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AUG 20 2024

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To: ARBITRATION OFFICE  
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AUG 21 2024

August 15, 2024


Arbitration Office  
Montana Department of Labor and Industry  
P.O. Box 8011  
Helena, MT 59604

**Re: International Association of Firefighters Local 100 v. Anaconda-Deer Lodge County**

Attached is a copy of an interest arbitration award distributed to the parties earlier this week.

If you have any questions, feel free to let me know.

Sincerely,



Stephen M. Biersmith

INTERNATIONAL ASSOCIATION OF FIRE )  
 FIREFIGHTERS LOCAL 100, )  
 )  
 Union, )  
 )  
 and )  
 )  
 ANACONDA-DEER LODGE COUNTY, )  
 )  
 Employer. )  
 \_\_\_\_\_ )

ARBITRATION AWARD  
 Interest Arbitration

RECEIVED ESD  
 AUG 21 2024

**APPEARANCES**

**For the Employer:**

Ms. Cindy Walker  
 Mr. Elliott McGill  
 Boone Karlberg  
 201 West Main Street, Suite 300  
 Missoula, MN 59807

**For the Union**

Mr. Rick Walsh  
 IAFF 7<sup>th</sup> District Vice President  
 Post Office Box 5604  
 West Richland, WA. 99353

**PROCEDURAL MATTERS**

On or about February 2, 2024 the parties selected Stephen M. Biersmith to serve as an arbitrator in a matter involving Anaconda-Deer Lodge County (“Employer”) and the International Association of Fire Fighters Local 100 (“Union”). The matter was heard in Anaconda, Montana on June 17, 2024. Per Montana Code 39-34-103 the arbitrator was to choose from the last, best and final offer submitted by each party and that his decision would be binding.

During the arbitration hearing, which was a de novo proceeding, both parties called and/or were given the opportunity to examine witnesses. Documents in support of each party’s position on wages were marked and entered into evidence. After written arguments the Employer raised and both the Union the matter was deemed submitted.

**ISSUE**

1. Which party’s final position regarding annual wage increases is appropriate for the two-year contract term of July 1, 2023 through June 30, 2025?

## RELEVANT STATUTES

### **Montana Code 39-34-103. Powers and duties of arbitrator for firefighters and public employers.**

- (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.
- (2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.
- (3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.
- (4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of the determination.
- (5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:
  - (a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;
  - (b) the interests and welfare of the public and the financial ability of the public employer to pay;
  - (c) appropriate cost-of-living indices;
  - (d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.
- (6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

### **Montana Code 39-34-106. Cost of arbitration.**

The costs of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

## RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

**Section 10 Personnel Reduction (in part)**

The City-County will make a reasonable attempt to retain its manpower level. There will be a minimum staffing of three (3) firefighters per shift who are members of Local 100 if such firefighters are available and willing to work. It is further understood that in the event of manpower layoffs, the Chief will be allowed to perform bargaining unit work if necessary to guarantee public safety.

**Section 19 Hours of Work (in part)**

The work cycle shall consist of regular opening occurring 27-day period which need not coincide with any particular day of the year of period.

The work day shall consist of one of three shifts (A,B,C) working 24 consecutive hours from 7 a.m. to 7 a.m. in a “Modified Detroit” schedule, resulting in each member working 216 hours in each 27-day cycle.

To satisfy the requirements of the Fair Labor Standards Acts, each bargaining unit member shall be compensated at a rate of .05 of; the straight time rate for each of the 12 hours that are scheduled above the FLSA 204-hour threshold for each 27-day work cycle.

**Section 28 Duration of Agreement (in part)**

In the event that such notices are given, negotiations shall begin no later than ninety (90) days prior to the anniversary date. If a successor agreement has not been negotiated prior to the expiration of this contract, any unresolved issues shall be submitted to final and binding arbitration in accordance with Section 29 of this Agreement.

**Section 29 Arbitration Between Firefighters and Public Employers**

A. 1. This section applies only to firefighters and their public employers.

2. If an impasse is reached in the course of collective bargaining between a public employer and a firefighters’ organization or its exclusive representative and if the procedures for mediation and fact finding in 30-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the Board of Personnel Appeals for final and bunding arbitration.

C. Powers and Duties of Arbitrator for Firefighters and Public Employers

(same as Montana Code 39-34-103 as noted above)

**Appendix A**

**Wage and Classification Schedule 2021-2023**

A. Probation Firefighter      \$\$46,424.55

B. Firefighter	\$50,309.14
C. Firefighter First Class	\$51,037.96
D. Captain	\$51,792.95

**EXHIBITS**

**Employer's Exhibits:**

1. July 1, 2021 – June 30, 2023 Collective Bargaining Agreement
2. Cost Estimation for Each Party Proposal
3. City/Towns Comparables in Montana
4. Summary of Employees' Gross Wages Listing (1/1/23-12/31/23)
5. List of Open Proposals-Items in Dispute
6. Union Comparable
7. Montan Code 39-34-103

**Union Exhibits:**

- A. Comparable Locations
- B. Hours Worked
- C. Captain Pay
- D. First Class Pay
- E. Firefighter Pay
- G. Scale Comparisons
- H. Offer Comparison
- I. Cost of Living Comparison
- J. Overtime Hours During 2022-2023

**TESTIMONY PRESENTED**

**Loy Bink**

Bink, who has 9 years with the Department, is currently classified as a Firefighter First Class. For the past three years he has served as President of the Local and was a lead negotiator for the last 6 years. Currently there are nine (9) unionized members in the unit which includes

two (2) Probationary Firefighters, one (1) confirmed Firefighter, three (3) First Class Firefighters, and three (3) Captains. The City recently hired two employees and are looking to add two more. There are no volunteers within the City, but there are some in the outlying districts. They do not respond on every occasion when contacted.

