IN THE MATTER OF THE ARBITRATION

BETWEEN

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 271, Union, and CITY OF MISSOULA, MONTANA, Employer.	)	OPINION AND ORDER Re: INTEREST ARBITRATION 1993-95 CONTRACT

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BEFORE

ERIC B. LINDAUER

ARBITRATOR

April 7, 1994

REPRESENTATION

FOR THE UNION:

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FOR THE EMPLOYER:

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NATURE OF PROCEEDING

This is an interest arbitration case. The parties are in dispute over the terms of their 1993-95 Collective Bargaining Agreement.

The City of Missoula (the "Employer" or the "City") and the International Association of Firefighters (the "Union") are parties to a Collective Bargaining Agreement (the "Agreement") which expired on June 30, 1993. The terms of the Agreement provided that the parties shall enter into negotiations for the terms of a successor agreement. Article XXV further provides that if, at the conclusion of their negotiations and mediation, there are any unresolved issues, those issues shall be submitted to arbitration.

The parties opened their negotiations for a successor agreement in May 1993. They entered into their first negotiations on September 8, 1993, and after five sessions of bargaining, they were at impasse and requested the services of a mediator. One mediation session was conducted on November 12, 1993, at the end of which the parties were unable to reach a resolution and agreed to refer the unresolved issues to arbitration. Even after the mediation, the parties continued their negotiations and, to their credit, were able to resolve most of the issues regarding the terms of a successor agreement. The remaining unresolved issues that the parties submitted to arbitration were as follows:

1. Article VI - Compensation
   Appendix A - Salary
   Section 3 - Certification

2. Article XI - Shift Changes

3. Article XIV - Overtime Pay

4. Article XV - Vacation Time

The arbitration hearing was held on March 3, 1994, at the City Hall in Missoula, Montana. The Union was represented by Karl J. Englund, and the City of Missoula was represented by its City Attorney, Jim Nugent. At the hearing, the parties stipulated the contractual issues that were in dispute and agreed that the Arbitrator was to reach a determination of the issues pursuant to the provisions of Article XXV of the Collective Bargaining Agreement and Chapter 34 of the Montana Code Annotated relating to the powers and duties of arbitrators for firefighters and public employers.

During the course of the hearing, each party had an opportunity to make opening statements, introduce exhibits, and provide testimony on all matters relevant to the contractual issues in dispute.

At the conclusion of the hearing, the parties requested, pursuant to MCA 39-34-1-3(3), to submit their respective final positions on the matters in dispute. Upon receipt of the parties' post-hearing positions, the hearing record was closed and the Arbitrator took the matter under advisement. The Arbitrator now renders his determination on the issues submitted for resolution.

RELEVANT CONTRACTUAL PROVISIONS

In the opinion of the Arbitrator, the following provisions of the 1991-93 Collective Bargaining Agreement are relevant to determining the issues in dispute:

AGREEMENT

ARTICLE XXV.
Duration of Agreement

Section 5. Unless otherwise mutually agreed, at the expiration date of this Agreement, unresolved issues shall be submitted to the following procedure:

(C) Each party hereto shall submit to the arbitrator within four (4) working days after the appointment a final offer on the unresolved issues with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached. The parties may continue to negotiate all offers until an agreement has been reached or a decision is rendered by the arbitrator. The submission of the unresolved issues to the arbitrator shall be limited to those items that have been considered in mediation and upon which the parties have not reached agreement. Any item other than economic may be dismissed without decision and without recourse of the parties hereto. With respect to each remaining item, the arbitrator's award shall be restricted to the final offers on each unresolved issue submitted by the parties to the arbitrator. The arbitrator shall select and inform the parties hereto, in writing, within thirty (30) days after it's [sic] meeting, as to the most reasonable offer, in it's [sic] judgment, of the final offers on each unresolved issue submitted by the parties.

(D) The determination of the arbitrator shall be final and binding on both parties.

(E) The selections by the arbitrator and items agreed upon by the Employer and the Union shall be deemed to be the collective bargaining agreement between the parties.

(F) The arbitrator shall give written explanation of its selection within thirty (30) days after completion of arbitration.

