

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

**CITY OF HAVRE POLICE UNIT
MONTANA FEDERATION OF
PUBLIC EMPLOYEES,**

Union

v.

CITY OF HAVRE

Employer.

**ARBITRATOR'S AWARD
Case No. : Unassigned**

APPEARANCES

For the Union:

Mr. Nate McConnell, Esq.
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Missoula, Montana 59802

For the Employer:

Ms. Jane E. Faure
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JURISDICTION

This arbitration award arises out of a collective bargaining dispute between the City of Havre ("City") and the Montana Federation of Employees - City of Havre Police Unit ("Union"). Beginning in May 2020 the parties attempted to negotiated a new Collective Bargaining Agreement ("CBA"). Failing to reach a new agreement in October 2020, the Union requested mediation through the State of Montana. After several sessions with the mediator, the Union declared an impasse on March 15, 2021 and on June 8, 2021 requested arbitration. On or about August 10, 2021 Stephen M. Biersmith was selected by the parties to serve as arbitrator. An in-person hearing was originally set for October 15, 2021 with both parties submitting their last best

offer package. Just prior to commencement of the hearing that day, the arbitrator was informed the parties were still negotiating and the date was cancelled. The parties were unable to finalize an agreement and the matter was subsequently set for a remote hearing on November 3, 2021. Appearing through their designated representatives, the parties were given a full and fair hearing. Witnesses testified under oath and were cross-examined. Each party also presented exhibits, testimony, and addressed questions during the hearing. After the parties submitted closing briefs on December 9, 2021, the matter was deemed submitted.

ISSUES

The parties agreed the only two issues left unresolved for this interest arbitration regarded Article 8 (A) (2) - Wages and Other Compensation and Article 13 (A) - Medical Insurance. Each party submitted a final proposal addressing these two contractual provisions as follows:

City of Havre

“1. Wages

1% for 2021-2022

1. Health Insurance

Starting July 1, 2021

Medical Insurance: The City will contribute fully the amount needed towards each participating single employee's monthly premium for the employee only. In addition, the City will fully pay employee's dental insurance premiums (employee only)

The City will contribute toward dependent care and family premium at the 2017 fixed rate for all employees hired before July 1, 2017”

Montana Federation of Public Employees - Havre Police Unit

“Article 8 – Wages

A. Wages and Other Compensation

1. Wages: The wage schedule is set out and attached to the contract as Appendix A, which shall form part of, and be subject to all provisions of this contract for all employees. It includes a 2% base pay increase, which is effective on July 1, 2020 and a 4% base pay increase July 1, 2021.

Article 13 - Employee Fringe Benefits

For employees hired before July 1, 2017 who elect insurance coverage for the employee and spouse, the employee and child(ren) or the employee and family, the City will contribute towards insurance premiums, the same amount as it was obligated to pay in FY 2020. For all other employees, the City will cover the entire cost of the insurance premium for employee only coverage and if the employee elects insurance coverage for the employee and spouse, the employee and child(ren) or the employee and family, the employee shall pay the premium cost over and above the amount of premium for the employee only.

The City shall pay the cost of dental insurance for the employee only.”

RELEVANT STATUTES AND CBA PROVISIONS

COLLECTIVE BARGAINING AGREEMENT

ARTICLE 2 - CITY RIGHTS

The Employer retains the sole right to manage its business and direct its work force covered by this Agreement. This included the right to hire, to classify, to transfer, to promote to supervisory or other positions, to determine an employee's ability or qualifications to perform the work required to use improved methods or equipment, to permanently or temporarily increase or decrease the work force, to plan, to direct, train, control, curtail, discontinue, merge or increase operations, and to maintain order and efficiency, including but not limited to, the right to establish, modify and enforce rules for safety, service, and conduct. The failure to set forth specific retained rights does not constitute a waiver or elimination of vested retained rights or implied management reserved rights existing prior to the effective date of this Agreement.

ARTICLE 8 – WAGES

A. Wages and Other Compensation

- (2) Wages: The wage schedule is set out and attached to the contract as Appendix A which shall for part of, and be subject to all provisions of this contract for all employees. It includes a 4% base pay increase, which is retroactive to July 1, 2018 and a 2% base pay increase July 1, 2019. Upon ratification of this agreement the employees shall also receive an additional .5% base pay increase.

ARTICLE 13- EMPLOYEE FRINGE BENEFITS

A. Medical Insurance:

The City will contribute that amount towards each participating employee's monthly medical premium as it contributes for the majority of the other City employees. The City will cover the increase in insurance premiums for July 1, 2018 through June 30, 2020. In addition, the City will pay employee's dental insurance premiums.

Montana Code 39-31-503. Binding arbitration -- policy.

- (1) It is the policy of the state that because the right of police officers to strike is prohibited by 39-31-501, it is necessary to the high morale of police officers and to the efficient operation of police departments to provide an alternative, expeditious, and effective procedure for the resolution of labor disputes through binding arbitration.
- (2) Binding arbitration must be scheduled by mutual agreement no earlier than 30 days following the submission of the petition seeking binding arbitration under 39-31-502(2)(d).

MCA 7-1-4111. Classification of municipalities.

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

MCA 7-1-4112. Exceptions from classification system.

Notwithstanding the provisions of 7-1-4111:

- (1) every municipal corporation having a population of more than 9,000 and less than 10,000 may, by resolution adopted by the city council pursuant to 71-4114 through 7-1-4119, be either a first-class city or a second-class city;
- (2) every municipal corporation having a population of more than 5,000 and less than 7,500 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a second-class city or a third-class city; and
- (3) every municipal corporation having a population of more than 1,000 and less than 2,500 may, by resolution adopted by the city or town council pursuant to 7-1-4114 through 7-1-4118, be either a city or town.

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

- (3) The arbitrator shall decide the unresolved mandatory subjects contained in the last best offer package. The arbitrator shall base findings and opinion 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, and other pay 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 measure by the consumer price index, U.S city average, commonly known as costs 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 subsection (3)(a) through (3)(g) provide a sufficient basis for an award.

