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August 9, 2018

Montana Department of Labor and Industries  
Employment Relations Division  
Eric Strauss - Administrator  
1805 Prospect  
P.O. Box 8011  
Helena, MT 59604  
(406) 444-6543

Re: City of Havre Interest Arbitration Award

Dear Mr. Strauss:

Enclosed you will find my award in the interest arbitration dispute between the City of Havre and the Montana Public Employees Association (Havre Police Unit). I have also sent copies of my award to the parties, as instructed by statute.

If you have any questions, please contact me at your earliest convenience.

Sincerely,



KENNETH JAMES LATSCH  
Arbitrator

AUG 18 2018

BEFORE THE ARBITRATOR

CITY OF HAVRE, )  
 Employer, )  
 )  
 and )  
 )  
 MONTANA PUBLIC EMPLOYEES )  
 ASSOCIATION (HAVRE POLICE UNIT) )  
 Union. )  
 \_\_\_\_\_ )

INTEREST ARBITRATION AWARD

Hi-Line Law, by **Jennifer E. Forsyth**, Attorney at Law, appeared on behalf of the Employer.

**Karl J. Englund**, Attorney at Law, appeared on behalf of the Union.

By agreement of the parties, Kenneth James Latsch was selected to serve as interest arbitrator in a dispute arising from collective bargaining negotiations between the City of Havre (Employer) and Montana Public Employees Association (Havre Police Unit). A hearing was conducted on June 15, 2018, in Havre, Montana. During the course of the hearing, the parties presented testimony and documentary evidence in support of their respective versions of the facts at issue. The parties submitted post-hearing briefs on July 2, 2018. The briefs were received in a timely manner, and the hearing was closed.

**APPLICABLE STATUTORY PROVISIONS**

**TITLE 39. LABOR**

**CHAPTER 31. COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES**

**Part 5. Police Officers -- Strikes Prohibited -- Binding Arbitration**

\* \* \*

**39-31-504. Selection of arbitrator -- procedure -- cost sharing.**

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\* \* \*

(3) The arbitrator shall decide the unresolved mandatory subjects contained in the last best offer package. The arbitrator shall base findings and opinions on the criteria listed in subsections (3)(a) through (3)(h). Primary consideration must be given to the criteria in subsection (3)(a). The criteria are:

(a) the interest and welfare of the public;

(b) the reasonable financial ability of the unit of government to meet the costs of the proposed contract, giving consideration and weight to the other services provided by the unit of government, as determined by the governing body of the unit of government;

(c) the ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided;

(d) the overall compensation presently received by the police officers, including direct wage compensation, holiday pay, other paid excused time, insurance, and all other direct or indirect monetary benefits;

(e) comparison of the overall compensation of other police officers in comparable communities with similar populations in Montana and contiguous states;

(f) inflation as measured by the consumer price index, U.S. city average, commonly known as the cost of living;

(g) the stipulations of the parties; and

(h) other factors, consistent with subsections (3)(a) through (3)(g), that are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator may not use other factors if, in the judgment of the arbitrator, the factors listed in subsections (3)(a) through (3)(g) provide a sufficient basis for an award.

(4) Within 30 days after the conclusion of the hearings or an additional period agreed upon by the parties, the arbitrator shall select only one of the last

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best offer packages submitted by the parties and shall make written findings along with an opinion and order. The opinion and order must be served on the parties and the board of personnel appeals. Service may be made by personal delivery or by certified mail. The findings, opinion, and order must be based upon the criteria listed in subsection (3).

### BACKGROUND

Located in North Central Montana, the City of Havre (Employer) has a population of approximately 9,800 residents. Situated near the Canadian border, Havre is at the intersection of two major highways and two large Indian reservations. In addition, the City has an active railroad yard and is the home of Montana State University – Northern, a four year university.

The Employer is considered to be a “first-class city” under state statutory criteria. As the parties explained at the hearing, Montana municipalities are classified as first-class cities, second-class cities, third-class cities, and towns, depending on population. Cities with a population of 10,000 residents or more are considered to be first-class cities. Cities with less than 10,000 but more than 5,000 residents are classified as second-class cities. The law also specifies that a second-class city with a population of more than 9,000 may elect to be a first-class city. Havre has elected to be considered to be a first-class city. Havre is the only first-class city in the State of Montana to have a population less than 20,000, and while there have been several attempts to pass a resolution making Havre a second-class city, those efforts have not been successful.