(G) The fees and expenses of the arbitrator and all other costs of arbitration shall be shared equally. In consideration of the provision to subject all unresolved issues to final and binding arbitration, the Union agrees that no firefighter shall strike or recognize a picket line of any labor organization while in the performance of his official duties.

MONTANA ANNOTATED CODE

CHAPTER 34
ARBITRATION FOR FIREFIGHTERS

Part 1
General Provisions

39-34-103. Powers and duties of arbitrator for firefighters and public employers.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

39-34-104. Collective bargaining permitted during arbitration. Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.

39-34-105. Strikes limited. Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

BACKGROUND

The City of Missoula has a population of 45,000, making it Montana's third largest city. The city is served by the Missoula Fire Department, consisting of Chief Charles Gibson and Assistant Fire Chief Lyle Marshall, and 62 firefighters who are members of IAFF Local 271. The Department serves the City and provides automatic aid or backup, fire, and medical service to the rural fire district adjacent to the city of Missoula. There are three fire stations currently serving the City, and an additional fourth fire station is under construction. The City Fire Department responds to nearly three thousand calls per year, 60 percent of which are medically related. The City of Missoula has a current city budget of $22 million, of which $3 million is allocated to operate the City's Fire Department.

The City and the Union have had a long and satisfactory relationship. As evidence of the excellent working relationship between the parties, the Arbitrator notes that there have been no grievance arbitrations filed between the parties, and there has

been only one previous interest arbitration which was in 1987. Negotiations between the parties, by their own assessment, have been frank, cordial, and open. The Arbitrator observed these same characteristics during the course of the hearing.

There are five major issues which are in dispute and which have been submitted to the Arbitrator for final and binding resolution. The issues and the parties' respective positions are as follows:

1. Article VI - Compensation, Appendix A - Salary

A. The Union

The Union requests that the bargaining unit salaries be increased 5 percent the first year of the contract (July 1, 1993-June 30, 1994) and 4 percent for the second year of the agreement (July 1, 1993-June 30, 1995).

B. The City

The City requests that the Arbitrator award a 3 percent increase for the first year of the agreement and a 3 percent increase for the second year of the agreement.

2. Section 3 - Certification Pay

A. The Union

The Union requests that the Arbitrator increase both the amount of certification pay and the number of certifications by adding an intermediate certificate and an MSA certification.

B. The City

The City has no objection to the inclusion of the two additional certifications. However, it contends that the amount of

certification pay should remain as currently provided and that the amount for the intermediate certificate be $10 any time after October 1994; whereas, the Union contends that it should start on July 1, 1994.

With respect to the MSA certification, the parties have no disagreement on the establishment of certification or the amount ($10 a month). The only objection is the number of members who are to be certified. The Union contends that eight (8) of its members should have MSA certification; whereas, the City contends only four (4) of the members should be allowed to be certified and receive the certification pay of $10 per month.

3. Article XI - Shift Changes

A. The Union

The Union contends that the Arbitrator should adopt the current language of the Agreement.

B. The City

The City recommends major changes in the language of the Agreement in two basic areas. First, the authority for granting shift changes should be left to the Battalion Chief or Assistant Battalion Chief and, second, the change of shifts should only be between qualified personnel.

4. Article XIV - Overtime Pay

A. The Union

The Union requests that the terms of the Agreement be modified to include a differential for overtime pay under one-half hour and over one-half hour.

B. The City

The City takes the position that the current language should prevail.

5. Article XIV - Vacation Time

A. The Union

The Union is requesting a 5 percent increase in the accrual of vacation time.

B. The City

The City takes the position that the current language of the Agreement should prevail.

STATUTORY GUIDELINES

The issues in dispute will be determined in accordance with the statutory guidelines established for arbitration between firefighters and public employers as set forth in Montana Code Annotated 39-34-103(5). The factors arbitrators are to consider in arriving at a determination are as follows.

a. Comparable jurisdictions;

b. Interest of the public and the city's ability to pay;

c. Cost of living indices; and

d. Other factors.

Applying these statutory guidelines to the current dispute, the Arbitrator makes the following preliminary findings.

