

FINDINGS OF FACT AND RECOMMENDATIONS

BACKGROUND

The Factfinder was selected pursuant to MCA 39-31-308 and a hearing was conducted on December 19, 2017, in Helena, Montana, pursuant to MCA 39-31-309. City of Helena, Montana (hereinafter "City") was represented by Michael Dahlem, Esq., and Iryna O'Connor, Esq. International Association of Firefighters, Local 448 (hereinafter "Local 448") was represented by Ricky J. Walsh, IAFF 7th District Vice President. The parties agreed on the filing of posthearing briefs and timely briefs were received from both parties on January 24, 2018. At the hearing, the parties waived the MCA 39-31-309 requirement for the factfinder to submit his findings of fact and recommendations within 20 days of his appointment and agreed that he could do so within 30 days of receipt of briefs. Thereafter, extensions were granted the Factfinder.

FINDINGS OF FACT

The City of Helena is a Class I city, i.e. a city with 10,000 or more residents, in the State of Montana. It is also the capital of Montana. There are six other Class I cities in Montana, including, in order of size from largest to smallest, Billings, Missoula, Great Falls, Bozeman, Butte-Silver Bow and Kalispell. The City falls between Butte-Silver Bow and Kalispell in size.

The City provides fire protection, fire suppression and emergency medical services to the City of Helena and surrounding areas. It also has HAZMAT teams that

travel throughout the state. At its two stations, one located downtown and the other on the east side of town, the City employs a total of 35 persons, 32 of whom are members of the bargaining unit, including 30 suppression personnel and two fire prevention employees. The City operates one ladder truck. Suppression employees work 24 hours on, 48 hours off and a Kelly day after five shifts in a 15-day period. This amounts to 2434.93 hours per year.

The City and Union have been signatory to a series of collective bargaining agreements, the most recent of which expired on June 30, 2017. Although the parties reached agreement on the ground rules for negotiating a successor agreement on February 21, 2017, met ten times, including three in mediation with the assistance of Montana DOLI Mediator Halfrisch, and tentatively agreed on many provisions, they could not reach agreement on all terms at issue.¹

At the conclusion of mediation, the two issues outstanding were base wages addressed in Section 12 and longevity pay addressed in Section 27 of the contract. The City submitted its last and final offer to the Union on December 13 and the Union responded with its last and final offer to the City on December 14. Each was presented as a take-it-or-leave-it package offer.

As regards the matter of base wages, by the time of the factfinding hearing in late December, the individual base wages for all classifications proposed by the parties were identical except as to the highest paid Union-represented positions of Battalion Chief and

¹ All dates hereinafter are 2017 unless otherwise noted.

Fire Marshal,² the Union had agreed to the City Commission-approved COLA increases of 2.5% for the entire wage matrix on July 1, 2018, and July 1, 2019, and the City had withdrawn its inability to pay argument and acceded to the Union's demand to make all first-year wage increases retroactive to July 1, 2017, rather than the date of ratification of the new agreement. However, the Union proposed to eliminate the language contained in Section 12 of the parties' 2011-2014 and 2014-2017 collective bargaining agreements stating, "The methodology used for determining the wage adjustment is the median of the Class I cities, [sic] Helena is not included in the comparison."

As concerns the issue of longevity pay, the City offered an increase from the existing rate of \$14.13 per month for each year of service to \$15.66 per month for each year of service to all unit employees regardless of rank or accumulated years of service whereas the Union sought a graduated scale depending on length of service including \$10.00 per month for each year of service for employees with between zero and five years of service, \$12.00 per month for each year of service for employees with between five and ten years of service, \$15.00 per month for each year of service for employees with between ten and fifteen years of service, \$22.00 per month for each year of service for employees with between fifteen and twenty years of service and \$25.00 per month for each year of service for employees with more than twenty years of service. The fiscal year 2018 cost of the Union's longevity proposal exceeded the cost of the City's offer by approximately \$28,000.

² It appears the parties merely received conflicting information from different Butte-Silver Bow officials that caused the fiscal year 2018 cost of the Union's base wage proposal to exceed the City's by approximately \$10,000.

