

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2014-002

**TO:** City Council, Mayor John Engen, Bruce Bender, Leigh Griffing, Scott Paasch, Fire Chief Jason Diehl, Assistant Fire Chief Jeff Brandt, Assistant Fire Chief Chad Nicholson, Police Chief Mike Brady, Assistant Police Chief Scott Hoffman, Donna Gaukler, Ellen Buchanan, Mike Haynes, Marty Rehbein, Gail Verlanic, Ginny Merriam, Ellen Leahy

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** January 21, 2014

**RE:** Pursuant to Montana collective bargaining laws municipal firefighter and police collective bargaining may be determined pursuant to binding arbitration that does not require City Council approval.

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### FACTS:

As City Council members prepare for engaging in a budget game exercise with members of the Missoula community concerning the City of Missoula general fund budget it is important that everyone be aware and understand that pursuant to Montana state collective bargaining laws municipal firefighters and police officers could have their collective bargaining negotiations resolved pursuant to binding arbitration that does not require City Council approval of the arbitrator's decision. The firefighters and police collective bargaining units membership are far and away the largest the City of Missoula negotiates with. Montana state law prohibits municipal Firefighters and Police from engaging in strikes as part of their respective binding arbitration laws.

### ISSUE(S):

If collective bargaining negotiations with either City of Missoula firefighters or police officers are determined pursuant to Montana binding arbitration laws, does the City Council have any power or authority to modify or disapprove the arbitrator's collective bargaining determination?

### CONCLUSION(S):

No. Pursuant to Montana collective bargaining laws municipal firefighter and police collective bargaining negotiations may eventually go to binding arbitration if there is impasse, during

negotiations. The arbitrator's decision is final and binding and does not require city council approval.

### **LEGAL DISCUSSION:**

Title 39, Chapter 31 Montana Code Annotated is entitled "Collective Bargaining for Public Employees." Montana state collective bargaining laws for public employees pursuant to section 39-32-305, MCA entitled "Duty to bargain collectively-good faith" require public employers to bargain in good faith with respect to wages, hours, fringe benefits, and other conditions of employment. Fringe benefits include health and dental insurances.

Section 39-31-305 MCA provides:

39-31-305. Duty to bargain collectively -- good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2).

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or the public employer's designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising under an agreement and the execution of a written contract incorporating any agreement reached. The obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith. (emphasis added)

Also, pursuant to Montana state collective bargaining laws for public employees, the Montana State Legislature has enacted binding arbitration laws for municipal firefighters and police officers, pursuant to which the arbitrator's determination is final and binding and does not require City Council approval of the arbitrator's final binding determination.

Municipal police collective bargaining binding arbitration is set forth in Title 39, Chapter 31, Part 5, MCA entitled "Police Officers – Strikes Prohibited – Binding Arbitration" Section 39-31-503 MCA entitled "Binding Arbitration – policy" provides:

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). (emphasis added)

Pursuant to Montana State Law, the criteria for the arbitrator to consider pertaining to municipal police binding arbitration are set forth in subsection 39-31-504(3), MCA as follows:

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

(a) the interest and welfare of the public;

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

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

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

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

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

(g) the stipulations of the parties; and

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

Section 39-31-505 MCA entitled “Arbitration decision final” provides that the arbitrator’s decision is final and binding on the parties.

Municipal Firefighter collective bargaining binding arbitration law is set forth in the title 39, chapter 34 MCA entitled “Arbitration for Firefighters”. Section 39-34-103 MCA entitled “Powers and duties of arbitrator for Firefighters and public employers” provides:

39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(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 the 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. (emphasis added)

### **CONCLUSION(S):**

No. Pursuant to Montana collective bargaining laws municipal fire fighter and police collective bargaining negotiations may eventually go to binding arbitration if there is impasse, during negotiations. The arbitrator's decision is final and binding and does not require city council approval.

OFFICE OF THE CITY ATTORNEY

/s/ \_\_\_\_\_  
Jim Nugent, City Attorney

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