is the Employer's position that it is in-
4 appropriate for the Factfinder to compare one Havre bargaining unit with an-
5 other.¹⁰

6 One element of the Employer's proposed health and dental insurance pre-
7 mium structure is to convert the current three tiers into four by adding "employee
8 and children". The economic impact on the Employer would be a reduction of
9 \$328.75 per month to, along with the employee's current \$246.70 monthly con-
10 tribution, satisfy the monthly premium required by the insurance company for
11 one firefighter. Without changing the monthly contribution required of any cur-
12 rent firefighter electing coverage for just a spouse, along with a small decrease in
13 cost to the Employer it would standardize tiers among all Havre employees. I re-
14 gret not being able to include the Employer's proposed added tier because it is not
15 part of the proposal otherwise most appropriate to recommend.

16 (3) Nonemergent callback: The Union proposes a new section for the CBA which
17 would be Article 11, Section E, 2 - Non-emergent Callback.¹¹ The proposal would
18 guarantee Havre firefighters at least three hours of pay at time and one-half when
19 called back to work for a nonemergency ambulance transfer to compensate a fire-
20 fighter for the inconvenience of going to the fire station to change clothes to per-
21 form work for the Employer, and the necessary cessation of personal activities in
22 order to perform that work. The Union argues this addition is appropriate on its
23 face and that the Employer obviously agrees with the rationale for this arrange-
24 ment because it is basically similar to a provision it agreed to include in the Havre
25 Police CBA at Article 8, Section B, 2, b, (2):

26 Call Out: An Officer will be paid for a minimum of three hours at the rate of
27 time and one-half his or her regular rate of pay when he or she returns to
28 work as a result of recall which is not directly connected to either the begin-
29 ning or end of his or her regularly scheduled shift.

¹⁰ *Supra* note 5.

¹¹ On a minor point, the Union designates this proposal Article 11, Section "E, (ii)", but "E, 2" would be more consistent with the numbering system present throughout the CBA.

1 The Union further argues this addition is necessary because:

2 Once at the fire station, they spend time changing out of their civilian
3 clothes and into a fire department uniform. It is not until they drive out of
4 the station that the clock starts on their overtime. Once back at the station
5 the clock stops on their overtime, however, the firefighter still needs to
6 change back into their civilian clothes.¹²

7
8 Not during the hearing or in its brief did the Employer mention this proposal
9 let alone provide any testimony, data or argument in opposition. With what ap-
10 pears compelling argument by the Union absent any rebuttal by the Employer, it
11 is an easy task to decide to recommend the Union's proposal.

12 (4) Term: The Union desires a multiyear agreement but the Employer is not
13 agreeable to that for the Firefighters' unit. In compromise, the Union is amenable
14 and proposes a one-year term,¹³ but how wage proposal are applied to each con-
15 tract term differ. The Employer proposes two separate 2% increases for the 2018-
16 2019 and 2019-2020 fiscal years. The Union proposes one 4% retroactive increase
17 with an ending date of June 30, 2019, and negotiations for a successive contract.

18 When one party to contract negotiations refuses to extend a potential agree-
19 ment for more than the mandatory one-year term beyond an expired agreement,¹⁴
20 mediators, factfinders and arbitrators are loath to recommend or order the parties
21 forego negotiations on items of current interest by imposing a longer period away
22 from the bargaining table. The Employer has made clear its need to assess em-
23 ployee health and dental insurance premium increases as they occur because of
24 the major impact they have on City finances. Recommending an expiration date
25 of June 30, 2019 would provide each party the opportunity to address current
26 issues, including known and anticipated insurance premium changes.

¹² Union's brief, p. 3, ¶ 2. This argument's potency depends upon if under the Fair Labor Standards Act such pre- and post-preparation would be considered time worked according to the generally recognized 10 minute per day *de minimis* or other applicable exclusion.

¹³ *Id.*, p. 2, ¶ 4; and p. 3, ¶ 3.

¹⁴ Administrative Rules of Montana, 24.26.602(1): Agreements reached between a public employer and a labor organization shall be for a minimum of one-year.

