

In the Impasse Dispute Between

Case No. 2025DRS00184

INTEREST ARBITRATION OPINION & AWARD

This case arises under the Montana Arbitration for Firefighters Act (“the Arbitration Act”), Mont. Code Ann. §§ 39-34-101 to 39-34-106, which provides for final and binding arbitration “[i]f 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 factfinding in 39-31-307 through 39-31-310 have been exhausted.” Mont. Code Ann. § 39-34-101(2). The Arbitration Act empowers the arbitrator to hold a hearing and provides that “[t]he 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.” Mont. Code Ann. § 39-34-103(4). The Arbitration Act also specifies some specific factors the interest arbitrator must consider in rendering an award:

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.

Mont. Code Ann. § 39-34-103(5).

Thus, the Arbitration Act provides for “an interest arbitration dispute resolution process known variously as ‘final offer’ arbitration or ‘last best offer’ arbitration or ‘either-or’ or even as ‘baseball’ arbitration.” *City of Missoula*, 2002 BNA LA Supp. 109621 (Snow 2002) at 2. There are two types of final offer arbitration – “final offer package arbitration” and “final offer issue-by-issue arbitration.”

Final offer package arbitration limits the arbitrator to selecting the entire final offer of one of the parties. Final offer issue-by-issue arbitration limits the arbitrator to selecting the final offer of one of the parties with respect to each issue but allows the arbitrator to select different parties’ final offers with respect to different issues.

Martin H. Malin, *Two Models of Interest Arbitration*, 28 Ohio St. Disp. Resol. J. 145, 147 (2013). In *City of Missoula*, Arbitrator Snow interpreted the Arbitration Act as providing for final offer issue-by-issue arbitration, and he analyzed and decided several issues on which the parties remained at impasse, sometimes selecting the union’s final offer and sometimes selecting the city’s final offer. In fact, I was unable to find a case in which a court has decided which type of final offer arbitration the Arbitration Act contemplates. In this case, I need not make such a determination because the parties are at impasse on a single issue – wages. Thus, whether the Arbitration Act provides for package or issue-by-issue arbitration, my role remains the same.

Under the Arbitration Act, “[t]he arbitrator may not mix and match the offers or compromise the parties’ final positions.” *City of Missoula*, 2002 BNA LA Supp. 109621 at 2. “The ‘final-offer arbitration’ procedure requires the parties to analyze their positions before the hearing, and in theory forces adoption of a more reasonable stance before bringing the matter before the arbitrator.” Elizabeth J. Fabrizio, *Elkouri & Elkouri, How Arbitration Works* (8th ed., Bloomberg 2020) at 1388. One advantage of such final offer arbitration is that it encourages parties to compromise and settle their disputes through bargaining rather than through the decision of a neutral arbitrator. As Arbitrator Jeffrey Winton put it in *City of Aurora, Ill.*, “[f]inal offer arbitration usually has the effect of pushing both parties towards their most reasonable position, [lest] the arbitrator select the other party’s position.” 92-1 CCH ARB ¶8255 (Winton 1991) at 7.

In accordance with the Arbitration Act’s provisions, the parties obtained a list of arbitrators from the Board of Personnel Appeals from which they selected me to serve as the sole arbitrator in this interest dispute. On October 7 and 8, 2025, the parties’ representatives and witnesses appeared before me for hearing at the City-County Building in Helena. A certified court reporter was present and created a verbatim transcript of the proceedings. During the hearing, the parties had a full and fair opportunity to make opening statements, to present documentary and other evidence, and to call, examine, and cross-examine witnesses, all of whom testified under oath. At the conclusion of the hearing, the parties elected to submit briefs in place of oral argument. I received the City’s brief by email on December 4, 2025. After receiving Local 448’s brief by email on December 5, 2025, I exchanged the briefs, thus closing the record.

II. Background

The City of Helena (City or Employer) is the Montana state capital and has a population of in excess of 32,000,¹ making it a first class city.² Montana has six other first class cities, including – in order of population size – Billings, Missoula, Great Falls, Bozeman, Butte, and Kalispell. Butte and Kalispell are approximately the same size as Helena while Billings, Missoula, and Great Falls are significantly larger.

International Association of Fire Fighters Local 448 (Union or Local 448) is a labor organization within the meaning of the Montana Collective Bargaining Act. Mont. Code Ann. § 39-31-103(6). The City has recognizes the Union as “the exclusive bargaining agent for all employees of the fire department, with the exception of the Fire Chief, the Assistant Chiefs and administrative staff,” Jt. Ex. 1, § 1, Formal Recognition.