Municipal services are offered to local residents through a number of city departments. An elected mayor and an eight member board of city commissioners provide general budget and policy direction, and department managers direct daily operations. At the time of hearing, Havre’s annual budget was approximately \$22, 817,000, including a general fund budget of \$6,020,000. The Employer’s budget is in good economic condition, with a budget surplus and an increasing general fund balance. The Employer maintains a high general fund balance as a percentage of total general fund expenditures, and has a high “asset to liability” ratio. In

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fiscal year 2016, taxable property value increased 19.1% over the previous year, and it increased another 3.45% in fiscal year 2017. Fiscal year 2018 showed another increase, this time 9.15%.

The City has a workforce of approximately 140 full-time and seasonal employees filling 102 full-time equivalency (FTE) positions. Among its other municipal services, the Employer provides local residents law enforcement protection through a 19 member police department. At the time of hearing, the department consisted of three administrative positions and 16 patrol officers below the rank of Captain. Gabe Matosich served as Police Chief at all pertinent times for this proceeding. The Montana Public Employees Association (Union) represents a bargaining unit of patrol officers, and has negotiated several collective bargaining agreements with the Employer.

Several of the police officers are funded through grants, and the rest of the police force is funded from the Employer's general fund. At the time of hearing, the police bargaining unit consisted of one new hire, four officers with two years' experience or less, and two officers with just under five years' experience. The Employer noted that the high turnover was not specifically due to low wages and benefits, but occurred for a number of reasons, including retirement, criminal investigations, and a desire to relocate for personal reasons.

The record discloses that the Employer has had challenges in recruiting for available officer positions. Again, the parties presented different reasons for this difficulty. The Union noted that an October 2017 recruitment ended without attracting any qualified applicants. When the recruitment was run again in January 2018, the Employer received nine applications, and screened down to four potential hires. Only one of those four accepted an invitation to interview and was subsequently hired.

The Employer agreed with the recruitment schedule presented by the Union, but noted that there has been a general downturn in police recruiting across the country and the City's experience was indicative of the larger issue facing law enforcement agencies.

Apart from recruiting issues, the Union noted that the Employer had retention concerns, arguing that the Employer's records show that there have been 61 officers hired since 2000,

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meaning that there has been an average of over three new officers hired each year, representing almost 25% of the bargaining unit.

Once employed, Havre Police Officers have busy work schedules. Statistics prepared by the Montana Board of Crime Control for 2016 show that Havre had more violent crimes and more property crimes reported than any second-class city in the state. Information provided at the hearing indicates that crime has continued to rise over a number of years, and there is no indication that the trend is going to reverse in the foreseeable future. The budget is set annually after department directors make requests that are reviewed by the Havre City Council. The Council prepares the final budget after consultation with the department directors.

### **PRINCIPLES OF THE INTEREST ARBITRATION PROCESS**

Before discussing the issues that must be decided, it is appropriate to set forth general principles that have been applied in interest arbitration cases. While these cases come from the Washington State experience with interest arbitration, they express general concepts that are applicable to the case at hand.

Arbitrator Carlton Snow set forth the controlling principle for interest arbitration decisions in *City of Seattle*, Washington PERC Case No. 6502-1-86-148 (Snow, 1988):

[A] goal of interest arbitration is to induce a final decision that will, as nearly as possible, approximate what the parties themselves would have reached had they continued to bargain with determination and good faith.

A number of other arbitrators have agreed with Arbitrator Snow's analysis. See: *Kitsap County Fire Protection District No. 7*, PERC Case No. 15012-1-00-333 (Krebs, 2000); and *City of Centralia*, PERC Case No. 11866-1-95-253 (Lumbley, 1997). Arbitrator Snow's observation serves to provide a general framework for analyzing specific language and wage proposals.

In addition, other legal principles have developed in interest arbitration litigation. Interest arbitration is conducted in the context of past negotiations and future contractual terms. The arbitrator must be mindful of the parties' bargaining history to provide an appropriate context

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for an award that will set their future rights and obligations. See *City of Seattle*, PERC Case No. 6576-1-86-150 (Beck, 1988). As noted in Elkouri and Elkouri, *How Arbitration Works*, Sixth Edition (BNA, 2003): interest arbitration is more nearly legislative than judicial.

.. our task here is to search for what would be, in the light of all the relevant factors and circumstances, a fair and equitable answer to a problem which the parties have not been able to resolve by themselves.