The Captains only assist with those calls within the City. During the day the Chief may respond. If the commander is not there, then the captain is considered to be the site commander. A classified Firefighter may serve as the Captain and occasionally as chief, which is why they get paid a little more. Until they pass their probationary period (which last for a year), those employees so classified are not allowed to enter a structure on fire or be on call-in.

Their department also provides ambulance service to the City and County both inside and outside the district. The City is about 12 square miles while the EMS of service area encompasses the County's 750-800 square miles. The department responds to about 1300 calls a year of which 80% are for EMS and the remaining 20% fire related calls. People are transported both within and outside the district which can sometimes take 45 minutes one way. They have a service arrangement with West Valley.

Responding to a fire incident is challenging with only three people where there are two employees on the engine and one on the ambulance. There are occasions when only person is able to respond to a call, which requires a call-out to members who are off duty. The majority of time employees cancel their off-duty plans just to make sure there is back-up. When employees on duty are called upon to leave town, those on standby are called in to the station. Call-ins are considered overtime. During the period 2023-24 there was more overtime with one less position being filled for that term.

Since there is a mandatory requirement to carry pagers, they are effectively always on duty. Employees in the department count on each other to hang around and let each other know when they are out. He would like to see the contractual minimum staffing level increased. The Union has not proposed an increase to minimum staffing or a change to the pager requirements

The NFPA manpower standard for entry into a structure is 12 firefighters. The Friday before this hearing, they encountered a very stressful and challenging fire situation. When they arrived, a child was still on the second floor. When one of the responders went in, they found a child unconscious. The fire suppression was stopped in order to render aid to the child. Two off duty people subsequently arrived to transport him. Eventually, six people in all responded to this fire incident. It is hard to straighten a line, ventilate and attack a fire with three people. On this occasion some of the equipment malfunctioned.

During his tenure with the Department there have been several vacancies. They test and interview candidates on a as needed basis. The amount of time it took to fill them has varied. The current openings are the longest time positions have gone without being filled. It feels like they have been constantly training people. There have been times when they were fully staffed.

The issues still open associated with a new two-year bargaining agreement beginning in 2023 were recently narrowed down after they had further discussions with the CEO. During negotiations the employer has never said they never could afford to pay. The reason the City gave for their wage proposal was that every other bargaining unit was offered, agreed to, and ratified a 4% increase for each contract year. They did not want to change it just for his group. He believes they took this position basically just to save face.

When the Union compared the pay their members earned other firefighters, they found the wages paid to those in their members were the lowest in Montana. He does not believe



having them at this level is helpful with recruitment and retention. They really cannot compete with Butte based on compensation where turnover is very low. The majority of the City's police officers make more than his overtime rate on an hourly basis. In addition, they are scheduled to work 2912 hours while a police officer works 2080 not including overtime.

Blinks believes there is an issue with wage compaction in the Department. When they take into consideration the extra stress associated with an increase in rank, some people do not want to move up. Even though more pay would not take away the stress associated with more responsibility, it would increase the incentive for one to promote. In the past every other bargaining unit settled for a 3.8% increase per year. In 2021 the police officers went to the Commission and got a 15% increase. The following year the County gave each bargaining unit, except the police, an additional 5%. In total the police officers back then received 18.8% while everyone else got 8.8%. To his knowledge turnover in the Police Department has slowed to just attrition related openings.

At one point an attorney for the employer suggested they go to the Commission and ask for an increase. Blink did not meet with them as a group but did call each Commissioner to try and meet with them individually to talk about safety, staffing, and the poor state of negotiations. Only one of them talked to him while the rest refused. Subsequently he received an email saying they should not be trying to meet with Commissioners. They could address these individuals during their meetings as a member of the public, but he has not done so.

In regards to cost of living, most of the department's members are from the area. The price of the gas here is a little more expensive with most people going to Helena or Butte to purchase groceries. Insurance and property taxes are pretty similar. When he first moved here one could purchase a house for about \$70,000. Now they are in the range of \$200-300k with the

majority them needing major innovations. Everyone could go elsewhere and several are trying to leave the department, but that would leave the others in a predicament. What keeps them here is their dedication and sense of community.

Their work schedule is 24 hours on 24 off. They do the same before they are off for 96 hours. They start work around 7 a.m., get a report from the crew leaving, and then perform apparatus checks. Mondays are when they primarily inspect the equipment and clean the ambulance. On Tuesdays they do the same for the fire equipment and clean the station the following day. Thursdays and Fridays are inspection days. Saturday and Sunday are somewhat down days while they perform station maintenance. During the summer they test their hoses every day. Down time can start at 10 p.m. Lately they seem to have been on runs all night. They can end up working 72 consecutive hours before a day off.

All firefighter personnel get \$50 per paycheck or annually about \$1,300 of FLSA pay. Overtime also increases their year-end gross wages. The total amount they earn is higher than other City employees because they work an additional 1300 hours a year. There can be some FLSB overtime if they work over 212 , they have to pay you at a higher straight rate. If they work over 212, they get 1/12 or 3 hours per cycle. Those amounts were not included in their weighted average calculations They did include stand-by pay, which required one to remain within the City's limits.

