

BEFORE FACTFINDER/ARBITRATOR MATTHEW PETERSON, ESQ.

In the Matter of the Collective Bargaining  
Negotiation Between:

PLUMBERS AND PIPEFITTERS  
LOCAL 367

And

THE MUNICIPALITY OF ANCHORAGE.

**FACTFINDER/ARBITRATOR'S DECISION**

**I. INTRODUCTION**

A fact-finding and arbitration hearing was held on January 27, 2017, between Municipality of Anchorage ("MOA") and the Plumbers and Pipefitters Local 367 ("Plumbers 367"). Plumbers 367 is a bargaining unit representing sixteen members who are direct Municipal employees and 128 members who are employed by Anchorage Water and Wastewater Utility ("AWWU"). MOA was represented at the hearing by Assistant Municipal Attorney Blair M. Christensen. Plumbers 367 was represented by its General Counsel, Charles Dunnagan. These parties have negotiated regarding a Collective Bargaining Agreement covering the bargaining unit. The parties have a complicated history of bargaining prior CBAs, from 2011 to the present. The parties have negotiated since March 2016, with respect to the terms of the Collective Bargaining Agreement which would have begun in 2017. The parties have been unable to reach an agreement on the terms of the collective bargaining agreement. Each party has made its "Last Best Offer." There are several

matters, described below, which are not contested between the parties. The primary dispute between the parties relates to the wages to be paid Plumbers 367 going forward. The Municipality proposes a one-time \$500 lump sum payment to each employee in the bargaining unit. The Union's last best offer is for a 5 percent one-time adjustment to wages. In addition, both parties have offered 1.5 percent increases each, for the calendar years 2017, 2018, and 2019.

The parties mediated the matter before the undersigned arbitrator in the fall of 2016. The parties were unable to reach agreement by January 1, 2017. Subsequently, the parties requested the undersigned to serve as factfinder and arbitrator pursuant to AMC 3.70.100. Alaska Rules of Professional Conduct apply ethical standards to attorneys working as third-party neutrals, including mediators and arbitrators. The difference in the role of the arbitrator/factfinder versus the role of a mediator was discussed with counsel and the parties. Appropriate waivers were obtained in order to allow the undersigned to sit as Factfinder and Arbitrator with respect to this matter. The decision set forth herein is based on the facts, exhibits, and evidence submitted at hearing on January 27, 2017, as well as legal arguments, as required by AMC 3.70.110. Any discussions or direct contact with the parties during the earlier mediation has not been considered and has no bearing on this arbitration decision.

Following the failure to reach agreement by January 1, 2017, the parties requested this matter be submitted for fact-finding and arbitration under AMC 3.70.100. The undersigned has sat on the matter both as a factfinder and arbitrator in this hearing. The Municipal Code requires the arbitrator to select

between the two last best offer proposals. AMC 3.70.110(C)(7) and (8). The arbitrator may not apply his or her own judgment with respect to a fair resolution, nor craft a compromise decision or outcome other than selecting between the two pending last best offers. AMC 3.70.110(C)(7)

Hearing was held on January 27, 2017. This was an abbreviated presentation, which combined both fact-finding and arbitration. However, the parties fully presented testimonial evidence from seven witnesses,<sup>1</sup> who were sworn and testified under oath, as well as documentary evidence which had been submitted beforehand and during the hearing.<sup>2</sup> Legal arguments were made in the prehearing briefs and at the arbitration. The matter was submitted for decision at the conclusion of the arbitration.

## **II. LEGAL STANDARDS**

Under the Anchorage Municipal Code, AMC 3.70.100, nine factors are to be considered in making a determination on the issues presented herein. Under AMC 3.70.100:

The factfinder shall have the power to determine all relevant facts including but not limited to workload, productivity, economic feasibility, cost of living, the parties' bargaining history, relevant market comparisons in the public sector and relevant market comparisons in the private sector taking into account the cost of living in the markets compared, the employer's past practice and impact on personnel or workplace morale.

---

<sup>1</sup> Plumbers 367 presented the testimony of David Peterson, James Christenberry, and Clinton Burton. MOA presented the testimony of Misty Vignola, Lance Wilbur, Dermot Pursing, and Robert Dundas.

<sup>2</sup> Plumbers 367 Exhibits A-I, and separate binders of comparables 1-9, CBA Binder, 1-6; and MOA Exhibits 1-18 were admitted.

Testimony was presented on all of these factors. The relative importance and weight of each factor is not defined in the ordinance, and is left to the factfinder. The bulk of the testimony and exhibits related to three factors, the comparable market comparisons in the public and private sectors, and the issue of economic feasibility given ongoing Municipality of Anchorage budgetary issues.

### **III FACTUAL BACKGROUND**

The historical background of issues between the parties goes back to 2011, when similar issues were raised and litigated. At that time, the MOA and Plumbers 367 were unable to reach agreement with respect to a similar issue involving a requested increase in wages. The matter was submitted for fact-finding and later an arbitration before Douglas J. Serdahely. Arbitrator Serdahely issued an opinion dated August 11, 2011, selecting the last best offer of Plumbers 367 with respect to the wage increase issue. The matter proceeded with a complicated procedural history following that decision. The arbitrator's decision eventually was not adopted by at least eight members of the Anchorage Municipal Assembly. The matter was further litigated, resulting in an Alaska Supreme Court decision, *Plumbers and Pipefitters Local 367 v. Municipality of Anchorage*, 298 P.3d 195 (Alaska 2013).