1 b. The interests and welfare of the public and the financial ability of the public
2 employer to pay:

3 This factor is comprised of two separate but related elements: The potential
4 impact of the proposals on the public, and the ability of the employer to fund the
5 proposals. While the amount of tax revenue required from the public would cer-
6 tainly have an impact on the public, there are other potential impacts as well.

7 (1) Interests and welfare of the public: The parties previously submitted their
8 disputes to interest arbitration. While Arbitrator Larney addressed the period
9 2014-2015, parts of his opinion and award remain applicable:

10 Although the Parties did not specifically address the interests and welfare
11 of the public, common sense dictates that a continuing viable Fire Depart-
12 ment providing fire suppression service and emergency medical service
13 (read ambulance service) is of utmost importance in the interests and wel-
14 fare of the public.¹⁵

15
16 Fire suppression and ambulance service can also be provided by a volunteer
17 work force or a private contractor. Volunteer firefighters and EMT's are a blessing
18 to communities who must rely on them, but the service they can provide does not
19 equal the speed and depth of training provided by dedicated full-time profession-
20 als.

21 An additional consideration is in order to maintain the "contracted" work
22 force arrangement of hiring a private company, an employer must relinquish most
23 of its control over how critical services are provided to the public. The IRS has
24 established rules to determine if a person is contracted or a regular employee
25 because of the impact on the withholding and payment of taxes:¹⁶

26 Behavioral Control: A worker is an employee when the business has the
27 right to direct and control the work performed by the worker, even if that
28 right is not exercised. Behavioral control categories are:

- 29 • Type of instructions given, such as when and where to work, what tools
30 to use or where to purchase supplies and services. Receiving the types of
31 instructions in these examples may indicate a worker is an employee.

¹⁵ Opinion and Award by Arbitrator George Edward Larney in December 2015, p. 15, ¶ 3.

¹⁶ IRS Fact Sheet: Understanding Employee vs. Contractor Designation.

- Degree of instruction, more detailed instructions may indicate that the worker is an employee. Less detailed instructions reflects less control, indicating that the worker is more likely an independent contractor.
 - Evaluation systems to measure the details of how the work is done points to an employee. Evaluation systems measuring just the end result point to either an independent contractor or an employee.
 - Training a worker on how to do the job -- or periodic or on-going training about procedures and methods -- is strong evidence that the worker is an employee. Independent contractors ordinarily use their own methods.
- ...

That test and those limitations are also imposed by the Fair Labor Standards Act to determine if a person is contracted or employed for the purposes of calculating time worked and overtime due.¹⁷

The desire to determine how services are provided by firefighters and EMT's may or may not play a part in the Havre City Council's decision to maintain a paid fire department, but they no doubt play a large role in the public's interests and welfare, exhibited by the willingness of the citizens residing directly outside the City to pay taxes for the services of a professional firefighting and ambulance service.¹⁸

(2) Ability to pay: My many years representing several unions familiarized me with employers' concerns over responsibly funding union proposals now and in the future, and my many years representing a multitude of employers, including the City of Havre, made those concerns mine. I do not take lightly let alone dismiss the arguments advanced by the Mayor and Finance Director. That said, the cavern between Havre's firefighter wages compared with those of the average Montana Class 1 city must be kept in mind when weighing the Employer's efforts to reduce and control insurance premium costs by passing more of the cost to the firefighters. Correcting the resulting dramatic tipping of the scales would to some extent

¹⁷ U.S. Wage and Hour Division, Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act.

¹⁸ Union's exhibit 10.

1 test the Employer's self-described practice of a "fiscally conservative way of ap-
2 proaching its budget".¹⁹

3 The Employer's opposition to the Union's proposed wage increase and
4 maintenance of insurance premium contributions is based both on the fiscal im-
5 pact to the City and the anticipated pressure for similar treatment from other
6 employees. The Employer's fear of whipsawing pressure is understandable but
7 goes against its otherwise stated philosophy that what other City bargaining units
8 do at the table cannot provide a basis for comparison with the Firefighters' unit.
9 Regarding the fiscal impact on the City's budget, the Employer insists:

