

BEFORE

GEORGE LARNEY, LABOR FACT FINDER

IAFF, LOCAL 4432)	
)	
)	FACT-FINDING REGARDING WAGES
UNION,)	AND RESIDENCY REQUIREMENT
)	
vs.)	
)	
THE HEBGEN FIRE DISTRICT,)	LOCAL 4432'S
)	POST-HEARING BRIEF
EMPLOYER.)	

I. INTRODUCTION AND ISSUES PRESENTED

The Hebgen Fire District, established in 2009, provides fire protection and emergency medical response/transport services for the geographic area within Hebgen Lake Basin area that is located in and around the town of West Yellowstone, Montana. Since the consolidation of the town of West Yellowstone Fire Department and the surrounding fire district in 2009 that created the Hebgen Fire District, the initial response area for the Hebgen firefighters is approximately 120 square miles.

The District's labor pool consists of 11 career personnel that includes fire fighters (all with differing levels of EMS certifications), an administrative assistant, an Assistant Chief, and a Chief. IAFF Local 4432 is the recognized collective bargaining representative of the combat fire fighters (eight in number) who are employed by the Hebgen Fire District, except the assistant fire chief and the fire chief. The District does have volunteer firefighters, 11 in number, that are not represented by Local 4432.

The members of IAFF Local 4432 work a 56 hour work week and it is accomplished utilizing a 48/96 schedule meaning working a 48 hour shift followed by 96 hours off (Union Exhibit 1, Current CBA).

IAFF Local 4432 and the Hebgen Fire District have a bargaining history that dates back to 2011. Prior to 2009 the BU Employees were employed by the Town of West Yellowstone at

the City Fire Department and did have a collective bargaining agreement and bargaining history. Per the successorship agreement in the CBA (and state statute) in place at the time when the City fire Department merged into the newly established Hegben Fire District, the employees of the town fire department became employees of the District and the collective bargaining agreement was re-negotiated by the Union and the District in 2011. During this history of labor/management relations there have been grievances but none have necessitated a third party for assistance. Contract negotiations has never used or needed outside assistance until this session in which the parties used interest based bargaining (IBB), traditional bargaining, mediation and are now in the fact finding process.

The issue brought before the Fact Finder involves the current residency policy and wages. As was revealed during the process the residency policy is a highly emotional issue for the members of IAFF Local 4432. The Local presented evidence that the current policy (Union Exhibit 2, Resident Policy) is restrictive and is unfair to Local members for a variety of reasons including and foremost, there is a lack of affordable housing available within the borders of the District (the policy requires the members to reside within the confines of the District). This housing situation combined with low wages offered to Local members causes stress to members currently employed and in part are a reason why past members have moved onto other opportunities.

The parties have tentatively agreed to all other provisions of the proposed collective bargaining agreement and further have agreed that a final CBA would be retro-active to July 1st of 2017. The only issues remaining unresolved are outlined above.

The parties agree that the issues that are presented for determination in this matter are as follows:

- 1. TO MODIFY THE RESIDENCY POLICY TO ALLOW FOR MEMBERS TO LIVE WITHIN 150 MINUTES FROM STATION 1 (UNION PROPOSING) OR TO ADOPT A 26 MINUTE RESIDENCY TO THE MAIN STATION (DISTRICT PROPOSAL).**

- 2. TO INCREASE BASE WAGES 5% PLUS COLA EACH YEAR FOR 3 YEARS (UNION PROPOSAL) OR ADOPT DISTRICT PROPOSAL OF 2% PLUS COLA IN FIRST YEAR, 1% PLUS COLA IN SECOND YEAR AND 1% PLUS COLA IN THIRD YEAR (DISTRICT PROPOSAL).**

II. STATEMENT OF THE CASE

A. RESIDENCY REQUIREMENT & WAGES

Local 4432 put forth credible evidence and testimony as to the history of the residency policy and why it must be modified to the Unions proposal of expanding the living requirements to allow members to live within 150 minutes of Station 1.