They are looking for parity with the police and their proposal would get them close. The majority of those in the Police Department outearned them. Survey data showed they worked a significant number of hours more than firefighters in the rest of the state. Several of the jurisdictions they looked at were not good comparisons There were several with similarly sized populations including Miles City, Lewistown, and Havre. He did not know about housing, but

agreed it was a monthly cost item. He had spoken to the Union President in Butte but was unaware they accepted 4%. He does not know how much overtime firefighters work in other communities. He acknowledged the employer has recently purchased new equipment, including turnouts.

**Tony Melillo**

Melillo, the BC at Whatcom County Fire Departments in Washington State, currently serves as Division Chief of Training for Local 106 and President of N.W. Washington Central Labor Council (AFL-CIO). Prior to the hearing he reviewed data from the 21 represented departments throughout Montana using like sized groups with similar call volumes to complete his survey data. It was difficult to use assessed valuations because the areas of service covered so many square miles. In putting together and comparing the data, he did not include overtime, just their respective contractual hourly rates.

Also prepared was a graph which showed a Captain in the department had the lowest hourly and annual wage when comparing others using base salary, even though they worked the most hours. West Yellowstone had no such rank. He used the five-year threshold given that is the prerequisite level of experience one needs to have to work at this level. Using 2023 bargaining unit contract data, another exhibit showed those in the First-Class position working significantly more hours for their hourly pay. There also was an exhibit which showed other departments with a larger wage difference between the various classifications. This gave those working in those groups a higher incentive to promote. Another graph showed if the Union's proposal was awarded, they would still be at the same comparable rank as those in similar classifications in other departments.

He assembled some data to show the cost of living in various locations across Montana. Four of them showed a higher cost of living than the locale serviced by the department.

**John Sholey (CFO)**

Sholey, who has served as the CFO for the last 6 ½ years, is responsible for all the financial activities of the County including its balance sheet, budgets, and helping with audits. Their main sources of revenue are property tax, federal grants and service fees. The budgeting process which occurs over a two to three-month period. It begins on July 1<sup>st</sup>. Currently, the budget is only preliminary and has not yet been finalized. The largest expense is labor costs which is about 40%. Most of the union and non-union salary adjustments are settled before July 1<sup>st</sup>. As this time, all of the other bargaining units, except for fire, have been settled on a new agreement beginning in 2023 for the same 4% which was proposed in this case.

Anaconda is the smallest county in Montana. Tax funds for the Fire Department can only come from within that jurisdiction with an area population of less than 10,000 and its one power plant as an industrial base. As a result, the residents here pay the majority of taxes as opposed to those in Butte/Silver Bowe. Anaconda has the lowest cost according to the U.S. Census. With the exception of health care, the cost of living is among the lowest in every category. Lockwood was a good comparable given its proximity to Billings but not Butte with its larger industrial base and population.

When employees in the police department approached with a request for higher wages, the CEO told them take it up with the County Commission during one of their weekly meetings. When they did so the Commission approved a wage increase because they were losing a lot of officers to areas with better wages and the additional costs associated with hiring and training new officers. During the Spring of 2022-23 the County provided all employees, except the

police, with an additional 5%. They had not anticipated such an increase in the cost of living would be so high. For 2023 the increase in total were about 8%. In general, wages over the last ten years have pretty much kept even with the CPI.

In comparing W-2s, the weighted average for their firefighters was \$72,229, which those with the police was \$70,328. The Fire Department's wages were higher wages because of the overtime, including a lot which is built into their schedule. Employees in the Fire Department could make \$20 to \$25k over their base wage.

As to their financial status, the Covid related money which came in during 2020-21 put them in a better position. Those funds are going away so the taxes will be a major burden. They are hoping to get some of their tax values back. With the elimination of a tax district the budget for 2023 decreased. There is now a volunteer district tax to cover for services provided to those individuals living in those areas.

### **Bill Everett**

Everett has served as the CEO for the last seven and a half years. He supervises all the departments including human resources. Formerly, he handled labor negotiations, but in 2023, the decision was made to bring in some professional help. He works with the CFO to put budgets together. He also tries to recruit businesses to the area. They have about 190 employees.

Although the City of Anaconda used to have a population from between 20 to 25,000, it currently stands at around 10,300 of which about 6,800 are property owners. It is one of the lowest income communities in the state with a median income of about \$50,000. The average person in the community is retired and living off of social security. Housing prices are also some of the lowest. When the State's assessor increased property taxes, the decision was made to cut the mills to make up for the increase. Their tax base is headed the right direction with a lot a

progress in the community, including the construction of new hotels. He does not feel the Union used good comparable in its presentations. As an example, he considered Lockwood a dream city with a good tax base. Boseman and Missoula have high housing prices and Montana is exploding as a whole

They have about 190 employees with several bargaining units including for employees in police, clerical and dispatch positions. There are three Teamster locals, Operating Engineers, and about 20% who are non-union. With an increase in the tax base and after making the highest offer in years, employees were given a 4 % annual increase. With the influx of some government funds, they were able to give all but the police officers a 5% bonus. His goal is to treat everyone the same.

Back in 2021 there was the concept of “Back the Blue” as officers were retiring throughout the state. They were losing officers to other departments for higher pay, especially at the mid-level where three of their best officers left. Others were getting ready to go as well. Those who did leave were replaced by rookies, which was dangerous. He believes the longer one is in the job, the better they get. They were paying for post training only to lose those officers. Believing they could not make up the wage gap, he suggested this group go to the Commission. When they did so, they asked for an additional 10% but the Commission chose to give them 15%. When this group got this increase, their employer was debt free.