An arbitrator must consider the parties' bargaining history as expressed in their most recent collective bargaining agreement. As Arbitrator George Lehleitner reasoned in *City of Yakima*, PERC Case No. 15379-1-00-346 (Lehleitner, 2000):

When a party seeks to change existing contract language, it is incumbent upon them to come forward with compelling reasons to justify the proposed language. This is particularly true where the language has been in the contract for many years and there has been no showing of problems with its application.

The reluctance to change existing contract language is particularly strong when it comes to recently modified contractual terms. In most cases, an arbitrator will change recently modified contract language only if the moving party can prove that the language at issue did not achieve its objective or if it had unintended consequences. *City of Camas*, PERC Case No. 6303-1-02-380 (Wilkinson, 2003).

## THE ISSUES

As the Employer notes in its closing brief, the parties originally had seven issues submitted for arbitration, but were able to resolve five of them prior to hearing. This proceeding was limited to two issues:

### Wages:

#### *The Employer*

2% wage increase beginning July 1, 2016

2% wage increase beginning July 1, 2017

#### *The Union*

4% wage increase beginning July 1, 2016

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4% wage increase beginning July 1, 2017

All retroactivity to be paid as of July 1, 2017

**Holiday Pay:**

*The Employer*

A one-time buyout of holiday pay if the Union accepts the proposed 2% wage increase with language inserted in the City Policy concerning "use of leave"

*The Union*

The Union would be willing to agree to the Employer's proposed changes if the Employer agreed to the Union's wage proposal. If the Employer does not agree with the Union's wage proposal, the Union proposes current contract language on Holiday Pay.

**ANALYSIS**

As arbitrator in this matter, I am required to accept the Employer's or the Union's final position on the remaining issues for determination. MCA 39-31-504 sets out the criteria that must be used in making that determination. The primary issue in dispute is the appropriate wage rate to be paid to the Havre Police Officers. Accordingly, my analysis starts with that issue.

In making its wage proposal, the Union compared the Havre workforce to several first class cities, several second class cities and other employers, such as the Montana Highway Patrol, the Burlington Northern Santa Fe Railroad, and the United States Border Patrol. When the Employer raised objections to comparisons with the Montana Highway Patrol, the Burlington Northern Santa Fe Railroad and the United States Border Patrol, the Union focused on comparisons with second class cities in Montana.

At the time of hearing, the first class cities in Montana were:

Billings, 109,089

Missoula, 70,117

Great Falls, 59,479

Bozeman, 41,761



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Butte-Silver Bow, 34,560

Helena, 30,102

Kalispell, 21,619

Havre, 9834

Montana's second class cities were:

Anaconda, 9139

Miles City, 8796

Belgrade, 8029

Livingston, 7302

Whitefish, 7073

Laurel, 6943

Sidney, 6828

Lewistown, 5874

Glendive, 5490

Columbia Falls, 5093

Of all of the second class cities, Belgrade and Sidney officers were not represented for purposes of collective bargaining.

From the information presented above, it is clear that Havre presents several real comparability issues. Located at a remote location, it is not immediately adjacent to any other city, either first class or second class. The Employer does have two major highways crossing through at a major junction, and it has an active railroad yard. The City of Havre is also located near two major reservations as well as the Canadian border. There is no other city in the State of Montana that possesses all of the factors just listed.

Yet, it is still necessary to find a way to compare the Employer to other jurisdictions in the state. As the Union appropriately notes in its closing brief, comparability is very important in determining an appropriate award. As Arbitrator Gary Axon held in *City of Helena and Local 448* (Axon, 2003): "The interest and welfare of the public is not served by a salary and

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benefit package... that is substandard". As Arbitrator Carlton Snow reasoned in *City of Havre and IAFF, Local 601* (Snow, 1981), comparisons:

provide a dominant method of resolving waged disputes throughout the nation... Arbitrators have long used comparisons as a way of giving waged determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party's proposal.

I must determine how to compare the City of Havre to an appropriate set of comparable jurisdictions, keeping statutory requirements in mind.

First, I must discount the attempt to compare the Employer to the Montana Highway Patrol, the Burlington Northern Santa Fe Railroad and the United States Border Patrol. During the course of hearing, it was established that these three entities had a presence in the City of Havre, but there was no compelling evidence that a number of bargaining unit members left to take jobs with any one of them. Given the number of potential comparable jurisdictions available in this case, I will focus on comparisons between the City of Havre and second class cities in the State of Montana.