James McBirnie, an original charter member of IAFF Local 4432 and 12 year member of the fire department (both the old West Yellowstone Town Department and the new Hebgen Fire District, and current IAFF Local 4432 President gave testimony on a variety of subjects. Mr. McBirnie gave testimony that the parties were properly in front of Fact Finder Larney and explained they had used IBB (interest based bargaining) with assistance of a BOPA (Board of Personal Appeals) without success of completing negotiations. They then transferred to traditional bargaining and was able to get all articles TA'd (tentative agreements) with the exception of wages and residency requirement. Local 4432 then utilized mediation without success of resolution. The mediation lasted just two hours. Mr. McBirnie testified that the residency policy was established in 2011 but had grandfathered the current employees at the time, meaning that those employed at the time of the policy being implemented could reside anywhere they choose and that the new policy would only apply to those hired after July 1, 2011. Mr. McBirnie testified that the new policy has been causal to a seemingly constant turnover in career personnel (Union Exhibit 3, Letters) since implemented. He further gave testimony that the reasons Local 4432 members, past and present, have deemed this their number one priority issue is that there is not affordable housing within the Hegben Fire District, the costs of goods and services are higher, there are reduced opportunities for spouses and significant others (overwhelmingly service jobs) and less opportunities for children of members. Mr. McBirnie affirmed his statement about less opportunity for spouses or significant others with job searches

and other documents (Union Exhibit 4, Available Jobs). Mr. McBirnie also testified that the comps the Union used were hit and miss on residency all though where they were in place, the members had more choice. He testified that Ketchum, Idaho did have a residency clause but it was within a 750 square mile boarder....Wood River, Idaho had a residency policy BUT did not adhere to it (per the Local Union president)....Whitefish, Montana did not have a residency policy....and Big Sky had a residency policy BUT had recently expanded (to include all Gallatin County, and one hour west of Big Sky) it due to the inability to attract and keep qualified firefighters per the Big Sky Fire Chief. Also of note by Mr. McBirnie, all of the mentioned jurisdictions paid their firefighters more than the Hegben Fire District pays its firefighters. Mr. McBirnie also testified to the Unions comps being chosen because of their size (8 BU members to 15 BU members) and the fact they were all tourist destinations. Mr. McBirnie also testified that Local 4432 members are frustrated seeing new hires leave the department because the residency policy has caused family issues. The 2 longest term employees are of the grandfathered class of employee not required to live in the District, McBirnie being one of them. Mr. McBirnie equated the residency policy and low wages to indentured servitude and that it would be nearly impossible to attain part of the American Dream of owning a home within the District. During cross exam MR. McBirnie did not waiver from his original testimony and in fact shed additional light. He in fact testified that Local 4432 initially agreed to the policy BUT six years later have different thoughts and believes it simply does not work, to attract and retain qualified firefighters. He testified that the latest two firefighters hired have been unsuccessful in finding any housing, let alone affordable and in able to start their employment with the District they were living in one of the un-staffed stations. One of the new hires has a family which necessitates a split family. Mr. McBirnie also shed light on the Districts position of needing the residency policy in its current form, that being for call back for simultaneous calls. In a most recent year, the Hegben Fire District responded to 498 calls of which a second call came in while crews were already engaged on a call 38 times, and then a third call came in only 7 times. This equates to the on duty crews mitigating 92% of the calls, while call back would only be needed for 8% of the total number of emergency responses. Mr. McBirnie also shed light on how those second and third calls are handled and it was not disputed they were handled by the chief's or by the duty crews clearing the first call and responding to the second or third call.