The Fire Department does not have as high as turnover as others. Most who leave do so because of retirement. There has been some turnover within the past 12-24 months. Two new employees were hired this past April due the Fire Chief leaving and another fireman retiring. They will be testing and interviewing next week to fill the vacancies in the department. They currently have 20 - 30 openings Countywide.

Funds for the Fire Department must come from an enterprise fund. Even if by example, there were a million dollars available elsewhere, those monies could not be moved into this enterprise fund. The County has put in for a "Safe Grant" which will allow them to pay for three more fire personnel for three years. If they do not get the grant, they are concerned about keeping staffing at that level. Currently, they are going out for a bond to upgrade the fire station which will result in an increase of about 50-60 mills. He does not believe the capital budget is anywhere close to where it needs to be. They have expended about \$300k for a new ambulance and another \$250k for a new modular unit, which were the biggest expenditures they ever had in that department. The monies for such capital expenditures come out of the same budget.

## DISCUSSION

### **A. Bargaining History**

A review of how negotiations progressed for a new Collective Bargaining Agreement ("CBA") after the previous one expired on June 30, 2023 was helpful in understanding the wage issues which remained unresolved (Ex 1). At the start of those discussions the Union proposed a new CBA with just a one-year term. Their first wage proposal was a 24% increase for those classified as Firefighters, a 29% increase for Firefighters First Class, and 34% for the Captains in the department. On May 5, 2023 the parties agreed the CBA would run for two years with the Employer offering an annual 4% across the board increase. The Union modified their original offer and asked for a 12% for all Firefighters, 14.5% for those classified as Firefighter First Class and 17% increase for Captains.

Unable to reach an agreement on wages and eight other issues, the parties participated in several mediation sessions beginning on June 22, 2023. When those attempts failed, the remaining issues were referred to a Fact Finder. On January 17, 2024 the Fact Finder issued her report with several recommendations including one in favor of implementing the Employer's

wage proposal. On May 13, 2024, the parties met again with a mediator. During that session the Union submitted a revised offer of 2% for the Probationary Firefighters, 4% for Firefighters, 8% for Firefighters, and 10% for Captains for each year of the new CBA. The Employer’s proposal did not change as they continued to offer 4% for annually for each of those same classifications. Prior to the de novo arbitration, the parties were able to resolve all outstanding issues with only the exception of wages.

**B. Last Best and Final Offer**

Towards the end of the arbitration hearing the Employer was asked to provide certain financial information to the Union. Per Montana Code 39-34-103 Section 5(3), it was suggested they then meet to discuss this additional information before submitting a final wage proposal (Ex 7). On June 25, 2025 the Employer produced a budget and unaudited income statement, however, they chose not to meet with the Union again to discuss the financial data. Both parties went on to submit their final wage proposals which could be summarized as follows:

<b>Classification</b>	<b>Union/Employer</b>	
	<b>Year One</b>	<b>Year Two</b>
Probationary Fire Fighter	2% / 4%	2% / 4%
Firefighter	4% / 4%	4% / 4%
Firefighter 1 <sup>st</sup> Class	8% / 4%	8% / 4%
Captain	10% / 4%	10% / 4%

**II. Comparison of Wages with Employees Performing Similar and Other Services**

Montana Code 39-34-103 listed a number of factors an arbitrator was to consider in deciding which of the two wage proposals the parties should implement. In the instance of wages, they include a comparative analysis of the compensation received by those who perform similar work elsewhere and other services in general (Ex 7). Such an analysis could include a



review of the pay for those performing other tasks for the employer as well as firefighters in other jurisdictions.

Both parties presented internal and external compensation data to bolster their respective positions. They acknowledged the gross earnings data was higher due to both the amount of built in overtime due and other extra hours necessary to meet operational needs. While the Employer relied heavily on this set of data in making its comparisons, the Union used just the base hourly wage. With such a disparity in the resulting rankings, deciding which metric to use for both internal and external comparative purposes was a threshold question.

Due to the necessity of providing 24/7 coverage, comparing compensation with others working for the Employer or outside with other departments was not a straightforward process. To meet the community's service needs the CBA required there be a minimum of three firefighters per shift. Also negotiated at some point was the length of time and number of shifts those individuals were to work (Ex A p. 5 & 10). It was unclear when this compensation/schedule scheme first took effect but it was in place prior to their negotiations for a new CBA.

Based on survey data from other jurisdictions, there were a myriad of schedules used by fire departments throughout Montana to ensure round the clock coverage. The one chosen by the parties in this case was referred to as a "Detroit" schedule. Where firefighters would work 24 hours on, 24 hours off, 24 hours on, 24 hours off and another 24 hours on before having the next 96 hours off. Including the built in overtime associated with this schedule these employees would work 2,912 hours a year. Given the agreed to scheduling/staffing regimen with such built in overtime, using the common denominator of base hourly wage was a representative metric to use when making both internal and external comparisons.

One way or the other the Employer was going to have to pay for round the clock coverage in order to provide fire and ambulance service to the community. To reduce the gross wages while still meeting the staffing minimum, the parties could have opted to cut back overtime and possibly call-and stand-by costs, by increasing the complement and/or adopting a different schedule. During the hearing Bink testified they would like to be able to work less hours and spend more time with their families and doing other off-work activities.