- (4) Within 30 days of the conclusion of the hearing or an additional period agreed upon by the parties, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall make written findings along with the 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).
- (5) The cost of the arbitration must be borne equally by the parties.

Montana Code Annotated 2021 Chapter 32 (Law Enforcement)

Part 41. Municipal Police Force - Group Insurance for Police Offices - Funding
7-32-4117 Group insurance for police officers -funding (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

- (a) Provide the same insurance to their respective officers;
- (b) Notwithstanding Title 2, chapter 18, part 7, pay no less than the premium rate in effect as of July 1, 1980, for insurance for police officers and their dependents;
- (c) Provide for collective bargaining of other agreement process to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b)

EXHIBITS

Joint Exhibits

- 1. Montana Final Budget Document - City of Havre ending June 30, 2022

For the City:

- 1. Collective Bargaining Agreement
- 2. Letter dated March 30 2019 from Solomon to Dahle
- 3. City of Havre Police Unit Proposal A dated October 23, 2018
- 4. City Proposal dated October 23, 2018
- 5. Union Proposal Contract Email dated November 1, 2018
- 6. City of Havre Police Department Wage Proposal

7. PD Union Contract Final
8. City Proposal dated February 20, 2019
9. Financial Reports Request Email
10. Police Department Pay Rates July 2017 – June 2018
11. PD Union Contract Email dated April 3, 2019
12. PD Union Contact Email (2018-2019)
13. PD Union Contract City Proposal email April 4, 2019
14. Bargaining Email dated May 15, 2019
15. City Proposal dated May 24, 2019
16. Dental Coverage Email dated June 24, 2019
17. CBA Email dated August 7, 2019
18. Employee Status as of June 30th
19. Employee Status 1998 -2000
20. Letter to Chief of Police dated June 22, 2018
21. 2019 Resignation Letter from Cassidy to Whom It May Concern (undated)
22. 2017 Resignation Letter from Kulla to Matosich
23. Resignation Letter from Holt to Matosich dated October 10, 2018
24. Resignation Letter from Sayler to Matosich dated March 6, 2014
25. Slayer Email re: Resignation
26. Tax Revenue, dated June 30, 2021
27. Population
28. Budget Document Havre
29. Resolution 4357
30. Budget Document - Miles City
31. Budget Document - City of Laurel
32. Budget Document - City of Hamilton
33. Budget Document - City of Whitefish
34. Budget Document - City of Polson
35. Budget Document - Silver Bow County
36. Payroll Register
37. Havre Police Department Seniority List

38. Reported Crimes

39. Insurance Notice

For the Union:

A. Insurance Decision and Award

B. Havre and MFPE Clarification

C. FY 22 Police Budget

D. FY 21 Police Budget

E. Ending Fund Balance 2021-2022

F. Union's Last Offer

G. March 22, 2021 Havre Police Final Offer

H. August 20, 2021 City of Havre Summary Judgement

I. February 11, 2021 City Proposal

J. Pearson March 15, 2021 Paycheck

K. February 11, 2021 City Proposal

L. Pearson Paycheck June 15, 2020

M. Pearson Paycheck 8/31/21

N. -7-32-4117 MCA

O. 7-33-4130 MCA

P. May 2020 CPI Stats

Q. Chart Single

R. Chart Spouse

S. Chart Family

T. Health Insurance Plans

U. HPD Health Insurance Graph

V. Probationary -Internal

W. First Year Internal

X. Fifth Year – Internal

Y. Population

Z. Probationary Officers

AA. Probationary Officer - City Proposal

BB. Probationary Officer- Union Proposal

- CC. One Year Officer-Hourly
- DD. One Year Officer – City Proposal
- EE. One Year Officer – Union Proposal
- FF. Five Year Officer – Hourly
- GG. Five Year Officer – Union Proposal
- HH. Five Year Officer – City Proposal
- II. Fire CBA 2021 – 2022
- JJ. FF Wage Matrix
- KK. Havre Dispatchers 2021 – 2022
- LL. Havre PW 2021 Local 336
- MM. Ord 921 Section 1-6-1 Amendment Salaries of Elected Officers
- NN. 2019 02021 Policeman Health Insurance Reimbursement
- OO. Health Insurance Plans
- PP. Union Insurance Proposal

TESTIMONY PRESENTED

Jon Dompier

Dompier, a field consultant for and former Union president, was a negotiator for the July 2018 - June 2020 Collective Bargaining Agreement (“CBA”). From May 2020 until February 2021, he also participated in the discussions for a new agreement. In November 2020 an arbitration was held regarding Article 13 after which the City was required to maintain the status quo for all premium increases. The parties subsequently sought a clarification of that award.

The City presented a proposal for a new CAN on January 27, 2021 and then another on February 11th. The latter gave more in terms of wages but only offered the same as the original proposal for health insurance. The Union rejected that proposal due to the insurance piece. The Union’s last, best, and final offer increased wages by an annual cost of \$39,686.52. The insurance proposal cost an additional \$29,910 which brought the cost of their entire proposal to

about \$59,000. The City represented the cost of their proposal was \$35,523.29, but it was actually less due to a mathematical error.

Dompier confirmed employees were able to choose from one of several insurance medical plans. The Union prepared a graph which showed what each of them cost the City and its employees. One exhibit showed the premium amounts paid for those employees hired before 2017 based on the last negotiated deal and recent arbitration award while a second showed what they currently contribute. There were five (5) employees eligible for the premium reimbursement from the arbitration, of which only three (3) are currently on the dependent plan. Of the ten originally listed as eligible for family or dependent coverage, one has been promoted and two have left the City. As a result, the maximum number of employees eligible for the extra insurance is seven (7). He believed the City's exhibit, which reflected what the employer and employees paid for insurance over the years, was accurate.

Even though the wage information provided by the Union did not include additional cost benefits such as clothing and other stipends, Dompier believed his department was one of the lowest ranked when it came to funding such items. He acknowledged there were some distinctions between the City and other municipalities in the Union's survey data. He agreed Whitefish, had a higher taxable value and that towns such as Belgrade were going through a significant economic boom. The City was currently classified as Class I, even though its population was less than the 10,000 threshold for that designation.