Mike Cameron, a member of Local 4432 and a two year employee of the Hegben Fire District gave credible and emotional testimony on the subject of residency. Mr. Cameron had created some of the Unions exhibits and testified to their authenticity and accuracy. Mr. Cameron testified to how members lives could be made better if the Unions position of extending the residency policy to within 150 minutes of station one in regards to the choices a member could live (Union Exhibit 9A, 9B, and 9C, Maps). This exhibit shows how far a person could drive in 150 minutes, following the posted speed limits, on all routes leaving West Yellowstone and more specifically from Hegben Fire District station 1. He explained that he and other members actually drove these routes and were able to visit other towns and cities where members could potentially live if the boundaries were expanded in favor of the Union's proposal (Union Exhibit 5, Time Driven). Mr. Cameron further testified to homes for sale within the District's borders (Union Exhibit 10A, Thumb Drive) and then also within the Unions proposed 150 minutes (Union Exhibit 10B, Thumb Drive) and pointed out that if members were forced to continue to live within the District, home ownership was virtually impossible while if allowed to reside within the Union's proposal, home ownership could become a reality. He also testified to the rental situation within the District (Union Exhibit 11A, Thumb Drive), VRBO's within the District (Union Exhibit 11B, Thumb Drive) and again the rental situation within the 150 minute Union proposal (Union Exhibit 11C, Thumb Drive) and pointed out that affordable rental actually exist outside of the District borders. Mr. Cameron pointed out the Town of West Yellowstone hired a consulting company, Land Solutions, that made observations that affordable housing for year round residents as well seasonal employees is at a critical juncture, and that "private developers are constrained in their ability to build additional housing" and that "existing stock is being taken off the market and instead are becoming vacation rentals through Airbnb, over 140 with an average nightly rate of \$183" (Union Exhibit 12, Thumb Drive). Mr. Cameron also testified that Land Solutions assessment included that there was "no solution coming soon". Mr. Cameron also testified that goods and services in the District are higher than the surrounding area, such as gas....milk....and bread (Union Exhibit 13, Thumb Drive). Mr. Cameron also testified to the many publication articles and minutes of a nearby fire district in Big Sky (Union Exhibit 8, Minutes Articles) that speak to the housing crisis within the District and also why the Big Sky Fire Department eliminated their residency policy....thus supporting Local 4432 assertions. Mr. Cameron also testified to the duty crew handling 92% of the calls while only 8%

of the calls come in a simultaneous AND that all calls were answered. Mr. Cameron closed with he feels the policy is an intrusion into his personal life, that his fiancée has moved back to Seattle and when she was here there were only service jobs available to her....that the District is forcing the off duty members to remain on high alert on their days off...that turnover is astounding, noting that everyone who was hired under this residency policy has left, except him....that the new hires are hurting. Under cross exam Mr. Cameron did not waiver. He admitted he signed a contract (District Exhibit 15) before starting employment, in acceptance of the job and signed a new letter when transferring from day position to shift position. He testified that the Union had proposed (in mediation) that the District eliminate the residency policy but pay a \$750 housing stipend-incentive to those that CHOSE to live within the District boundaries and that the District at some time in negotiations off handedly offered a \$250 housing stipend BUT leaving the policy in place. Mr. Cameron's testimony was emotional as he lives this every day.

Local 4432 put forth credible evidence and testimony as to the need and justification for a base wage increase of 5% plus COLA for each year of a 3 year agreement.

Mr. McBirnie, the Local President and lead negotiator for Local 4432 testified to the low wages paid to the personnel covered by the CBA applying to the members of the Union. Mr. McBirnie stated that a 5% plus COLA increase in each year of a 3 year agreement was necessary and warranted by the Unions comparable jurisdictions. He testified that Local 4432 picked the jurisdictions of Whitefish, Big Sky, Ketchum (Idaho) and Wood River (Idaho) because they were all combination departments (both paid and volunteer firefighters) of similar size and equally important is that they are all tourist destinations. He also noted that all departments had a 5 year firefighter that was required to be an engineer or that had a FF/engineer and that is the pay that was compared with (Union Exhibit 6, Comparative Pay). Mr. McBirnie showed with this chart that the average pay for a 5 year FF/Engineer is \$56,380 leaving the BU personnel employed at the Hegben Fire District approximately 17.45% behind. He testified that while getting the Unions proposal on wages would help the members, it still would not allow members to afford housing within the District borders. Mr. Burney also testified during cross that yes in fact the members did receive wage increases for the last 3 years but that amounted to only 70 cents per hour increase to base wages. Mr. McBirnie testified that while he is a 12 year member of the fire department and in the BU, his gross salary for 2016 was \$49,308 and that is well below the average for a 5 year FF/Engineer amongst the Union comps.

B. THE DISTRICT'S POSITION IS FLAWED IN THIS INSTANCE.

The District put forth one witness to their case, the Districts Fire Chief Shane Grube. Chief Grube testified to all of the Districts exhibits and gave a somewhat accurate history of how the Hegben Fire District came to be as well some aspects of the bargaining history. Chief Grube tried to paint a gloomy picture for volunteer turnout within the District by comparing to national data that volunteerism within the fire service ranks are declining. He also showed data on how the District is funded with a combination of tax revenue, ambulance billing revenue and town contributions that are funded with resort tax revenue. Chief Grube also testified that currently the District board is focused on paying for the remodel construction of station 1, saving money for a new engine, ambulance and SCBA's as well to build an additional fire station. He also testified that the District has 14 pieces of apparatus and yes, there are two new career personnel living in an un-staffed station and described the living quarters as two bedrooms with bathroom and common kitchen. He testified that he had offered the Union members that ability to make additional wages by signing up for call back at a rate of \$40 per 24 hour availability and that each could get 60 of those per year (on top of the 120 24 hour shifts they already work).