RECOMMENDATIONS OF THE FACTFINDER

Base Wages

Battalion Chief/Fire Marshal

As noted above, there are two remaining sub-issues related to the issue of base wages, namely the linked wages for Battalion Chief and Fire Marshall and the wage adjustment methodology historically appearing in Section 12 of the contract. Given the parties' agreement on the remainder of the wage matrix, the proper recommendation with respect to the first is obvious. All that is required of the parties is to obtain a clarification from Butte-Silver Bow with respect to the wage paid the Battalion Chief there. As the City argues, as long as the parties continue to use the median-wage methodology of the other five Class I cities having Battalion Chiefs (Kalispell does not have them) in identifying the fiscal year 2018 Battalion Chief/Fire Marshal base wage as they did in arriving at the remainder of the base wages in the matrix, that will dictate the wage of the City's Battalion Chiefs and Fire Marshall. I will recommend that approach with respect to this sub-issue.

Median Methodology

The second base wage sub-issue is the question of retention of the median-wage methodology. As it relates to the setting of base wages, I can find no reason to recommend that it be removed from Section 12 of the parties' accord. Indeed, retaining that language in the new collective bargaining agreement will serve two purposes. The first is that it will lead to resolution of the present base wage conflict vis-à-vis the Battalion Chief and Fire Marshall classifications identified above. The second purpose to

be served is that virtually any agreed-upon methodology is better than none at all, a situation that, in my view, leads to negotiating free-for-alls. Although the Union argues that the median-wage approach has not always been followed in practice and the parties have ended up in fact-finding and interest arbitration three times in five years, I note that the earlier conflicts, unlike the present one, involved many non-wage issues. Moreover, in the present dispute, the setting of base wages was essentially resolved by the time of factfinding, a fact due largely to having an identified methodology. If the parties find in future bargaining that the methodology at issue does not lend itself to a particular classification or that comparable market factors have changed significantly and made the approach unworkable, they can address those considerations at that time. No such considerations have been identified here.³ Absent strong evidence militating for change, factfinders and interest arbitrators should resist the temptation to modify the parties' historic approach. As well-known Arbitrator Marvin Hill stated in *Village of Elmwood Park and Elmwood Park Firefighters Assn.*, ILRB Case No. S-MA-10-192 (2010), "There is a presumption that what the parties did in the past regarding contractual language should not be upset by an interest arbitrator, absent some compelling reason for so doing." *Sl. op.* at 14. A factfinder should follow the same approach. I will therefore recommend that the language at issue remain in Section 12.

³ I recognize that one of the Union's arguments is that it is constantly playing "catch up" with the other Class I cities, achieving a measure of parity when a new contract goes into effect only to slide significantly behind in subsequent years. However, an examination of the collective bargaining agreements for those six cities placed in evidence as Union Exhibits No. 27-32 does not bear that out, revealing instead that the 2.5% COLA offered by the City and tentatively agreed to by the Union in its December 14 last and final offer minimizes such back sliding inasmuch as the COLA adjustments appearing in those contracts vary from 1.3% to 3.3%, the median of which, after averaging the sliding scales at three of the cities and then computing the average of the two cities at the center of the resulting range, is approximately 2.875%.

Longevity Pay

I am also inclined to recommend the City's proposal with respect to longevity pay. The Union contends its goal is retirement parity with the employees of the parties' historic comparable cities and that granting its request would cost the City only \$28,000 more than the City's offer in fiscal year 2018. However, the City's offer of a 10% increase in longevity pay from \$14.13 to \$15.56 per month of service for each year of service already accomplishes parity with the six other Class I cities historically used for the purpose of negotiating longevity pay as well as base pay. When comparing the City's offer of \$15.56 to the longevity pay levels agreed to in the most recent collective bargaining agreements signed by various locals of the IAFF and the cities of Billings (\$14.05-17.45), Bozeman (\$10.00-14.00), Butte-Silver Bow (\$13.00-13.50), Great Falls (\$15.50), Kalispell (\$55.56) and Missoula (\$22.68-31.75), it almost precisely equals the \$15.625 average of the Billings numbers ($\$14.05 + 17.45 = 31.50 \div 2 = \15.75) with the Great Falls number of \$ 15.50, following the historic practice of the parties in arriving at median numbers. On the other hand, averaging the Union's proposed variable rates for the length of service exhibited by the department's 31 currently-filled positions as of July 1, 2017, provides an average longevity level of \$17.32, over 11% higher than the City's offer, and that difference will grow larger with the passage of time, particularly in light of the fact that twelve of the 31 present positions would matriculate to a higher rate before the contract under scrutiny expires. That would cause the longevity pay scale proposed by the Union to significantly exceed the median of the six comparators, a result I cannot recommend.