I must use second class cities as a basis of comparison because it would be unrealistic to compare Havre to first class cities. While Havre has chosen to consider itself a first class city under a statutory provision, the reality of the situation demonstrates that the Employer is over 10,000 residents smaller than the next smallest jurisdiction on the first class list. Such a difference has immediate impacts on tax revenue, department size and scale of operation, and would not allow a meaningful comparison to the actual fiscal reality facing the Employer in this case.

In like manner, I must consider the entire economic situation facing the City of Havre. The Employer has collective bargaining relationships with several other unions, and must provide appropriate wages and benefits for all of its employees. In addition, the Employer has specific limits on its taxing ability and does not have an unlimited budget for its employees' benefit.

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The Employer noted that it provides generous medical insurance, and it proposes to continue this coverage as part of its final wage package. While the issue of insurance is not squarely before me, I must acknowledge that medical insurance is a substantial cost item for all municipalities, and the Employer must be given credit in keeping coverage at existing levels.

In like manner, the Employer must assume “roll up” costs in any wage proposals, to cover such costs as workers compensation and retirement. These monetary costs have a real impact on the wage rates being discussed in this dispute, and must not be overlooked.

Finally, I must consider the economic condition of the Employer. The Union argued that the Employer has adequate revenue to meet its wage demands without serious repercussions on its overall budget. The Employer argued that the Union’s proposed wage increase would cause serious disruption in the existing budgetary structure and would cause difficulties in maintaining an adequate reserve. The Union maintained that the Employer was only required to maintain a reserve of 16.67% of its budget, and could easily cover the cost of the Union’s proposed wage increase and still maintain that level of budgetary reserve. The Employer argued that it never kept a reserve at such a low level, and does not reflect the true use of reserve funds. As Budget Director Doug Kaercher testified, the reserve is routinely used to pay the city’s bills for the period before it receives its regular tax payment from the county, and it is not a “savings account” that is never touched. Mr. Kaercher testified that state law allows a city to keep as much as 50% in reserve, and in Havre’s case, he has routinely kept between 28-30% as a budget reserve.

I do not believe that I have authority to tell a municipality how to budget, and I must limit my inquiry into the amount of available funds within the budgetary system in place. I cannot fault an employer who wants to maintain a reserve and must not substitute my judgement for municipal leaders who must deal with the realities of their budgetary situation. The Employer must be able to maintain any commitments reached at the bargaining table, and it is appropriate to give the Employer’s witness considerable weight in determining what the City of Havre can realistically afford.

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Taken together, I must conclude that the Employer's proposed wage increase should be adopted in this case. I do not believe that the Union's proposal is necessarily onerous, but I have to conclude that the Employer's proposal is more in line with the second class cities that were used as comparables. In making that determination, I have given the Employer credit for the medical insurance it offers, and I also note that the rates presented by the Union are more up to date, and do not reflect the actual rates that were in effect for the period to be covered by this award.

The Employer's proposal does not improve the bargaining unit's position within the list of comparables, but it does not create the kind of monetary loss that would preclude me from using it as the basis for my decision. The Employer has established a fiscally conservative way of approaching its budget and maintains a relatively high reserve. However, the Employer presented credible evidence that the reserve is routinely used as part of the Employer's annual budget, and the Employer must be given the latitude to establish its budget to face the economic realities unique to the City of Havre.

Given the statutory directives that are in force here, my decision concerning the appropriate wage rate also resolves the Holiday Pay issue. I do not have independent authority to render a decision that would conflict with the Employer's last and best proposal since I have already determined that the Employer's wage proposal should be adopted as the basis for my award.

Given that the Employer's proposal on Holiday Pay was conditional on the Union's acceptance of the Employer's wage proposal, I must conclude that the condition no longer exists, and that the Employer should provide the one-time buyout of Holiday Pay that was originally offered.

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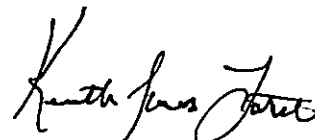
**AWARD**

Based on the foregoing and the record made in this matter as a whole, I find that the City of Havre's last best and final offer made to the Montana Public Employees Association (Havre Police Unit) is to be awarded as the way to conclude bargaining between the parties for the period involved in this proceeding.

The Employer's final offer is:

- 2% wage increase beginning July 1, 2016
- 2% wage increase beginning July 1, 2017
- A one-time buyout of holiday pay increase with language inserted in the City Policy concerning "use of leave"

DATED at Lacey, Washington, this 9<sup>th</sup> day of August, 2018.



KENNETH JAMES LATSCH  
Arbitrator