Chief Grube, during cross exam exhibited a limited knowledge of MCA 39-31, that being the statute covering collective bargaining for public employees in the state of Montana. He testified that he thought his agreements that he had the employees sign (District Exhibit 15) trumped the collective bargaining agreement between Local 4432 and the Hegben Fire District. He further testified that he thought the residency policy was non-negotiable (District Exhibit 6) or not a mandatory subject of bargaining until he was given a copy of MCA 39-31-305 (Union Exhibit 16) that clearly states an obligation to "negotiate in good faith with respect to wages, hours, fringe benefits, and **other conditions of employment**". This may well have stifled the ability to get resolution in regular bargaining. While Chief Grube gave testimony, that at times was educational, there is not one aspect of his testimony or the District's exhibits that assists the

members of IAFF Local 4432 in their pursuit of attaining affordable housing. His only testimony in regards to housing was in regards to a website, “Sperlings best places”, that was clearly flawed and haphazard in preparation compared to Local 4432’s testimony and exhibits on the same subject. Chief Grube, under cross, was vague in his answers on many points including when asked if about the Districts position on wages (District Exhibit 10).....Union question— “Does getting an additional \$470.22 per year help with affordable housing?”.....Chief Grube answer---“It couldn’t hurt”. This testimony appears to disregard the housing crisis that exists within the borders of the District and further when Chief Grube was asked if he planned to fire the two new hires if they could not find affordable housing after 6 months, he answered---“I don’t want to deal with what if’s”. Chief Grube attempted to utilize an argument that other town employees were required to live within the town or District (District Exhibit 14) but even in this document there appears to allow for exceptions outlined in section B of the document AND rebuttal testimony from Mr. McBirnie indicates that the police force is not required to reside within the town or District. Chief Grube attempted to testify that the town of West Yellowstone only has a population of less than 2000 BUT in fact had to admit under cross exam that there are 2.5 million visitors annually to the town of West Yellowstone. In regards to wages, Chief Grube never stated that the District could not afford to pay members of Local 4432 what they have proposed. The District is flawed in its assertion that members of Local 4432 are paid fairly within even the Districts comps because they failed to condense the comp list to other Union departments as well they failed to show annual hours worked per year for their comps....even though they could have figured it out by using the shift schedule and had to admit under cross exam that in fact many of the comps they used worked a 42 hour work week and earned a higher hourly rate. The District also presented that a town police officer enjoyed significant greater earning capability (District Exhibit 11) without mentioning that both are engaged in public safety and have at times been used in internal comparability. This inequity was testified to in rebuttal testimony where we heard that a 12 year employee of the District (Mr. McBirnie) that works 2912 hours annually and earned \$49,308 dollars in 2016 which equates to \$16.93 per hour. Additionally, the District never explained how they came up with their jurisdictional comps and tried to down play the use of Big Sky, regardless of the minutes and articles that showed Chief Grube utilizes Big Sky as a comparable when it suits the District in other pursuits.