A. Comparable Jurisdictions.

The parties to this arbitration are in agreement that the appropriate comparable cities for the Arbitrator to consider are

the eight cities other than Missoula which are classified as "first class cities" under MCA 7-1-4111(1). That statute recognizes all cities with populations over 10,000 persons as first class cities. The eight comparable cities are Anaconda, Havre, Kalispell, Bozeman, Helena, Butte/Silver Bow, Great Falls, and Billings. The Union does point out that Anaconda and Havre are not truly comparable to Missoula, either in terms of population or firefighters employed. Missoula has a population of 44,500 and employs 66 combat firefighters. Anaconda employs five combat firefighters for its population of 10,037. Havre has a population of 10,306 and employs 15 firefighters. Nevertheless, the Union has provided comparable information on compensation and benefits for both Anaconda and Havre, as has the City. Therefore, the Arbitrator will use all eight first class cities as comparable jurisdictions in resolving the wage and benefit issues relating to the firefighters.

B. The Interest and Welfare of the Public and the Financial Ability of the Public Employer to Pay.

The Union reasons that because Missoula has had a substantial cash balance in its general fund in each of its last three fiscal years, it has the ability to pay the salary and benefit increases sought by the Union. The City confirms a cash balance of $2,866,531.88 as of June 30, 1993; $3,228,034.47 as of June 30, 1992; and $1,729,736.39 as of June 30, 1991. However, the City argues that the cash balance held by Missoula is the lowest of the comparable cities when measured against total expenditures that must be paid out of the general fund. For example, Missoula's

general fund balance for 1993, according to City information, was 19.8 percent of the City's total expenditures from the general fund. This percentage compares to 97 percent in Billings and 29.5 percent in Kalispell. The City does not deny that it is in good financial condition but argues that it is actually in a worse condition than other first class cities as far as general fund balance is concerned.

The Arbitrator notes that the City has not argued that it does not have the ability to pay the increases requested by the Union. Additionally, the actual dollar amounts between the City's position and the Union's position are less than $100,000 over the two-year contract period. At this point, the Arbitrator does not decide that the Union should receive the increases it is requesting, but the Arbitrator does find that the City of Missoula does have the financial ability to cover those increases.

C. Cost of Living

The parties are in basic agreement that the Arbitrator use the CPI-U (all urban consumers) as the appropriate measure of the cost of living. Therefore, the Arbitrator will do so.

D. Other Factors

Such other factors which are traditionally considered in the determination of hours, wages, and conditions of employment will be discussed to the degree that they are relevant in each of the issues submitted for resolution.

ARTICLE VI - COMPENSATION, APPENDIX A - SALARY

The parties' positions on salary increases are not that far apart. The Union is asking for a 5 percent increase in the monthly base salary the first year, and a 4 percent increase the second year. The City is willing to give a 3 percent increase in each of the two years. The Arbitrator is required to choose between these last best offers.

In reviewing the record of this matter, the Arbitrator found the evidence submitted by the Union with respect to its request for salary increases persuasive. An examination of City Exhibit 5, a salary comparison for fiscal year 1994, which included the City's proposed 3 percent increase, showed that even by the City's own calculations, Missoula firefighters are sixth in terms of salary out of the nine comparables. Further, the Arbitrator cannot ignore that the City's calculations left out City-paid insurance, while at the same time included certification pay of $74 for all employees. This certification pay figure is unreliable in that several issues regarding certification pay are still to be determined by this Arbitrator and, even if decided in favor of the Union, not all employees of the Department would be entitled to $74 in certification pay.

The Union presented unrefuted evidence that over the last three years, the number of firefighters has remained relatively constant, while the demands for their services and responses have increased dramatically for the same period of time. Even though the Arbitrator understands that three new firefighters will be

hired in the near future, he must conclude that the City is being well served by its Fire Department.

The Union also introduced evidence comparing the monthly base salary of several firefighter positions in each first class city. For the position of Confirmed Firefighter (1 year) and Firefighter First Class/III, Missoula ranked seventh out of the nine comparable cities. For the position of Captain, Missoula ranked fifth out of the nine; and for Battalion Chief, Missoula ranked fourth out of the five cities compared. The City objects to the use of only the monthly base salary as a comparison since it ignores additional compensation received by the firefighters for longevity, clothing, and certification. Nevertheless, the Arbitrator considers this information as another indication that Missoula firefighters are currently receiving below average compensation compared to other first class cities in Montana. As cited earlier, the City's own evidence places Missoula sixth in overall compensation to its firefighters as compared to other first class cities.