When Dompier reviewed several City budget documents he noted of the \$5.5 million appropriated there was a cash reserve \$1.6 million or about 30%. Funding for the Police Department at the time was \$1,862,030. He estimated the cost of the Union's proposal was a little over 1% of the General Fund while the City's was about one-half of 1%. The Union

compared the hourly rates the City paid to probationers, and those with one, and five-years of service with similar classified officers working for other cities. The data showed the City was at the lower end of the comparative scale.

He believed the Union's proposal was the better option to address problems with retention and recruitment and that keeping experienced officers was important when it came to such things as testifying and maintaining professional contacts with those in the community. Since the police department was understaffed by 2 or 3 officers, the other officers had to work overtime. Training replacements was an additional cost to the City. He agreed other police departments were also having a difficult time recruiting.

Sgt. Ryan Pearson

Pearson has been with the City for 13 years and is currently enrolled in a medical insurance plan with family coverage. He participated in contract negotiations for a new CBA from May of 2020 until October 2020. Subsequently, there were several rounds of mediation before the Union elected to go to arbitration. The Union's last offer was for a two-year agreement with annual raises to the base rates of 2% and 4% and another provision that kept the City's insurance contribution at the 2020 level. For its part the City proposed a single 1% wage increase with the same insurance premium scheme put in place back in 2017. Pearson's monthly insurance contribution for 2020 was \$172.20 before it increased to \$223.90 the following year. As a result, even though his gross pay during that same period went up, his take home decreased. It was his belief insurance costs during that period increased by about 8%.

The officers in his department work 12-hour shifts. They are currently down three positions which generally leaves only two officers per shift. If one of them wanted some time off, another officer might need to move over from a different shift to cover for him. On a couple

of occasions, the Finance Director told him all the City cared about were the employees and not their families.

Over the last 13 years, Pearson has seen 24 officers leave for various reasons. Some did so because of the lower volume of calls elsewhere while others quit because of the low rate of pay and insurance. He believed the City was seen as a training ground for other departments, but agreed turnover was also common in other police departments. Turnover had a negative effect on officer morale in that it required the remaining officers to work longer hours to cover other shifts which led to more stress and burn out. It also hurt the police department in that experienced officers make a difference with how they handle investigations as well as their knowledge of the people in the community issues and those areas which require special attention. He believed property crimes had decreased during the last several years because of COVID 19. The rate of those committed against persons, which required more experienced officers, has gone up. For Pearson the quality of applicants the City was not the best in that it was unable to attract experienced officers. He has stayed with the City because of his strong connection with the community and family in the area.

In 2017 Pearson was informed the City was going to be moving to a different insurance program which included making the full premium payments for only the employees. The employees subsequently received a notice about the change in their paychecks. Before the employee paid a portion of the premium while the City made contributions across the board for dependents. In 2019 he decided to file a grievance as to whether the City's interpretation of Article 13 of the CBA was correct. The resulting January 2021 arbitration award required the City to pay for the premium increases through June 2020 and to reimburse the amounts the employees had overpaid.

Pearson assumed the three current officer vacancies were budgeted for by the City. He was aware three officers joined the department in 2019 and that two out of the six who applied in 2020 were hired. One of them resigned while under investigation and another left to get married. In 2021 the City hired two other officers but also lost the same amount. One moved to Idaho and another left while an internal investigation was pending. He did not know if any of them quit because of wages and benefits.

Brian Cassidy

Cassidy currently works as a Computer Crime Specialist for the State of Montana. From January 2013 through June 2019, he was a detective and an officer for the City. He considered it as an attractive as a place to work in that the City's higher crime rate kept him busy. He left the City in June 2007 for more stable hours, better pay, and because the change in health insurance meant he was going to have to pay \$1,300 per month for family coverage. At that level a new officer would only have about \$600 left on his paycheck.

While serving as a union representative Cassidy tried to get health insurance benefit increased for the membership, but opted to go with a pay boost after the City denied their request to pay for extra training. He felt they were grossly underpaid no matter if their wage scale was compared to a Class I or a Class II city. As an example, he pointed to the city of Anaconda, where pay rates were formerly below the City but now were above it. When compared to what others contributed towards insurance premiums and before the July 2017 change, the City ranked in about the middle of other departments. It was the City's position that they were unique and could not be compared to others. Cassidy asked but did not get an answer as to why the City showed almost a 50% reserve in its financials.

Cassidy characterized the City's reputation as a place where individuals would go to work just to get their foot in the door and then leave. Turnover was high and the department understaffed so much so that he would have to cover other shifts. Its hiring pool was already low when it became even harder to recruit those with families. He noted the department was only fully staffed for a couple of months, but then confirmed other police departments also had recruitment challenges. He acknowledged his resignation letter did not comment about wages, but did say he was leaving to secure a position with more stable hours. He left out the former in that he wanted to keep it short and professional since such notices can follow one throughout their career.

Dylan Kulla

Kulla currently works in Probation and Parole for the State of Montana and still lives in town. Before that he worked for the City as a senior patrolman from June 2011 until 2017 when he resigned. Initially he took a pay cut to switch jobs, but after three years was making more now than he did with the City. He started with the City at \$15.58 per hour and was making \$20.84 when he left. The family plan premium where he currently works cost employees \$250 a month for a family and \$100 per month for employee and child coverage. He would not return to the City because of the insurance.

During his time with the City, Kulla was unmarried and bought a home. He left because of burn out and the lower pay rates when compared to other agencies. Before he resigned, he talked to his supervisors about the level of pay. He did not believe the City was adequately staffed and able to keep a three person shift in part because of its low pay rates. The mayor told him said if someone else paid more, then they should go work for them.

Kulla agreed the opportunity the City allowed him to be where he was today. He initially chose to work for their police department because he wanted to return to Montana and after one of his classmates promoted the City as a good place to work.