The parties have a long history of successful collective bargaining pursuant to the terms of the Collective Bargaining Act. For the past several contract cycles, dating back more than a decade, the parties have followed the same process for initiating bargaining. Initially, the Union would collect pay and fringe benefits data from other fire departments in first class cities. The information collected would reflect wages for ranks comparable to the ranks used by the Helena Fire Department. After assembling the data, the Union would present it to the City’s negotiating team. Thereafter, the City would either accept the Union’s data or commence bargaining over the comparability of the ranks the Union identified and other issues relevant to pre-bargaining matters. In the four most recent negotiations before the current round of bargaining, the City

¹ According to the 2020 Census, Helena’s population was 32,091. As of July 1, 2024, the Census Bureau estimated Helena’s population at 34,729. According to the 2010 Census, Helena’s population was 28,190. <https://www.census.gov/quickfacts/fact/table/helenacitymontana/RHI725224>. Thus, Helena has been growing at a rate in excess of 1% per year for many years, and the rate of population growth appears to be accelerating.

² The Montana Code Annotated provides that “[e]very city having a population of 10,000 or more is a city of the first class.” Mont. Code Ann. § 7-1-4111(1).

accepted the data the Union had collected without challenging the comparability of the ranks used.

The duration clause of the parties' most recent collective bargaining agreement (CBA) provides as follows:

This agreement shall be effective as of July 1, 2021, and shall remain in full force and effect until June 30, [2024].

It shall automatically be renewed from year to year thereafter, unless either party shall have notified the other, in writing, at least sixty (60) days prior, but no more than three hundred and sixty five (365) days prior, to the expiration date that it desires to modify the agreement.

All sections not annually negotiated upon will remain in full force.

In the event that such notices are given, negotiations shall begin no later than thirty (30) days after receipt of the opening letter. At the end of sixty (60) days of negotiation, any unresolved issues shall be submitted to mediation as specified in Chapter 31, Title 39 of the current Montana Code Annotated as amended.

Jt. Ex. 1, § 34, p. 26. The parties gave timely notice of their desire to modify the agreement.

Section 12 of the 2021-2024 CBA provides that "[t]he methodology used for determining the wage adjustment is the median of the Class I cities, Helena is not included in the comparison."

Id. at 26. Identical language has appeared in many successive CBAs without change.

Negotiations commenced in March 2024 with the Union forwarding to the City's negotiators the wage data it had gathered from the fire departments of the other six first class cities. In compiling the data, the Union used the same rank comparators the parties had used in determining the median wages of the other Class I cities in the previous four wage negotiations. As proposed, the Union's wage increase had an overall cost of \$486,798.81. The City proposed an across-the-board increase of 3.5% for each rank. In formulating its initial wage proposal, the City included out-of-state comparisons and did not base its proposal exclusively on wages paid to comparable fire department employees in other first class cities in Montana.

The parties held their first formal negotiating session in late-March 2024, more than three months before the 2021-2024 CBA's expiration date. Over the course of the negotiations, the parties met for a total of nine bargaining sessions. During those sessions, the parties reached tentative agreements on all issues except for health insurance, longevity pay, and wages.

During bargaining in 2024, the City never disputed the comparability of the ranks used in the Union's data, and the City never sought to negotiate over the use of different ranks for purposes of determining the proper wage adjustment for bargaining unit members in the successor contract. Nor did the City seek to renegotiate the methodology language set forth in § 12 of the 2021-2024 CBA.

In September 2024, the parties submitted their outstanding issues to mediation but were unable to reach agreement. On October 17 and 18, 2024, the parties participated in a virtual factfinding hearing before Bradley A. Areheart, who recommended that the parties' successor CBA include the Union's proposal on wages and the City's proposals on health insurance and longevity pay. After receiving the factfinder's report, the Union withdrew its proposals on health insurance and longevity pay, thus agreeing to the City's proposals and taking those issues off the table.