The City argues that even its 3 percent suggested increase is over the CPI-U increase of 2.5 percent for January 1993 to January 1994. The Union presented CPI-U figures for the average percent change of all items from 1992 to 1993. During that period, the CPI-U rose 3 percent. Clearly, whether the Arbitrator relies on the City's evidence or the Union's evidence with respect to the CPI-U, a 5 percent increase is above the CPI-U average increase for either 1992-93 or 1993-94. However, the Union supplemented its CPI-U information with evidence that Missoula's cost of living in

October 1992 was 103.8 percent of the national average. Additionally, the Union presented unrefuted evidence that the average price of a home in Missoula County was now $91,794, up from $82,072 in 1992 and $73,103 in 1991. This evidence leads the Arbitrator to conclude that Missoula's cost of living increases have been higher than the national average as shown in the CPI-U indices.

The Arbitrator finds the comparable jurisdictions provide better grounds on which to decide the salary increase than the CPI-U, and the Arbitrator has given more weight to that information than the CPI-U figures.

On the basis of all the evidence submitted by both parties, the Arbitrator is persuaded that the firefighters deserve a 5 percent increase in monthly base salary in the first year of the Contract and a 4 percent increase in the second year. Although these percentages exceed the increase granted to other bargaining units in the City, the Arbitrator does not find them to be excessive.

AWARD

> It shall be the Order of the Arbitrator that the firefighters shall receive a 5 percent increase in their monthly base salary in the first year of their Contract retroactive to July 1, 1993. Further, the firefighters shall receive a 4 percent increase in the second year of the Contract.

ARTICLE VI, COMPENSATION, SECTION 3 - CERTIFICATION

The parties have reached agreement on many issues regarding special certification pay. They differ on pay increases for

certain certifications, on when to implement a new classification for Emergency Medical Technician/Intermediate, and the number of new Level 3 MSA Certified Repair Technicians.

The comparison of the parties' proposed increases for certain special certification follows:

	Union's Proposal	City's Proposal	Current Amount
Emergency Medical Technician	$30.00	$20.00	$18.00
EMT-Defibrillator Certified	26.00	18.00	17.00
Cardiopulmonary Resuscitation Instructor	24.00	16.00	16.00

As admitted in the Union's brief, to grant the Union's requested increases would place Missoula first among the comparable cities in terms of special certification pay. The Union's evidence does not convince the Arbitrator that such large increases are necessary. According to the Union's evidence comparing certification pay in the first class cities, Missoula ranks fourth out of the five compared. However, three cities do not offer certification pay at all. When compared with all nine of the first class cities, Missoula actually ranks fourth out of the nine, exactly in the middle. The City's proposed increases would maintain Missoula's position in the middle of the comparable cities. The Arbitrator cannot ignore that in some cities, firefighters receive no special certification pay at all. Special certification pay is a monetary benefit to the firefighters of Missoula, and in determining whether the existing pay rate is fair,

the Arbitrator must look at all eight of the comparables, not only the cities which actually provide special certification pay.

It is the decision of the Arbitrator that the compensation amounts proposed by the City should be adopted by the parties with respect to the Emergency Medical Technician, Emergency Medical Technician/Defibrillator Certified, and Cardiopulmonary Resuscitation Instructor.

The parties have already agreed to add a new certification, Emergency Medical Technician/Intermediate. Firefighters obtaining the new certification will be entitled to $10 per month special certification pay. The only point on which the parties disagree is when the program should be implemented. The City asks that the program be implemented after October 1, 1994, while the Union wants the program to run the full term of the new Contract, which actually began on July 1, 1993.

The Arbitrator concurs with the Union that the implementation of the program should be designated as a date certain, rather than sometime following October 1, 1994. The Arbitrator understands that the City may need some time to develop and institute the new certification, but by ordering that the program should run the entire term of the Contract, the Arbitrator believes he is insuring that the program will be implemented as soon as practically possible.

The parties also agree that a new certification for Level 3 MSA Certified Repair Technician will be added, and the pay for this certification will be $10 per month. However, the City wants to

limit the number of firefighters who may hold this certification to four, while the Union is requesting that the certification be available to eight of its members.