Gabe Matofich

Matofich has been with the City since 1997 and as its police chief since 2014. The City recruits officers using social media, the State's employment service, and Montana State University job fairs. Recruiting for officers has been difficult nationwide over the last several years due to the perception of law enforcement as a career. Students interested in criminal justice seem to prefer avenues in areas such as forensics and not patrol. Geographical factors also have a negative effect on recruitment in that spouses often prefer to live in a larger city with more restaurants and shopping. No officer ever told him they were leaving the department because of pay and/or benefits. He believed the wages, benefits, 12-hour shifts, and various stipends were attractive to officers. He was unaware of any problems associated with someone being able to go to training or on vacation because of the number of officers working per shift. The crime rate in the City has gone down because of the pandemic.

Before 2017 the officers paid part of their own premium. Afterwards the City changed its insurance programs and started offering different plans, paid 100% of the employee only premium, and put a cap on the contribution for family coverage. There were a number of employee meetings to discuss the changes. None of his officers came forward at that time and complained.

Even though Matofich did not normally do exit interviews, his officers still had the opportunity to tell him why they were leaving. When Kulla left he did not say it was because of the benefits. Matofich knew he was interested in going to work in probation and parole. Cassidy

moved to Helena for a better opportunity with DCI and never told him compensation was a reason for leaving. Another former officer went to work for the railroad and then wanted to return to the City after he was laid off.

Matofich's department was budgeted for 20 positions, which included three administrators. During 2019 the City hired several officers who were still there. The two hired in 2020 and again in 2021 are also still with them. Several came with experience, including one from Massachusetts. There were two officers who left during that same time. One wanted to move back to Bozeman and another resigned while under investigation. He agreed in years past the department was perceived as more of a training ground and understood why, after an officer got married, a spouse might want to leave. There was a period when they were fully staffed.

The City currently has ten applicants for several open positions, including some with experience in the military, as detention officers, dispatchers, or work with the border patrol. He tries to sell the community as one which is family orientated. During his meetings with other police chiefs, he learned some of them pay more and others less. The wage data presented by the Union did not surprise him.

Tim Solomon

Solomon, the mayor for the past 12 years, was involved in negotiations in 2017 when changes were made to the insurance benefit. At that time officers wanted more money to go to wages. They reached an agreement where the City was to pay the employee's full premium and give more to wages while the amount it paid for those enrolled in family coverage was frozen. With insurance costs going up 6-8% there was a need to have the increases paid for by the employees. In addition to holding employee meetings to discuss the changes, they were also

given notice with their paychecks. With the exception of the Fire Departments all of the other City employees have the same insurance program.

Later after the changes were made a grievance was filed. The City denied it because they felt the matter was already negotiated and signed off by the Union. The arbitrator ended up agreeing with the Union but only required effective date to be when the grievance was filed. It also stopped with the expiration of the CBA. He did not recall Pearson coming forward and say the reimbursement calculation paid to officers after the arbitration award was incorrect.

After an unfair labor practice was filed, the City posted its final offer. In it they went back to what it previously offered the Union believing it could not afford both the insurance and a higher wage increases in the years to come. Insurance premiums for the City have gone up from \$716.80 to 807.80. With the Union's proposal the City would be responsible for paying insurance costs at the higher 2020 level. Solomon believed if the City agreed to those amounts, it would have to maintain them and that was not sustainable. Currently he believed there were eight (8) employees eligible to take advantage of the family plan.

Even though the City's population dropped below the 10,000, it chose to remain a Class 1 city because of its fire department. Solomon felt some of the comparisons presented by the Union might be skewed because some of those other cities had more resources. The City attempted to maintain a 30% reserve to carry them through financially until the next revenue cycle. He did know how far it dropped during the fiscal year. Tax revenue has increased over the years from around \$9 to \$12 million. Both the CARES and ARPA programs have restrictions on how those funds can be used. He did not think any of those dollars was spent on police in that they were used more for water and sewer. With \$1.8 million going to the police and amount of reserves, he believed the City could afford the \$50,000 - \$60,000 cost of the Union proposal, but

after that there were too many unknowns regarding future costs. They did not want to hire and then have to turn around and lay those employees off to pay for the increase. The cost of living in the City has increased by 4%.

Doug Kaercher

Kaercher serves as the Finance Director and Clerk for the City where agriculture is the leading industry followed by the railroad and the local hospital. There were no other Class 1 cities in their part of the state. While the State allowed a reserve of up to 50% the City chose to operate at around 30%. Depending on such factors as the timing of capital outlays, its reserve could run down almost to zero. Once during the last ten years, there was a period of time when it got down to \$80,000.

The City was self-insured before it switched to Blue Cross in 1990. In 2002 they joined a consortium with other public entities for coverage. After the Union said they wanted more money in their wage base, the decision was made to go to a flat insurance contribution rate. The City then committed to paying 100% of the employee's premium and froze the dependent care contribution at that 2017 level. Later an arbitrator ruled the City was to pick up the premium increase for spouse and dependents until June of 2020.

Kaercher noted the City had several good years of premium increases in the range of 3-4% until COVID 19 when they went up by 8%. Last year there was a 0% increase. It was hard for the City to estimate futures premium liability in part because marriage and family status might change. He felt it was up to the employee to provide for their dependents and not the City. After the arbitration award increasing its premium liability, the City tried to recoup the extra cost by making a lower wage offer. He believed if the Union went back to the original 2017 level for insurance, their wage proposal would be feasible.

felt any wage data for comparative purposes should also include other cost items such as stipends. He gave several reasons why including certain cities in the Union's survey was inappropriate. He noted the Whitefish's market was four times bigger than the City while Laurel and Belgrade had to compete with larger cities nearby. He pointed out that Miles City, which was in the same insurance group, was making premium payments of just \$808 across the board. He considered Glendive to be a railroad town like the City.

Kaercher confirmed the cost of the City's last offer was roughly \$35,000. It was his hope that if the City ever got to the point where they were just paying the employee premium rate, an officer's salary could be in the \$22 per hour range. He confirmed those employee units which stayed with the 2017 insurance rates received 2% and 4% wage increases over the last couple of years. The City was unable to negotiate similar insurance premium changes with its firefighters.

OPINION

MCA 2021 Chapter 32 Part 41 (Law Enforcement) required the parties to negotiate additional premium payments beyond the minimum amounts guaranteed elsewhere in the statute (Union N). If they were unable to reach an agreement, MCA 39-31-504 limited what the fact-finder could consider in a subsequent interest arbitration. The statute required the arbitrator to take into consideration a number of factors before choosing either the Union or the City's final proposal. One was not allowed to fashion another remedy.