In advance of the hearing in this interest arbitration case, the parties met for a bargaining session on September 19, 2025. During that meeting, the Union reduced its proposed wage increases for years two and three. Specifically, the Union lowered its proposed wage increases from 4% to 2.5% in year two and to the higher of a 2.5% increase or a City-approved COLA in year three. On September 19, the City also made a new wage proposal that used first class cities in Montana as comparables. But the ranks used as comparators in the City's new proposal differed significantly from the ranks the parties had used in the previous four negotiations. The

City chose its comparator ranks on the basis of job titles rather than job duties, and the City never sought to negotiate with the Union over the selection of proper comparator ranks. Instead, the City presented its September 19 wage proposal as its last, best, and final offer. The cost of the City's final wage offer for year one was \$330,502.14. The cost of the Union's year one wage proposal remained at \$486,798.81, a difference of \$156,296.67.³

III. Positions of the Parties

City: The City argues that I should select its last, best, and final offer for the following reasons:

- The City's final wage offer was consistent with the parties' longstanding practice of determining wages in accordance with § 12 of the parties' CBA;
- The relevant circumstances set forth in the Arbitration Act favor the adoption of the City's final wage proposal because:
 - The proposed wage rates compare favorably to the wages paid to employees performing similar services;
 - The proposed wage rates are consistent with the public interest and the City's ability to pay;
 - The proposed wage rates are consistent with the relevant cost-of-living indices; and
 - The proposed wage rates are consistent with other factors in the determination of wages.

Union: The Union argues that I should select its last, best, and final wage offer because it is based on a proper comparison of ranks and wage rates among fire departments in Montana's other first class cities. The Union further argues that the City's September 19, 2025, wage proposal was flawed because, although limited to data drawn from the other Montana first class cities, the ranks the City used as comparators were not actually comparable to the ranks and job

³ The calculation I made during the hearing was off by approximately \$300 due to an arithmetic error. Tr. 201:13-14.

duties of bargaining unit employees. The Union further contends that the City is in good financial shape and has the ability to pay the Union's proposed wage rates.

IV. Award

Traditional burdens of proof are ill-suited to interest arbitration. Instead, "each party must establish the superiority of its position." *City of Oklahoma City*, 110 LA 912, 915 (Gordon 1998). Moreover, "a party seeking to change the status quo bears the evidentiary burden of showing that there is a compelling need to make a change." *City of Missoula*, 2002 BNA LA Supp. 109621 at 12.

Based on the record developed by the parties in this case, I find that the Union's final wage proposal should be adopted. This is so because the Union's wage proposal is based on the median wages paid to comparable ranks in the fire departments of the other six first class cities in Montana and because, in assembling its proposal, the Union used as comparators the same ranks that the parties had used during the previous four rounds of collective bargaining.

In contrast to the Union's approach, the City used an entirely new method for determining its initial wage proposal, one that included wages paid by fire departments in cities outside of Montana as comparators. It did so in violation of § 12 of the CBA, which requires the wage adjustment to be based on "the median of the Class I cities, Helena is not included in the comparison." The City never sought to delete the relevant sentence from § 12 or to change the methodology for determining the wage adjustment.

Although the City based its final wage proposal on wages paid by fire departments in the other six first class cities in Montana, many of the ranks the City used as comparators were different from the ranks the City had consented to use over the course of the previous four contract negotiations. The City also presented its final offer on a take it or leave it basis without

any opportunity for the Union to bargain over the choice of comparator ranks from the other first class cities. The City has not satisfied its burden to show to show a compelling need to make a change from the status quo of determining the median wage based on the ranks used by the Union, which were in turn selected because the parties had used them over the course of four consecutive collective bargaining negotiations. For the reasons set forth in great detail in the Union's brief (pp. 14-21), moreover, I find that the ranks used by the Union as comparators are appropriate for determining the median wage rates paid by other first class cities in Montana.

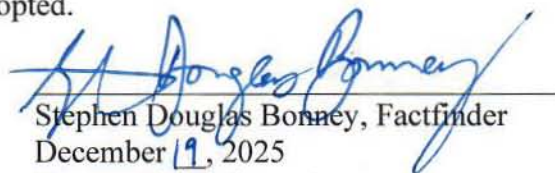
The public interest is well-served by paying fire department employees a market rate calculated based on the median wages of comparable positions in other fire departments operated by first class cities in Montana. In addition, the record shows that the City is in good financial condition and that it can afford to pay the wage rates proposed by the Union. In fact, the City has never claimed an inability to pay.

The wage rates proposed by the Union are also consistent with the appropriate cost-of-living indices. In particular, inflation remains persistent, around 3% for the past several months. Furthermore, the wage rates proposed by the Union will allow bargaining unit members to recoup some of the purchasing power they lost during the years when inflation approached 9%.

I am not persuaded that other factors traditionally considered in determining wage rates in interest arbitration are relevant to my determination in this case.

V. Award

The Union's final wage proposal is adopted.


Stephen Douglas Bonney, Factfinder
December 19, 2025
Kansas City, Missouri