The Union contends that there should be two people per shift qualified to repair breathing apparatus, which is a major responsibility of a Level 3 MSA Repair Technician. Again, the Arbitrator does not find the Union's position persuasive. In the past, the City has done without this certification. It has now agreed that such a certification would be appropriate, but argues that four firefighters with the certification will meet the Department's needs. The Arbitrator agrees that the City may limit the number of certifications available to its firefighters, particularly when doubling the number of certifications would not add to the quality of the performance of the Department. If, in the future, the parties find that additional Level 3 MSA Repair Technicians would be of benefit to the Department, they may raise the issue at that time.

Accordingly, the Arbitrator concludes that the Contract should provide that the new certification for Level 3 MSA Certified Repair Technician will be available to four firefighters only.

AWARD

It shall be the Order of the Arbitrator that special certification pay shall be as follows:

Emergency Medical Technician	$20.00 per month
Emergency Medical Technician/ Defibrillator Certified	18.00 per month

Cardiopulmonary Resuscitation Instructor	16.00 per month

It shall be the Order of the Arbitrator that the new certification program for Emergency Medical Technician/ Intermediate shall be retroactively implemented to begin on July 1, 1993.

It shall be the Order of the Arbitrator that the number of Level 3 MSA Certified Repair Technicians be limited to four.

ARTICLE XI, SHIFT CHANGES

At the arbitration hearing, it appeared to the Arbitrator that the issue causing the parties the greatest concern and the most dissention was the City's proposed changes to the "shift changes" provisions of the Contract. The Union wants the provisions to remain as they are, while the City desires to add language requiring that shift changes be approved by the Battalion Chief, Fire Chief, or Assistant Fire Chief, and that exchanges be limited to exchanges between "qualified employees."

The City believes its proposed changes are necessary to return managerial control to a situation it views as "bordering on chaotic." The City did provide convincing evidence that shift changes are prevalent (1,464 in fiscal year 1993) and that even one exchange can have a trickle down affect that has staffing ramifications at each of the fire stations. The Union argues that the current language is adequate and that problems that are perceived by the City arise from the failure of the Department administration to manage and monitor the shift changes as closely as they should.

The current Contract language with respect to shift changes provides at Article XI:

> Employees shall have the right to exchange shifts when the change does not interfere with the best interests of the Fire Department, as determined by the Fire Chief or his designee. In no event shall shift exchanges result in the application of overtime pay provisions of this contract or require payment for working out of classification. The Employer assumes no obligation to insure repayment of time for those involved in shift exchanges. Employees scheduled as a replacement for approved shift exchange accept full responsibility for that shift.

As interpreted by this Arbitrator, Article XI as it presently exists gives the Department authority to administer exchange shifts consistent with "the best interests of the Fire Department, as <u>determined by the Fire Chief or his designee</u>." (emphasis added) Thus, the Fire Chief or his designee may currently deny a request for shift exchange based either on the issue of qualification or the assignment or both. This interpretation was affirmed in a November 6, 1987, memo from Fire Chief Charles H. Gibson to all Department Members. Chief Gibson stated:

> It is the replacing individual's responsibility to be qualified for the position he is filling. The officer approving the trade must insure that the trade does not interfere with the best interests of the Department.

He further stated:

> 3. [I]t is the duty of all involved with a trade that the position be filled with qualified personnel.

The Arbitrator considers the current Contract language which has been unchanged for at least the last ten years, to grant the Fire Chief or his designee broad discretion in determining which exchanges are appropriate and which are not. It is up to the Chief

or his designee to monitor the exchanges and, when an exchange is detrimental to the Department, to discipline those abusing the privilege. The City's concern regarding the problems brought about by shift changes was demonstrated on May 25, 1993, during the 6 p.m. to 8 a.m. shift. Three shift changes occurred at this time and date, one of which resulted in Fire Station 3 having no Emergency Medical Technician/Defibrillator Certified (EMTD) firefighter on duty. Clearly, this is not in the best interests of the Department or the public interest since no firefighter at Station 3 was qualified to deliver certified emergency medical and defibrillator service to a citizen who might have needed assistance. The Arbitrator cannot understand the Department's failure to enforce its existing policy in this instance or in the 100 other exchanges in 1993 it now says were inappropriate. As the Arbitrator reads the evidence concerning the May 25, 1993, exchange, only one firefighter scheduled to work for the 6 p.m. to 8 a.m. shift had an EMTD certification. Since it is in the best interests of the Department and the public to have an EMTD certified firefighter on duty at each station at all times, when that one individual requested to exchange his shift with another firefighter of another station, the request should have been denied. Under the existing shift policy, it clearly could have been denied. The City, in its post-hearing brief, argues that the City fire administration does not have adequate notice of shift exchange to prevent problems. A number of solutions to this problem occur to the Arbitrator. First of all, the administration