Subject 3 (a) The interest and welfare of the public

Although the arbitrator was required to take into account each of the paragraphs in MCA 39-31-504, subsection (3)(a) was to be given primary consideration. In this case the City was tasked with managing its police department so as to protect the lives and property of those who resided or visited there. Since resources were not unlimited, it was required to do so in a fiscally

responsible matter so as to ensure viability while still providing for police and other City sponsored services.

After engaging in negotiations for a period of several months and even though a mediator tried to assist, the Union and the City were unable to conclude discussions for a new CBA. The parties agreed the only contract issues left unresolved for this arbitration were wages and contributions towards insurance premiums. As required, both parties submitted a best and final offer for this proceeding. (Union F & G). In support of the same, the majority of their oral and written presentations focused on affordability, comparability, and how their respective proposals were in the best interest of those served by the City and its law enforcement personnel.

Subsection 3 (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.

In addition to its police department, the City also managed and budgeted for those operational and capital expenditures it felt were necessary to provide residents with other services such as public works and fire protection (Joint 1). As to affordability, the City argued its offer was in the public's best interest and sustainable while the Union's maintained there were sufficient monies to fund its proposal based on the City's continued revenue growth and the amount it retained in reserve.

There was no dispute the City was in good financial condition on both the revenue and cost sides of the ledger. In fiscal 2021 taxable property value decreased by .37% but increased by 3.94% in 2022. Over the past five years revenue increased from \$10,363,003 to \$12,765,347 or 23%. For the last ten years it increased by 54.8% (Joint p. 9). As a public sector employer, its

revenue was generally limited to tax levies, assessments, fees, and supplemental funds provided by the State and Federal governments. The latter included monies from the CARE and APRA, programs which were not insignificant. Solomon was uncertain but believed those funds were generally allocated to capital projects and public works and were not used for the operational needs of the police department. This allocation was confirmed in the City's 2021-2022 Budget Message (Joint 1 p. 11).

As to costs, the City's proposal appeared to require an additional expenditure of \$31,523.29. The \$35,523.29 in its exhibit was incorrect due to a mathematical error (Union F). Per its submittal, wages were to increase annually by \$7,722.93 and the cost of insurance by \$23,800.36. The latter cost less than the Union's \$29,910 insurance offer in that it reverted to contribution levels the City believed should have been in force but for the earlier arbitration (Union A, B & G p. 2). Per that award the City was obligated to pay additional dependent premium costs.

As to wages, the City proposed a 1% increase for the entire 2021-2022 contract term (Union F). In its closing, they referenced a reopener the second year, but there was no mention of any such possibility in any produced document or witness testimony (City Closing p. 14). During his testimony Solomon confirmed the 1% increase mentioned in the City's last offer was for just the first contract year. There was no increase proposed for the second.

The Union's last offer called for a 2% base increase the first year with an additional 4% at the start of the second which would cost an additional \$39,686.53 (Union G p. 2). The Union's proposal on insurance was to continue with what was awarded in the prior arbitration. For those hired before July 1, 2017 the City was to make premiums for dependents at the same level it paid during FY 2020. The phrasing of its proposal was somewhat ambiguous but appeared to mean

the Union was willing to accept a freeze on the actual dollar amount paid by the City for those dependent options. Based on manpower complement at the time of its survey, the Union believed its insurance proposal would cost an additional \$29,910 per year (Union G p. 2).

The City argued the actual increase was much higher in that the Union assumed the amounts approved of by the arbitrator would remain the same even though those contribution levels stopped with the expiration of the prior CBA. Such an assumption was premature. Each party had the right to try and negotiate changes up or down, but for comparative costing purposes, the Union's numbers were representative of where the parties stood back on June 30, 2020 when the previous contract ended and when bargaining first began.

With the Union's proposal estimated to cost an additional \$69,596.53 and the City's \$31,523.29 the difference between them was about \$37,073.24. This amount was only about 1% of the amount budgeted for the police department in 2021 (Union C). These actual costs and resulting differential were most likely overstated. When the Union costed its proposal there were ten (10) officers on the payroll hired before July 1, 2017 who were eligible for dependent premium assistance. Depending on the testimony and records provided only 7 or 8 were still with the City and eligible for that contribution at the time of the hearing. Of that number, only five (5) were actually enrolled in some type of dependent coverage (Union U). It was very possible then the real increase in insurance cost for the Union's proposal was about one-half of what it originally calculated (Union U). It was true there were some additional "roll-up" base wage costs associated with pension, workers compensation etc., but as noted below, they accounted for just a fractional increase in the reported cost calculations submitted by both parties.

Budgeting and forecasting are subject to change depending on various macroeconomic and local factors which might come into play as the fiscal year moves forward. By example, the

total cost to the City for insurance premiums might increase if one of the eligible officers opted for one of the more costly dependent designations. On the other hand, the anticipated expenditure for the same benefit might decrease if one of those eligible officers were to leave the department since his replacement would not be eligible for the dependent subsidy.

Somewhat unique in cases of interest arbitration, the expected amounts of revenue/ expenditures for review in this matter were much more certain. The parties were already about 70% through the two-year term of what was to be a new CBA. For the 2020-2021 fiscal period, which paralleled the first contract year, the police department's budget was \$1,862,030 but only \$1,623,821 was spent which left a residual of about \$240k. It was unexplained why the City reduced the department's budget for 2021-2022, which matched up with the contract's second year. Even though the police department's allocation was lowered to \$1,829,526 for that period, it was still about \$200k more than what was spent the year before (Union C & D). It was also unclear why such a large amount remained unspent beyond the possibility it was due to operating the department at less than full staff. At this point even if the City were to hire up to its full complement, the additional expenditure for wages less a decrease in related overtime to cover fewer vacancies, would most likely still result in a good deal left over.