The Employer noted the membership could have but did not make a proposal to increase the level of staffing and hours worked during negotiations. The Union claimed it was raised during their discussion although they acknowledged no formal proposal was made. Regardless, the Employer also chose not to make any adjustments to the schedule in line with other departments who work less overtime hours (\_\_\_\_\_). The Employer appeared to be aware there were steps they could try and take to reduce what they considered were high comparable gross wages being earned by firefighters. Everett testified they were looking to add several more employees and to maintain staffing at that level if a grant application was approved. It is fair to include that such manpower changes with or without a different schedule would both increase service and for purposes of this review, reduce overtime costs.

The Employer spent some time during the hearing focusing on what duties firefighters would perform during their shift. Bink testified they would respond to about 1300 calls a year, 80% of which were ambulance related. The Employer equated it to 3.5 responses per 24-hour shift (Employer Closing p. 5). In addition to service calls, Bink also described various other tasks firefighters performed throughout the week such as cleaning, maintenance, hose, and equipment checks. During a 24-hour shift they were expected to work until 5 p.m. doing these other types of jobs before going to sleep around 10:00 p.m. (alarm time). From his summary,

there did appear to be a certain amount of down time. Regardless, to somehow try to justify a smaller wage increase due to tasks the firefighters did or did not do during their shift was not material. At all times while on shift, they remained under the control of their employer. They were required to remain at the station and be in a position to quickly respond to a public safety need even during the late-night hours.

Taking all these factors into consideration and with the parties having negotiated the current staffing/scheduling regimen, using the hourly rate was a better metric for both external and internal comparative purposes.

#### **A. Internal Comparisons**

Both parties argued there were internal and external comparative reasons to support their respective wage proposals. As to the former, the Union presented graphs to show a Captain was 59% behind his counterpart in the police department (Ex C). Comparing them with what they believed were other similarly ranked classifications, they believed a Firefighter First Class (57%), Firefighters (59%) and Probationers were also behind those of similar rank (57%). In response the Employer presented data which showed during 2023, those in Fire and Ambulance made more on average than all other employees. As an example, a firefighter made \$72,229 while the average police officer made \$70,328 (Ex 4). Although both groups were responsible for public safety this did not present the full picture in that firefighters worked 832 more than the police officers.

A stronger point along raised by the Employer was its desire to treat all its employees the same. It was for this reason all of the other bargaining units were offered and subsequently ratified a 4% per annum increase. Bink confirmed this was his understanding noting this was the rationale given by the CEO during negotiations for not wanting to accept the Union's higher

proposal. Everett expanded on this reasoning further during the hearing. He felt breaking away from this patterned across the board adjustments would lead to other bargaining units to request the same in the future.

Treating employees in a similar fashion is a fair and reasonable position to take, however, in this case there were two problems with the Employer continuing to take such a position. The first was although it was a rational negotiating tact, the Union was correct in noting, as the sole bargaining representative for the firefighters, was under no obligation to go along with this type of pattern bargaining. It was their responsibility to consider the welfare of its members in negotiating wages and other terms of conditions of employment.

Secondly, Employer recently shoes to unilaterally move away from this negotiating philosophy when dealing with a different bargaining group. When police officers requested an additional 10% increase outside of negotiations and directly to the Commission to address what they believed were lower comparative wages and turnover. Based on these and other concerns the Commission went beyond the adjustment requested by the officers when they gave them and additional 5% above their ask. No other bargaining group received additional compensation at that time. This adjustment was made even though a negotiated bargaining agreement. Later firefighters and those in other bargaining group with the exception of the police officers, were given an additional 5%. This was still 10% less than the amounts given to the police. By making these adjustments, the Employer's emphasis on the importance of maintaining internal equity lost some of its luster. This was especially true given those in the fire department were pointing to similar considerations, such as turnover, to justify their current proposal.

An internal equity point made by the Union was the lack of a significant differential between the mid and higher-level firefighter classifications. They believed the present wage

matrix did not give the employees enough of an incentive to promote up given the stress and increased responsibility with the higher ranks. The Employer did not object and/or disagree with the representation. Bink testified correcting this impression was the reason why the membership was requesting a higher percentage increase for the mid and higher-level classifications.

The current Appendix A wage scale showed the differences between a Firefighter and one classified as First Class was only about 1.4%. The percentage differential between Firefighter First Class and a Captain was much the same. When comparing similar classifications in other jurisdictions the spread was 9.5% with the lowest being 5.49% (Ex G). The Union noted that even if its scaled proposal were chosen and the spread raised internally to 5.3%, the department's comparative ranking in this regard with outside departments would not change. The Union also cited the larger spread in rank compensation within the police department as an additional reason why this higher percentage request for comparative ranks in the fire department should be granted.

In response to the Union's justification for the higher increases to the Captain and Firefighter First Class positions. When compared with the percentage spreads seen both internally and in other agencies, and that of turnover as discussed below, there was significant justification to wage steps to increase the spread.

#### **B. External Comparisons**

In addition to being a statutory requirement for public sector bargaining in Montana, parties have traditionally used surveys data of those working similar jobs in other jurisdictions to rationalize proposals their wage proposals. Coming up with such comparable data can be difficult due to a number of factors. In addition to scheduling/staffing differences, the evaluative process in this case was further complicated by service, geographical, economical, tax base, and

demographic/population differences. In addition to the variances in service areas (80 to 3,800 square miles), there was also a difference in the composition of services provided. Some only provided fire protection while Bink testified that for about 80% of the time his group also provided ambulance services.