could impose a 24- or 48-hour notice on all shift exchanges. Second, the Department could discipline those who abuse the policy, thus hopefully preventing further abuse in the future.

The above example indicates to the Arbitrator that the Department is not properly monitoring the shift exchanges. Whoever granted the exchange could see from the schedule that only one EMTD firefighter was scheduled to work that shift at Station 3. Allowing that firefighter to work his shift elsewhere left Station 3 not properly staffed. The current Contract language is sufficient to prevent problems like this from occurring. Department administrators must simply take the appropriate steps to enforce the existing policy.

The City's argument that Article IX, Prevailing Rights, prevents the City from enforcing Article XI, Shift Changes, is incorrect in this Arbitrator's view. The existing shift exchange policy does not grant firefighters "at will" exchanges. However, unless the administration monitors the exchange requests and rejects those that are not in the Department's best interests, or disciplines those firefighters involved in abusing the policy, the Department will have a de facto at-will policy.

The Arbitrator is convinced that the City does not need the changes it is requesting to regain managerial control over the exchange policy. The City must simply do a better job of managing the policy that already exists. The administration has every right to change current practices which are inconsistent with the terms of the Contract after giving its employees and the Union proper

notice of the change. Memos from Fire Chief Gibson in 1987 and Fire Chief Al Sampson in 1981 show that administrations have already taken steps to clarify and define the shift exchange policy by means of written notice. The Union recognizes the Department's right to modify policy in its post-hearing brief at page 21 where it states:

> A close analysis of other contracts [from first class cities] demonstrates that, for the most part, they provide for the right to exchange shifts. Restrictions imposed on that right are, for the most part, contained in the departmental policies adopted over the years to meet the needs of those individual fire departments and the employees in those cities.

The evidence before the Arbitrator suggests that this is the first time either party has attempted to modify the language of the shift exchange provision itself. The record contains no examples of adverse actions taken by the Department or grievances filed by the firefighters under the policy. These facts indicate to the Arbitrator that the policy itself is not the cause of the problems cited by the City.

The City has not demonstrated that the current policy has an economic impact of any consequence on the City. The City argues that in at least two instances in 1993, it had to pay overtime in order to maintain minimum staffing requirements due to exchanges. However, the Union contends that the City actually saves money on overtime by arranging exchanges where possible. The Arbitrator concludes that the economic impact of either proposal is minimal.

The Union argues persuasively that the current policy is considered an important benefit for the firefighters. A liberal

exchange policy has been identified by Chief Gibson as a morale booster. The Arbitrator can find no persuasive reason to change a policy which already gives the City what it seeks by its suggested modifications. The Union admits in its post-hearing brief that shift changes cannot interfere with the best interests of the Fire Department. It recognizes the existing policy as requiring the replacing individual to be qualified for the position he is filling. Chief Gibson's memo of November 6, 1987, established that exchanges or trades must be "approved by the Battalion Chief or acting Battalion Chief at Station 1." Only in his absence may a Line Officer acquainted with the Department policy and the work schedule approve a trade.

It is the decision of the Arbitrator that the control the Department seeks over shift exchanges already exists in the current policy. The Department must simply enforce that policy as written.

This contract negotiation has made the Union aware of the Department's legitimate concerns regarding problems associated with the current practice. Assistant Chief Lyle Marshall's legitimate concern regarding the need to improve coverage by qualified personnel is a significant concern and needs to be addressed by both management and the firefighters. The Arbitrator would hope that the Union, in order to preserve this significant benefit, would realize that persons seeking to exchange shifts must be fully qualified to perform all the duties and responsibilities of the position which is being exchanged.

AWARD

It shall be the Order of the Arbitrator that the proposed changes to Article XI submitted by the City are rejected. The current language of Article XI, Shift Changes, shall remain unchanged.