In addition to those amounts budgeted and not spent, the Union argued there were other excess funds available in the form of reserves maintained by the City. It was unclear if this was the case. Kaercher testified reserves were used to meet the City's cash flow obligations until the projected revenues were received. Even though both Solomon and Kaercher represented it was about 30%, it was their expectation the reserve would approach zero as the fiscal year progressed and capital expenditures were made. Kaercher testified in the last ten (10) years it dropped to as low as \$80,000 for a short period of time.

Given this draw down history there may well be some marginal ability for the City to use its reserves to fund the Union's proposal. It should be noted though that this subsection also required the fact finder to consider the City's ability to meet its other obligations. Even if such additional resources available, the City may have a preferred operational need or managerial reason to spend those monies elsewhere. It was the Union's position that some of the capital outlays made or anticipated were not required and could be deferred. Such a decision was not the prerogative of the Union. The "employer retains the sole right to manage its business and direct its workforce covered by this Agreement (City 1 p. 6) The determination and allocation of funds to manage it business rested with management.

The Union argued the City produced little if any evidence to show it was unable to pay for what it was requesting. To a degree they were correct, at least for the term of a new CBA. Solomon admitted that for the next several years the Union's proposal was affordable given the size of the City's budget and the reserve. It was also his opinion however, that even if affordable, implementing the Union's wage and insurance proposals was unsustainable in the long term. He believed it would be difficult to modify those changes once the associated increases were granted. There were several shortcomings with relying on such a rebuttal.

Per MCA 39-31-504 the arbitrator was to choose only one of the proposals for the contract term which in the case was for two years as already agreed to by the parties. Even if the City's current position of economic strength reversed or slowed, it still retained the ability to take interim steps and/or wait until the contract ended to mitigate adverse changes in its revenue stream. As this new CBA nears expiration, the parties will have the opportunity to return to the table with new data and if necessary, negotiate adjustments in good faith. The City also appeared to currently have more flexibility in insurance administration than it has with the Fire

Department. In their recently negotiated CBA with the City, there was a specific provision which allowed input from the Union “to discuss any proposed changes in the family medical program” during the contract term (Union II p. 6). The City’s agreement with the police has no such provision (City 1p. 14). It appeared as if the City also negotiated different levels of flexibility in this area with its dispatchers and public work unit (Union KK p. 8 & LL p. 18).

Even during the contract term, the City has the ability to make cost adjustments and mitigate certain unforeseen near or longer-term concerns. Per the current management rights clause, it retains the right to institute manpower reductions, keep running at present staffing levels, or change insurance carriers. The latter might include a plan with a larger deductible and/or lower level of benefits which in turn might decrease the overall premium (City 1 p. 1). When asked Solomon acknowledged the City had the flexibility to take such steps as deciding on which plan it wanted to use. The City has already done so in the past. Years ago, it changed from a self-insured program to Blue Cross. More recently management chose to join a consortium with other employers for medical insurance.

Faced with possible plan adjustments or manpower reductions to compensate for a loss of revenue or higher costs, the Union may well be willing to modify future wage and/or insurance premium proposals. Discussions along those lines are for discussions between the parties and are not for an arbitrator to prospectively decide beyond the term of the new CBA.

Solomon was correct in noting forecasting revenue receipts and spending needs was somewhat problematic. By example, for the last several years revenues continued to increase while expenditures came under budget citywide (Joint 1). By the time this hearing commenced what was expected to occur on the cost and revenue side during the two-year term was pretty well confirmed given the amount of time already passed since the expiration of the last CBA. As

to future years, there was more uncertainty as to whether the positive economic trends experienced by the City over the last number of years will continue. The reverse may well occur. For example, the supplemental funding it receives from the State or Federal governments may be reduced or not be renewed. Nevertheless, it is generally accepted in arbitrations that an employer's claim of the inability to pay must be more than "speculative" (*How Arbitration Works*, Elkouri and Elkouri, 3rd ed. P. 774). At least for term of the new CBA, given the overall size of the department's budget and residual funds available at the end of each fiscal year, the financial data supported the Union's position the City was able to fund its proposal.

Subsection 3 (c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided

Even though affordable, the statute called for additional factors to be considered when determining whether a proposal was in the best interest of the City. Comparability, reasonableness, and whether the City had the ability to recruit and keep law enforcement personnel were other relevant factors. As to the latter, both sides agreed that except for a short period of time, the department was not operating at full staff and getting to that level presented a challenge. Matofich acknowledged this was the case and Pearson stated 24 officers have left over the last 13 years which equated to an annual turnover rate was about 15%.

Neither party introduced data to suggest the City's turnover rate was higher than other departments, but both did spend a fair amount trying to explain why officers left. This was not a minor consideration given the costs associated with additional training and the amount of overtime necessary to cover manpower shortages on shift. Although not as quantifiable, Dompier noted there were other material benefits associated with retaining experienced officers and utilizing their acquired knowledge of the community.

Through the testimony of Cassidy and Kulla, the Union attributed the inability to retain and attract officers to what it believed were low wage and premium contributions for dependents. At such levels Pearson testified the department was perceived as a place where a person could get their foot in the door and then move on. Dompier believed having two instead of the preferred three officers per shift led to longer work hours, reduced scheduling flexibility, and the ability to take time off, all of which led to burnout.

The City disagreed with the Union's contentions as to what caused the turnover. Chief Matofich characterized the City as a good place to work pointing to what he considered was the attractiveness of such things as working a 12-hour shift and a family orientated community. Even though two former officers testified they met and gave him their reasons for leaving, Matofich did not recall them saying it was due to inadequate wages or insurance. He felt the reasons they and other officers left were unrelated to compensation. In support of the same the City entered into evidence several resignation letters, which either gave no explanation or cited personal reasons for wanting to leave the department (City 20 – 24). When asked to explain why he did not state a concern over wages and/or insurance in his resignation letter, Cassidy said it was because such documents tend to follow one around and there was a desire to be professional about it.

There was no indication those who left in the last two years did so because of compensation. Pearson was unable to say if those were the reasons why. Further questioning whether wage levels and insurance premiums level were a predominate reason for leaving, was the fact that turnover was a long-standing issue throughout Pearson's tenure and prior to the insurance changes made in 2017. With turnover comes the need to recruit. The City was able to maintain but not necessarily improve its staffing numbers with the addition of three new

employees in 2019 and then two additional officers in 2020 and again in 2021. The overall numbers of employees did not improve for very long in that other officers left during these same time periods.