As already noted, another complicating factor was that a majority of the outside departments surveyed worked some type of modified schedule with different overtime, staffing and call-out provisions to accomplish the same goal of having adequate staffing in place for round the clock coverage. This was more of an issue when the Employer used the gross salary to make such comparisons (Ex 6 and Ex B). With the exception of Central, which also worked 2912 hours per year, the other 15 surveyed worked much less and thus had earned less annually.

There was not that much difference in the other departments with bargaining units the parties chose to survey. The Employer believed Havre, Miles City & Lockwood and Lewistown were most appropriate. The Union went on to include Frenchtown and West Yellowstone based on the methodology of selecting those 50% to 150% the size of Anaconda. Although higher in some instances in gross salary due to the greater number of hours required to work and corresponding overtime pay, Melillo correctly noted the represented employees in this jurisdiction were consistently at the lowest across comparable positions in other departments (Ex C- G). He also noted, even if their proposal was granted, they would remain close to the bottom.

### **III. The Interests and Welfare of the Public and the Financial Ability of the Public**

#### **Employer to Pay**

##### **A. Employment Costs**

Montana Code 39-34-103 5(b) stated an employer's ability to pay as a factor to be considered (Ex 7). This would include whether there was sufficient revenue available to pay for

the additional costs associated a higher bargaining unit proposal. It was the Union's position, even if overtime was included, their suggested increase was affordable. Bink claimed no one representing the Employer ever stated during negotiations they did not have the ability to pay. The only expressed rational given to the Union was management's desire to them the same as the other bargaining units. During the hearing Everett affirmed this point but along with Sholey went on to take the position the Union's proposal was not affordable.

Before one can make a determination whether the was the case or not, the actual/ projected cost of each proposal needed to be calculated. Both sides presented preferred options as to how this could be done. Putting together such information on a go forward basis is not an exact science. There are a number of variables which could change such projections such as preferred and actual staffing levels, a gain or reduction if revenue from external sources, unforeseen capital improvement needs, and/or unanticipated overtime due to some service need or loss of personnel. For these and the other reasons stated earlier, using comparative data based the hourly rate with the "Detroit" schedule, as presented by the Union was again a more representative metric. Beginning with the base pay as scheduled in Appendix A and by including a benefit factor of 47%, the Union calculated the differences between the proposals to be \$42,790.73 for the two-year term of a new CBA.

Another recognized way to analyze the cost difference was to use a weighted average. This was appropriate since both sides couched their proposals in terms of a percentage increase over the existing base rates in Appendix A. For much of the past year and continuing up through the date of the hearing, there were nine (9) employees working for the department. Their distribution per classification was as follows: two (2) Probationary Firefighters, One (1) Firefighter, Three (3) Firefighters First Class and three (3) Captains. The Employer is preparing

to interview and test new applicants to fill two current vacant positions. By taking this step it was fair to assume that at some point during the second year of a new CBA, they will reach full complement.

While the weighted average for the Employer’s proposal for each contract year was 4%, the Union’s was approximately 6.0% per annum determined as follows:

<b>Number of Employees in Each Classification</b>	<b>Union Proposal</b>	<b>Employer’s Proposal</b>
Two (2) Probationary Fire Fighter	$2\% \times 2 = 4$	$4\% \times 2 = 8$
Two (2) Vacancies to be filled in 2024-25	$2\% \times 2 = 4$	$4\% \times 2 = 8$
One (1) Firefighter	$4\% \times 1 = 4$	$4\% \times 1 = 4$
Three (3) Firefighters 1 <sup>st</sup> Class	$8\% \times 3 = 24$	$4\% \times 3 = 12$
Three (3) Captains	$10\% \times 3 = 30$	$4\% \times 3 = 12$
<b>Weighted Average</b>	<b><math>66/11 = 6.0\%</math></b>	<b><math>44/11 = 4.0\%</math></b>

In addition to the additional amounts associated with a wage increase, there were other less calculable but real cost considerations. In making which determination was most appropriate, the arbitrator was required to weigh to the impact of the proposals on the general welfare of the public (Ex 7). The Employer agreed turnover could be an issue, indeed, this was one of the reasons the Commission gave for approving an additional 15% increase to police employees after they had approached with concerns about the loss of mid-level personnel. Turnover was not a minor consideration with the CEO affirming “safety” was of “interest” to the community. He acknowledged replacing lost workers was an issue noting the more time one spends on the job the better they are at it. He also agreed there would be a safety concern if there were three “rookies” working in either the police or fire departments. Brink reinforced this point when he testified those on probation were not allowed to enter a structure on their own or take



certain on-call responsibilities. If the two additional vacancies are filled in the near future, for some period of time more of the third of the complement (4 out of 11) might be on a probationary status and unable to fully participate in firefighting activities. In addition to additional overtime to ensure 24/7 coverage when there are vacant positions, there are additional training and other costs associated with bringing on replacements.

It was the Union's position turnover due to a lower level of comparative compensation has been and remains an issue. Bink testified during his nine (9) year tenure; seven (7) employees had left their eleven (11) person Department. He represented others would also leave but for feeling in doing so, they would be abandoning their coworkers. No other employee testified but there was document which showed a firefighter left as recently as December 2023 to go and work in Boise (Ex J).

The Employer did not disagree over the last several years there have been several vacancies in the department but did not believe wages were the cause. Everett claimed those who left generally did so because of retirements. He testified the last two vacancies were due to the Chief leaving and another retiring. The Employer did not explain the differences between this representation and the document which showed a department to work elsewhere. Everett also noted he was not involved in personnel issues. On balance then there was sufficient evidence to support the Union's contention lower wages was a contributory factor in turnover.