III. ARGUMENT

1. RELEVANT PRINCIPLES OF LABOR ARBITRATION LAW.

- A. In a case of wages, some Fact Finders will apply the “Living-Wage Standard” versus the cost-of-living standard, and while both are related they are not the same. The Living-Wage Standard is in some respects based upon the ideal that the standard of living of American workers should be raised to the highest level possible, but a more realistic basis for it is the belief that “employees are entitled to wages and salaries sufficient to enable them, through the exercise of thrift and reasonable economy, to maintain themselves and families in decency and comfort and to make reasonable provision for old age”, including home ownership. And further, an important difference exists between the cost-of-living and the living-wage standards. While the costs-of-living standard is used to keep the standard of living of employees in status quo, the living-wage standard (which is not directly tied to changes in the cost of living) is invoked to raise the wages of employees to the point that will allow them a decent standard of living. Elkouri & Elkouri, HOW ARBITRATION WORKS, Fifth Edition, page 1123
- B. It also must be noted that Fact Finders/Arbitrators have a role in interest disputes and must legislate when one party to negotiations exhibit unreasonableness. Arbitrator Whitley P. McCoy stated on behalf of his arbitration board the following: “Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, **upon consideration of policy, fairness, and expediency, of what the contract rights ought to be.** In submitting this case to arbitration, the parties have merely extended their negotiations---they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, **as reasonable men**, have voluntarily agreed to? *** We believe that an unusual demand, that is, one that has not found substantial acceptance in other properties, casts upon the Union the burden of showing that, because of its minor character or its inherent reasonableness, the negotiators should, as reasonable men, have voluntarily agreed to it. We would not deny such a demand merely because it had not found substantial acceptance, but it would take clear evidence to persuade us that the negotiators **were unreasonable in rejecting it.** We do not conceive it to be our function to impose on the parties’ contract terms merely because they embody our own individual economic or social theories. To repeat, our endeavor will be to decide the issues as, upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take process of bargaining.” Elkouri & Elkouri, HOW ARBITRATION WORKS, Fifth Edition, page 135.

IV. CONCLUSIONS

The Union is reasonable with its proposals on both issues, amending the residency requirement and wages. The Union has put forth credible and emotional testimony from two individuals that live within the constraints of current contract language and are the representatives of IAFF Local 4432 that has been tasked to move both issues through the process that finds us before Fact Finder Larney. Their testimony was from the heart and supported by credible evidence. This evidence was not simply obtained by internet search BUT obtained by direct calls to individuals (Union officials) at other work sites within their comparable jurisdictions as well by driving routes out of the city, and visiting homes and rentals within the District and within the Unions proposed 150 minute residency requirement. The Union provided notarized statements by past employees that dictate that part of the reason for leaving was the current residency restrictions. The Union witnesses provided testimony that there are currently two new hires that are living in an un-staffed fire station because affordable housing does not exist within the District, the current boundaries of the residency policy and they are worried what might happen to these two Union members if they do not find housing at the end of the six month period....remember the testimony of Chief Grube in this regard when he stated..."I don't want to deal with what if's". In regards to wages, the Union brought forth credible evidence backed by testimony of the need for adjustment consistent with the Union's proposal BUT explained that even with the Union's proposal, this would not help Local 4432 members with the ability to attain affordable housing, as it just does not exist in the borders of the Hegben Fire District.

The District cries that it needs to confine its career staff within the Districts borders because it experiences difficulty with attracting and retaining volunteers BUT then explains its priority saving/spending will be on new apparatus and finally an additional fire station? It appears they aren't able to staff the apparatus and stations they currently have and during testimony they seem to ignore the problem they have in attracting and attaining their career staff. The Districts policy to pay lower wages and confine career personnel to the District borders is a dismal failure in regards to attracting and keeping career staff as the policy has been in place

since 2011 (2009 by the Districts testimony). It then is not unreasonable to consider the Unions proposal for the next 6 to 8 years, and then evaluate attracting and keeping career personnel.

The Union is sympathetic to the Districts desire to have career personnel available 24 hours per day and what community wouldn't want to have the off duty personnel on stand by and high alert during their time off but that tends to wander in the world of "unreasonableness". Communities around this country try to balance budgets, providing service and develop agencies to respond to most emergencies in a timely manner. But in these trying political times, we cannot staff to mitigate 100% of the emergencies on a first out basis. Each career member is scheduled for 2912 hours per years each (a 56 hour work week). First out calls comprise 92% of the total call volume and there are contingencies to hit that second and third call that happens simultaneously that does not include recall of off duty personnel. It is unreasonable to expect that all of the burden of covering the other 8% (45 calls over 365 days) of simultaneous calls falls on the off duty career staff by LOCKING them inside the District where affordable housing is non-existent. If this is a major community issue, the community has an obligation to address the larger problem, the "housing crisis" as identified by Land Solutions or additional funds to hire more career personnel as well wages commensurate with the cost of living within the District.

It is not reasonable to continue the atmosphere of indentured servitude that exists within the District currently and Local 4432 prays the Fact Finder agrees with our position and makes a recommendation accordingly.

Respectfully submitted this 8th day of September, 2017.

By: _____

Ricky J. Walsh
Labor Relations Consultant
Representing IAFF Local 4432
PO Box 5604
West Richland, WA 99353
509-999-3090
rwalsh4justice@outlook.com