As opposed to the Union's contention the difficulties in recruiting were due to wages and premium contribution levels, the City gave other explanations. It pointed to other factors such issues as geographic remoteness as well as the lack of shopping and other entertainment opportunities found in larger cities. Even though it utilized several different avenues to recruit including social media, state employment agencies, and a local college, placement was still difficult given what Matofich believed was the nationwide lack of interest in patrol work among those in the younger generation.

For its part the Union did not sufficiently show, why if compensation levels were so low, there were those who still wanted to join the department. There were 8 applicants to fill the current patrol vacancies. Even though Pearson believed the quality of the applicant's was down, the City claimed it has both hired and received employment inquiries from candidates with some type of law enforcement experience. Before making a decision to accept or pursue an offer of employment, these individuals most likely knew the wage scale and yet chose to proceed.

As opposed to wages, a greater deterrent to recruitment was more likely the amount a new employee would be required to pay for dependent coverage if the City's proposal were implemented. Pearson testified that while the City's premium scale was in effect, a new officer was required to pay \$1,300 per month for family coverage. In doing so he or she would only have about \$600 left on their paycheck. As such, it was difficult to understand how a new employee, who needed insurance coverage for his spouse or family, could afford to work for the City. Without their participation the applicant pool would effectively be reduced to those with no

dependents or who had the ability to secure affordable insurance from a working spouse or another affordable source.

Subsection 3 (d) the overall compensation presently received by the police officers, including direct wage compensation, holiday pay, and other pay excused time, insurance, and all other direct or indirect monetary benefits

In addition to insurance coverage, during the hearing there were references to what the City provided in the way of other direct or indirect benefits beyond the base salary and insurance. The CBA contributed \$1,000 towards an annual clothing allowance, \$800 towards body armor, and \$300-\$600 for Field Training Officers (Joint 1 p. 13). Beyond the specified insurance contributions there was very little in the way of comparable data to support the City's assertion it paid more in these areas than other police departments. Dompier disagreed but did not present other evidence to support this assertion. For its part the City introduced the bargaining agreement between the City of Mill and its police department. There were some differences but it appeared as if that city provided many of the same benefits. Mills provided less for uniform allowance, but as opposed to the City, it also offered a longevity bonus (City 29).

The City noted there was other compensation considerations associated with what it characterized as "roll-up" benefits. These contractual or legally mandated contributions included taxes, workers compensation, vacation, and pension. Given they were a function of wages, if there was a determination the City paid less, comparatively the same held for the cost of these benefits. Including insurance, the total cost was said to be about 30% of the base wage rate. Although there may be an accrual factor associated with "banked" vacation and/or sick time, generally when officers utilized those benefits, they did so in lieu of getting paid for work time. From the various paystubs introduced, it appeared as if pension costs were about 14% while

Medicare, unemployment insurance, and works compensation required an additional employer contribution of about 6% of payroll (City 36). Given the relatively small difference between the Union and City's proposals, the multiplier effect associated with the other direct or indirect compensation received by the officers was of some significance, but incrementally was not material as to the overall cost of either proposal.

Subsection 3 (e) comparison of the overall compensation of other police officers in comparable communities with similar populations in Montana and contiguous states

Comparability to other departments was a useful in gauging the appropriateness of both proposals but challenging. State law did provide some guidance. MCA 7-1-4111 stated "Every city having a population of 10,000 or more is a city of the first class" and those having a population of less than 10,000 but more than 5,000 were a city of the second class. There was an exception provided for those cities which had more than 9,000 residents but less than 10,000. With a population of 9,786, the City exercised this option for what Solomon represented were reasons related to the operation of its Fire Department.

Even though the City chose the higher Class I ranking, it was more appropriate to compare it to those municipalities in Class II given the population numbers in the former were much higher. MCA 39-31-504 (3)(e) did not necessarily mandate an evaluation with other cities in its class but did state an analysis in interest arbitration was to be with "comparable cities with similar populations." Still equating compensation with even the Class II cities was difficult. The City was relatively remote. While it has lost population others in the group such as Whitefish, were growing with more vibrant economies with higher tax basis due to tourism or oil and gas extraction. Laurel and Belgrade were seen by the City as being in a more competitive wage environments given their proximity to larger metropolitan areas.

Despite the difference in their economies, geography, and related population growth, it was reasonable to compare the City with Anaconda, Belgrade, Miles City, Whitefish, and Livingston given the language of the statute. Their population numbers were “similar” ranging from 9,786 to 7,714. The Union presented a number of graphs comparing these and other cities with the wages and insurance premiums paid at different seniority grades and points in time. Although the City disagreed with the inclusion of several of them, in general it did not question the Union’s data outside the omission of the ‘roll-up’ and stipend costs. Matofich testified he was not surprised by the data the Union produced.

With the City’s 1% wage proposal, the pay rates for those who were still on probation, with one or five years of service remained at the lower end of this sample (Union AA, DD, HH). While at \$24.23 per hour, the Union’s wage proposal placed its officers further up and closer to the group’s average, but still well from the top (Union BB, EE, & GG). The Union produced some additional data regarding what it believed were internal equity disparities. Beyond noting the percentage of wage increases other City employees received, which were comparable to what the Union was offering, there were too many qualification and job content differences to try and argue comparable rates.

Also in support of the Union’s wage proposal was the hourly wage data was provided by the Bureau of Labor Statistics. In its compilation for “East-Central Montana nonmetropolitan area” the annual mean wage for police, sheriff, and patrol officers was \$50,520 with both a mean and median hour wage rate of \$24.29. The Union’s offer placed its members almost exactly at that mean. This survey had a high level of reliability in that the Relative Standard Error (“RSE”) was the lowest of all those classifications surveyed or 1.7%. The smaller the standard error, the less the spread and the more likely it was that the sample mean was close to the population mean.