### **B. Cost of Living**

Both sides used external data either from government information sources or the private sector to show the relative differences with other surveyed jurisdictions (Ex 3 & Ex H). Based on its research the Employer claimed their analysis was more comprehensive in showing Anaconda was one of the most affordable areas in Montana. They also argued if their proposal was

implemented, the gross wages of these represented employees would exceed median household income in their community. Everett acknowledged housing costs are increasing, but excluding healthcare costs, believed their community was below the national average for shelter and other areas such as food and utilities. The Employer also pointed to data which showed for the last ten (10) years the historical increases given to the Union were commensurate with the CPI during that same time period. With the exception of some periodic variances over and above that mark during the periods of 2014-2017 and again in 2021-2023, this was generally true. Without citing the data source in its graph, they went on to project a CPI of 4.0% for 2024-2025 and argued their wage proposal will keep up with inflation (Ex 2 p. 2).

Although they considered it the “same old tired data,” the Union did not challenge the Employer’s presentation for accuracy. They did present other data which showed lower rankings when it came to such items as the affordability of housing. Bink represented those costs had risen so high many of the department’s employees could not afford to purchase a home. Their data indicated the cost of living in Frenchtown, Levingston, West Yellowstone and Billings/ Lockwood was higher while similar to Havre and Lewistown. Bink did not present specific data but testified gas and food were cheaper in a neighboring local.

In the aggregate, in considering the testimony and documents provided by both sides on the subject, there was not much material difference in their presentations as to the affordability with living in Anaconda compared to similar areas in the State.

### **C) Funding and the Ability to Pay**

In its closing the Union acknowledged in order to prevail and show their proposal was the most appropriate, they needed to not only prove it was justified when looking at comparable jurisdictions, but also that the Employer could afford it. As to whether the Employer was able to

do so while still meeting the needs of the other departments, the Union felt it was at a disadvantage in making such a presentation. Since affordability was never discussed prior to the hearing, they did not bring information to counter such a claim. This was a point well taken. After the Employer presented some testimony regarding its finances and the cost repercussions of the Union's demands, the arbitrator let both sides know it was difficult to evaluate such a claim without some financial information. To facilitate a more informed decision, the Employer was asked to prepare and present financials to the Union to support their budgetary assertions and then meet to discuss the data with them. After the arbitration the Employer provided both an "Income Statement for Anaconda-Deer Lodge County" and a "FY 2024-2025 ADLC Budget Overview of all Funds Combined."

The Employer argued this funding/budgeting documentation showed it was not economically feasible for them to meet the Union's demand for higher percentage increases (8 & 10%) for those in the First-Class Firefighter and Captain classifications. It was their position they would not be able to do so unless there was an additional tax mill assessment on property owners. They felt this was not acceptable given most of the community's residents were low and/or on fixed income. Everett felt they could not afford an additional mill levy given they were already being asked to fund a bond issue for a new fire station and bear the burden of a recent increase Statewide in property assessments.

During the hearing the CFO explained there were three (3) accounts from which wages, compensation and other department expenses were paid. Witnesses for the Employer went on to claim all three were already running at a deficit and that administrators lacked the flexibility to move and or secure additional monies from other accounts. A review of the documents provided

did substantiate some of their affordability claims, but also raised questions as to whether they were adequate in their present form and composition to show adequate funds were unavailable.

From the testimony provided and the documents presented, the Fire Fund (2190) pays 55% of gross wages and benefits while the Ambulance Special Revenue and Proprietary Ambulance Funds each contributed 22.5% to those same expenses. For the accounting period 2024-25 the first of these accounts showed revenue as \$1,266,612 and expenses of \$719,337 suggesting an anticipated short fall of \$547,275. The Employer noted monies for a new modular building (\$280k) and to pay off the remaining amounts owed on a new ambulance (\$70k) came from a capital fund made up of paid assessments from 2014-2018. Those monies were only to be used for capital improvements and not for operating expenses such as wages.

Sholey testified the Ambulance Special Revenue Fund (2230) was created in 2022 to spread cost for services they provide across to all county residents. This account received \$248,000 from the General Fund in 2024 to cover expected expenses of \$246,909 which included its 22.5% share of totals wage. He represented since this account was funded exclusively by the General Fund and that those amounts could not be increased. Sholey went on to add the Proprietary Ambulance Fund (5510) did not receive additional monies beyond those from insurance reimbursement and Medical/Medicaid payments, which he noted did not meet the actual cost of the services provided. He added they were not eligible for a higher level of reimbursement because EMTs did not provide the service. With estimated revenue of \$500,000, this fund was expected to have about a \$50,000 shortfall.

The problem with putting too much reliance on this data to support the Employer's position, is that as presented, the documents raised several questions and or supported the Union's affordability claim. There may well be reasonable explanations, however, given they

were not produced during negotiations or the hearing and the Employer did not meet with the Union again after distribution to discuss them, their importance was discounted.