ARTICLE XIV, OVERTIME PAY

Both parties have agreed to modify the existing overtime provisions. The existing provision provides that a firefighter held over to work beyond his regular shift shall have the right to work two hours and be paid at the overtime rate for those two hours. A firefighter may choose to leave before the two hours expire, but then will receive overtime pay only for the time actually worked. The City proposes that a firefighter held over to work beyond his regular shift for less than 30 minutes will be paid overtime for the time actually worked. A firefighter held over beyond his regular shift for more than 30 minutes but less than two hours may work two hours overtime. The Union's proposal differs from the City's only in that it requests a firefighter held over for less than 30 minutes receive overtime pay for a full 30 minutes.

The Arbitrator finds only minimal difference between the two proposals. Economically, both proposals would appear to save the City money. The Union's proposal provides greater incentive for a firefighter to work half an hour or less and then go home, rather than working a full two hours for which the Department would have to pay two hours of overtime. From an administrative standpoint, it appears easier to calculate overtime on a half-hour basis,

rather than by the minute. While the Union's proposal may cost the City slightly more money, the amount is diminimus. Therefore, the Arbitrator will order adoption of the Union's proposal.

AWARD

It shall be the Order of the Arbitrator that the Union's proposal regarding overtime pay shall be accepted and the City's proposal rejected.

ARTICLE XV, VACATION TIME

The Union seeks to increase the amount of vacation earned by 5 percent. It justifies this request by noting that firefighters work a 42-hour work week while most other public employees work a 40-hour week. Since the current Contract language is based on State law providing minimum vacation time for public employees, most of whom work less than the firefighters, the firefighters should be entitled to more vacation time. The Arbitrator does not find this evidence persuasive. As noted by the Employer, three of the nine first class cities in Montana have a longer work week than Missoula firefighters. This fact did not cause the Arbitrator to determine that Missoula firefighters were entitled to less compensation than firefighters in Bozeman, Helena, and Billings, where the firefighters work more hours. Similarly, the fact that the firefighters work 42 hours per week when other public employees may work only 40 hours is not determinative on this vacation time issue.

The State has seen fit to legislate how to calculate minimum vacation accrued for public employees like the firefighters represented here. The Arbitrator will follow that legislation and reject the Union's request for additional vacation time.

AWARD

It will be the Order of the Arbitrator that the Union's proposal for increasing the amount of vacation earned by 5 percent shall be rejected. The proposal submitted by the City is accepted.

IN THE MATTER OF THE ARBITRATION

BETWEEN

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 271,	)	AWARD
Union,	)	Re: INTEREST ARBITRATION 1993-95 CONTRACT
and	)	
CITY OF MISSOULA, MONTANA,	)	
Employer.	)	

The Arbitrator, in arriving at this decision, has reviewed all of the evidence, exhibits, and recorded testimony of the hearing, as well as the arguments of the parties as set forth in the post-hearing briefs. In view of all the evidence and for reasons set forth in this Opinion, it is the decision of the Arbitrator that:

1. The firefighters shall receive a 5 percent increase in their monthly base salary on the first year of the Contract retroactive to July 1, 1993, and a 4 percent increase in the second year of the Contract.

2. Special certification pay for the following certifications shall be as follows:

Emergency Medical Technician	$20.00 per month
EMT Defibrillator Certified	18.00 per month
CPR	16.00 per month

3. The new certification program for Emergency Medical Technician/Intermediate shall be retroactively implemented to begin on July 1, 1993.

4. The number of Level 3 MSA Certified Repair Technicians shall be limited to four.

5. The City's amendment to Article XI, Shift Changes, shall be rejected. The current language of Article XI shall remain unchanged.

6. The Union's amendment to Article XIV, Overtime Pay, is accepted, and the City's amendment rejected.

7. The City's amendment to Article XV, Vacation Time, shall be accepted, and the Union's amendment rejected.

8. Pursuant to the stipulation of the parties, the Arbitrator shall retain jurisdiction in this matter for a period of sixty (60) days following the issuance of the Award for the express purpose of assisting the parties in resolution of any disputes arising out of the interpretation of the Arbitrator's Award.

Eric B. Lindauer
Arbitrator

April 7, 1994