The Union also introduced graphs which compared the City's premium payments with other police departments municipal jurisdictions (Union Q through S). Although helpful, this data was not sufficiently comprehensive to ensure a good relative comparison. For example, although some such information was provided, generally missing from the compilation were pertinent plan details such as whether the other cities insurance programs were preferred provider plans, had high deductibles, required certain benefit exclusions, and/or had a history of low utilization, all of which might affect premiums and in turn influence a city's decision on how much to cover.

Setting aside these data concerns, the City compared favorably with others when it came to employee only coverage. It currently pays 100% of that premium cost. However, if one were to implement the proposal with lower payments for dependent coverage, the City's ranking would drop down considerably towards the low end of the scale. On the other hand, the Union's dependent proposal placed the City in about the middle of those cities with comparable populations.

Subsection 3 (f) inflation as measured by the consumer price index, U.S city average, commonly known as cost of living

Another relevant factor for comparing the proposals was whether they accounted for any up or downward adjustment in the cost of living. Neither side submitted SMSA or other government COLA data specifically focused on the City. The Union did introduce more geographically universal data which was informative. A CPI Data document titled "All Items in West – Size Class B/C, all urban consumers" for the period of July 2020 - June 2021 showed the cost of living for that region increased from 159.752 to 168.425 or 5.4% (Union P page 4).

A similar jump in the CPI was found in another Bureau of Labor Statistics compilation. Referencing the same time period, the report for “All Items in Mountain, All Urban Consumers (CPI-U)” showed there was an increase from 107.226 to 112.731 or 5.13% (Union P page 6). Solomon’s belief that costs to the City went up by 4% was relatively close to the government’s numbers. Given all of these COLA data points similarly covered the first year of a new CBA, the Union’s wage increase request for 2% the first year and 4% the second was not unreasonable (Union G).

Subsection 3 (g) the stipulations of the parties

There were no other material stipulations agreed to by the parties as to the affordability and/or compatibility of their respective best offer packages.

Subsection 3 (h) other factors, consistent with subsections (3)(a) through (3)(g)

All of the material facts raised by the parties in support of their proposals were included in the discussion of the other MCA 39-31-504 subsections as noted above.

CONCLUSION

The well-recognized goal in interest arbitration is to make a final decision that will as nearly as possible, approximate what the parties themselves would have reached had they continued to bargain. This task was somewhat limited by Montana State Code. Section 39-31-505 which required the arbitrator to choose between the last “best offer packages” submitted by the parties. Both sides made strong points during their respective presentations, however, the weight of the evidence showed the Union’s proposal was both affordable and more reflective of other police departments with cities of comparable size. As such, it would be in the best interest of the public to implement the Union’s last offer.

This award should not be seen as a barometer for bargaining over future agreements given many of the variables relied on by each side are subject to change as time goes on. Material factors which may affect affordability and relative comparativeness in the future could include the rate of inflation, an accelerating or depreciating tax base, or general economic conditions. It remains much more preferable for the parties to propose, consider, and negotiate rather than rely on interest arbitration where there is less flexibility in reaching a solution amenable to labor and management.

FINDINGS OF FACT

1. The previous CBA began on July 1, 2018 and expired on June 30, 2020.
2. The City and the Union engaged in collective bargaining for new CBA to be effective July 1, 2020 but failed to reach an agreement. Several mediation sessions were held but were unsuccessful. The Union requested the remaining issues be decided in an interest arbitration which was subsequently held on November 3, 2021.
3. The only two issues left unresolved for a new CBA were Article 8 (A) (2) Wages and Other Compensation and Article 13 (A) Medical Insurance.
4. Prior to the hearing each side submitted its last, best, and final offer.
5. The City elected to become a Class I city but was more comparable population wise to those in Class II.
6. The City is in good financial condition.
7. The County tried to maintain a reserve of about 30% as allowed by State law. The majority of those funds were used for capital expenditures and to facilitate cash flow until expected revenues were received. In the last ten years, the amount of reserve did not drop below \$80,000.

8. For the last two years the police department had or anticipated a budget surplus of about \$200k per year.
9. The City was able to attract qualified personnel but not to the level of fully staffing the police department. There was no predominate reason shown as to why this was the case.
10. The level of wages and amount paid by the City for insurance premiums contributed to turnover in the police department, but it was primarily due to reasons personal in nature.
11. The overall compensation received by the City's police officers did not compare favorably with the law enforcement personnel in similarly sized communities in Montana.
12. The estimated 2020 - 2021 rate of inflation for the City was in the range of 4 – 5.4%.
13. The City has sufficient financial resources available to meet the cost of the Union's proposal and still afford those services provided by other departments through June 2022.
14. The Union's proposal was affordable, reasonably comparable to other police departments, and in the best interest and welfare of the public.

DECISION AND ORDER

1. Based on the foregoing findings and conclusions, the Union's last, best and final offer should be and is, hereby, selected.
2. Per MCA 39-31-504 (5) the cost of arbitration shall borne equally by the parties.

Dated: December 29, 2021


Stephen M. Biersmith, Esq.
Arbitrator

DECLARATION OF SERVICE BY MAIL

I am employed in the County of Ventura, State of California, I am a citizen of the United States, over the age of 18 years and not a party to nor have an interest in the within action. My business address is 5462 Rincon Beach Park, Ventura, California 93001.

On December 29, 2021 I served the within document described as:

Arbitrator's Award

X By placing the true copies in a sealed envelope(s) addressed as follows:

Ms. Jean E. Faure
Faure & Holden
1314 Central Avenue
Great Falls, Montana, 59403

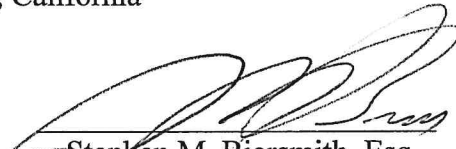
Mr. Nate McConnell
McConnell Law Office
721 Howell
Missoula, Montana 59802

Montana Board of Personnel Appeals
1805 Prospect Avenue
Helena, Montana 59620

X (BY MAIL) I am readily familiar with the normal business practice of for the collection and processing of correspondence and other materials for mailing with the United States Postal Service.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 29, 2021 at Carpinteria, California



Stephen M. Biersmith, Esq.