10 "The Fact Finder must limit his inquiry into the amount of available funds
11 within the budgetary system in place. He cannot substitute his judgment
12 for the City leaders who must deal with the realities of their budgetary sit-
13 uation."²⁰
14

15 The "budgetary system in place" I assume to be the 2020-2021 Havre City budget,
16 under which the City leaders have obviously been able to fit its two proposed 2%
17 wage increases for the Firefighters' unit and, even with annual increase in the cost
18 of employee health and dental insurance, maintenance of its share of contribu-
19 tions under the previously existing ratio. To fund its offers and still maintain a
20 conservative budget, the Employer seeks an offset in proposed wage increases by
21 shifting a significant portion of its current and future insurance premium ex-
22 penses to the Firefighters' unit. But at least for the current fiscal year, maintaining
23 the City's current budgetary expenditures for Firefighter unit wages and insur-
24 ance does not require me to substitute my judgment for the Employer's.

25 The focus of much of the Employer's argument goes to sustainability, par-
26 ticularly because of anticipated further increases in health insurance costs. The
27 Employer provided its calculations for "Determining Tax Revenue and Mill Levy
28 Limitations", which documents a major part of the City's taxing authority through
29 June 30, 2021, but no information was provided to illustrate the City's ability
30 beyond that. Converting the current "City pays everything above the established

¹⁹ Employer's brief, p. 10, ¶ 45.

²⁰ *Id.*, p. 9, ¶ 43.

employees' contributions" to "the employees pay everything above the City's established contributions" would provide the City a degree of sustainability both in budget planning and affordability. But that switch would most certainly create major impediments to the individual employee's ability to afford their insurance coverage and in each employee's effort for meaningful budgeting. Somebody has to pay, and between the City of Havre and the individual employee, the City has a greater degree of latitude in arranging funding and modifying its budget.

Finally, with the recommended contract term ending on June 30, 2019, the parties would be obligated to promptly negotiate anew on wage increases and the structure and funding of insurance premiums.

B. RECOMMENDATIONS

1. FINDINGS

The following findings are the basis for the recommendations below:

1. The Havre City Council has continuously opted to be recognized and treated as a Montana Class 1 city, and all argument to the contrary considered, it is appropriate to compare Havre's firefighters with other Montana Class 1 cities.

1. The City of Havre currently pays its firefighters substantially below the average of Montana Class 1 cities.

2. The Union's proposed wage increases would lessen but by no measure eliminate that gap.

3. The City is currently able to fund the difference between what the Union and Employer propose for wage increases.

4. The City is through its proposals attempting to mitigate current costs of firefighter health and dental insurance contributions in order to maintain a conservative budget.

5. Without a significant decrease in insurance coverage and/or benefits, one party or the other will be required to pay for current and increased premium costs, and the City is in a better position to do so.

1 6. With a contract term ending on June 20, 2019, the parties will be able to
2 promptly negotiate anew over current and future wages and insurance coverage,
3 benefits and premium payments.

4 7. The Employer did not quarrel with the Union's justification for it's proposed
5 addition of a provision which compensates firefighters for nonemergent callback.

6 2. RECOMMENDATIONS

7 Base wage: Union's proposed 4.0% retroactive increase through June 30, 2019.

8 Health insurance tier structure and contributions: Union's proposed *status quo*.

9 Nonemergent callback: Union's proposal.


10 3. JURISDICTION

11 I maintain jurisdiction sufficient to hear and attempt to resolve any question of
12 interpretation or implementation submitted to me by not later than 60 calendar
13 days after the issuing of these recommendations, and for any other purpose and/or
14 period to which both parties and I agree.

15 4. RECORD AND PUBLICATION

16 All records and materials I received from the parties and my notes will now be
17 securely discarded. I do not submit decisions for publication but 39-31-309(4),
18 MCA requires I consider making these findings and recommendations public 5
19 days after being issued to the parties. I decline. Instead, they will remain confiden-
20 tial and will not be disclosed by anyone until the parties reach a complete settle-
21 ment, or after January 14, 2021 if they have not.

22 _____
23 Issued this 22nd day of December 2020.


Jeff J. Minckler, Factfinder