There also appeared to be inconsistencies when one compared the documents to testimony provided by the Employer's representatives. Among them were if and how monies could be moved between the funds. Everett testified they could not transfer monies. That was most likely true as to the capital accounts, but he did not explain how the account deficits were paid for if not from other internal account sources. As an example, even if one were to totally eliminate wages from the Fire Fund budget (\$361,246) there would still be close to a \$200k deficit in that account. There was no explanation which accounts or how these deficits were paid for. As to the Ambulance account unlike the round number of \$500k anticipated revenue for account 5510, the \$248 k "Operating Transfer" in the 2230 Ambulance Account appeared to be a discretionary allocation based on the expected expenses. It was then unclear if there was similar flexibility in allocating more funds from the general account into this fund to pay the additional wage demands.

Everett testified the additional wages paid to the police were made when they were debt free. From the financials it appeared as there was still some debt being carried on the books, which might be paid off during 2024-25. If so, those funds allocated for debt service would be more than double the cost of the Union's proposal, but again it was unclear from those financials provided without further explanation. Without any indication if there were any restrictions on the "Ending Cash Balance" as a reserve or otherwise, it appeared those funds totaling some \$20 million could be used to meet the additional cost of \$42,790.73 for the two-year term as calculated by the Union.

In addition to whether the employer can pay for the increases during each contract year, the ability to afford them going forward after the expiration of the CBA was also a legitimate factor to consider. As part of the financial data they submitted, the Employer provided a budget for the second year of the new agreement which factored in its 4% proposed increase. Those financials showed a projected ending cash balance of \$19,367,364 by the end of the 2024-2025 which was down from \$23,062,913 at the beginning of the year. It was noted however, the 2024-2025 budget came in about \$3 million dollars below budgeted expenses. Particularly notable was the projected 12% increase in tax revenue year to year from 2023-2024 to 2-24-2025. It was unclear if this was due to the recent increase in economic development, as noted by Everett, or from some other source. Certain expenses came down year to year, but there was no explanation as to whether that would remain the case or decrease even further. Everett also noted the community's economy was improving and with it their tax base, including with the addition of some new hotels.

Sholey testified certain government funds may be going away. From the financials, intergovernmental revenue appeared as if it will remain for the term of the new CBA. Everett testified the Employer was in the process of adding three (3) additional firefighters. It was unclear if such funds were going to be available in the short term to fund them and/or if they were accounted for in the budget. They are in the process of applying for a grant. It was represented those positions may be eliminated in the future if the request was turned down, not that there were insufficient funds at this point in time.

The Union argued the decision to cut taxes bolstered their position the Employer could afford their wage proposal. As stated earlier, the Employer did so in an attempt to mitigate the additional tax burden associated with an increased assessment statewide. Whether it was a

“wash” or not was not clear. Nevertheless, the decision to reduce its own revenue to make the statewide assessment easier to bear on their citizens, was in the “interests” of the public.

#### **IV. Conclusion**

Montana Code 39-34-103 Section 4 requires the arbitrator to accept one of the other wage proposals (Ex. 7). With the exception of its presentation on the cost of living, the Union’s positions regarding internal wage compression, external comparisons with other department, and affordability were more persuasive. As opposed to the one made by the Employer, the Union’s varied wage proposal targeting the higher classified positions, although on the generous side, would help address those identified comparative deficiencies.

The weight of the evidence showed the Employer’s across the board 4% would not be as effective in maintaining a well-trained, sufficient, and stable workforce to meet the community’s public safety needs. The Employer might well have prevailed had they responded with a reasonable scaled wage proposal to address the turnover and compaction issues identified by the Union. Nevertheless, and as the arbitrator informed the parties during the hearing, he was not able to parse an award. One or the other wage proposal had to be chosen in its entirety.

With economic factors constantly changing, the findings in this arbitration are to not to be relied on in future negotiations, fact-finding, or arbitrations. It is well recognized imposing a labor settlement is not as preferred as productive collective bargaining. It remains in the best interest of the parties to fully discuss and be open to other viewpoints to resolve difficult issues. Doing so is much more productive and in the interest of promoting a better labor/employer environment for the good of the citizens they serve.

#### **FINDINGS OF FACT**

1. The prior CBA between the parties expired on June 30, 2023.
2. With the exception of wages, all other issues were resolved prior to the arbitration.
3. During the arbitration hearing the Employer was asked to provide some financial information. The arbitrator also suggested the parties meet and discuss that data after the hearing. The Union requested, but the Employer chose not to meet again.
4. Both parties submitted best and final wage offers for the arbitrator's consideration.
5. The wages earned by the Union employees were comparably less than those performing similar services in other communities in the State.
6. The percentage increase of both proposals were at or near the projected cost of living increase expected for those residing in the City of Anaconda.
7. The Employer had the financial ability to meet the costs associated with the Union's wage proposal.
8. By reducing turnover and encouraging employees to promote, the interests and welfare of the public were best met by the Union's proposal.

### **DECISION**

For the reasons cited above, the Union's offer is to be implemented retroactive to July 1, 2023 with a new Appendix A to read as follows:

#### **Appendix A**

##### **Wage Classification Schedule July 1, 2023- June 30, 2024**

A. Probation Firefighter	\$47,353.04
B. Firefighter	\$52,321.51
C. Firefighter First Class	\$55,121.00
D. Captain	\$56,972.25

##### **Wage Classification Schedule July 1, 2023 – June 30, 2025**



A. Probation Firefighter	\$48,300.10
B. Firefighter	\$54,414.37
C. Firefighter First Class	\$59,530.68
D. Captain	\$62,669.48

Per Montana Code Annotated 39-34-106, the cost of the arbitration shall be shared equally by the Employer and the Union.

Dated: August 14, 2024

Stephen M. Biersmith  
Stephen M. Biersmith  
Arbitrator