Although similar issues were raised in the 2011 arbitration, much of the evidence, issues and arguments now are substantially different on the part of both parties. The arbitration decision of Arbitrator Serdahely is considered as part of the bargaining history and record submitted in this case. However, this arbitration decision is made independently based on the evidence and arguments presented in

2017, and the prior arbitration decision has no impact on the substantive decision herein.

One hundred twenty-eight members of Plumbers 367 are employed by the Anchorage Water and Wastewater Utility (AWWU). Testimony was received with regard to the general duties and responsibility of the members of Plumbers 367 in providing reliable and safe drinking water, and both water and wastewater service to residents of Anchorage. The plumbers and pipefitters are A-2 category employees within the Municipal system. A-1 employees include the Anchorage Police Department and the Anchorage Firefighters. A-1 employees do not have the right to pursue a work stoppage or strike, for public safety reasons, and different arbitration procedures are applied to those categories of employee. A-2 employees have a right to engage in work stoppage, but that is quite limited as a practical matter. By way of background, as discussed in the *Plumbers and Pipefitters 367 v. MOA* Alaska Supreme Court case referred to above, a strike was threatened following the Assembly's failure to adopt the arbitrator's decision on wage increases. However, that did not occur due to an agreed injunction. Any strike would have been limited to less than 48 hours. This was based on the fact that a strike "would pose serious risk to AWWU's facilities and the continued successful operation of its water and sewage systems, and that even a strike shorter than 48 hours could cause partial system failure if an unexpected event or breakdown occurred." *Plumbers 367 v. MOA*, at 200.

The strike was enjoined by Superior Court order of September 1, 2011, "to protect the health, safety and welfare of the public." (*Id.*, at 200.) Plumbers 367 did

not oppose entry of the permanent injunction. *Id.* In the testimony of the witnesses presented in this proceeding, it is clear that the employees of AWWU in fact have a significant responsibility for the health, safety and welfare of the Anchorage public. The public has an expectation that AWWU will provide safe and reliable water and wastewater service.

The parties presented significant evidence with regard to the duties and responsibilities of the Plumbers and Pipefitters with respect to many different job categories. This was primarily in the context of comparing wage rates with other public and private utilities. The evidence presented will be considered by category, as set forth in AMC 3.70.110.

**A. Workload.**

Plumbers 367 presented evidence that the AWWU has a smaller workforce than comparable utilities and therefore an increased workload. The Municipality indicated that the AWWU is staffed appropriately and does not have a burdensome or unusual workload. The evidence on this factor slightly favors the union. The union did present testimony that the members of the union working for AWWU wear many hats and have multiple areas of expertise and experience, and that such flexibility and productivity is called upon to deal with the issues and problems in delivery of water and wastewater services presented on a given day.

**B. Productivity.**

Very little evidence was presented on this issue. Essentially, the argument with respect to this category was combined with the evidence presented with regard

to the category "Workload." The evidence presented in this category slightly favors Plumbers 367.

**C. Economic Feasibility.**

A significant amount of evidence on economic feasibility was presented by both parties. In large part, the primary argument of the Municipality of Anchorage was that a 5 percent raise across the board as contained in Plumbers 367 last best offer is not economically feasible for the Municipality of Anchorage given its current budget issues and problems.<sup>3</sup> The term "economic feasibility" is not defined in AMC 3.70.100. However, in reviewing the evidence, I am using the broad definition of that term, as argued by MOA counsel. In summary, the Municipality argues there are significant fiscal challenges facing the Municipality, including: (a) the 5 percent across the board raise would add approximately an extra \$850,000 to the costs of operation of AWWU and to Municipal labor costs; (b) the yearly 1.5 percent increases on top of that would be calculated on a higher base rate, rather than the current figure, which itself would cost additional amounts in each of the ensuing three years; (c) the Municipality has not budgeted these amounts; (d) the Municipality presented significant evidence with regard to the budget pressure and economic problems, involving several specific categories. This evidence is considered in light of general common knowledge with regard to the State of Alaska and Municipality of Anchorage budgetary issues, which have been ongoing for the last several years. The Municipality presented evidence that there are both

---

<sup>3</sup> MOA made a separate argument that any wage disparities could be addressed by reclassifying AWWU job categories. No specifics were presented on this, and reclassification has not been done.

increased costs and decreased revenues impacting its budget. The increased costs include additional amounts paid with respect to the Anchorage Police Department and the Firefighters Retirement and Overtime Control System. There is a \$6.5 million increase in public safety costs. Savings have been tapped in order to fund the municipal government. In addition to these increased costs, State of Alaska revenue sharing has been significantly reduced over the last three to four years, from a 2013 level of approximately \$14 million in state revenue sharing to the Municipality, to a current amount of just over \$4.5 million. (MOA Ex. 16). In addition, the reduction in 2016 of the Alaska Permanent Fund dividend amount paid to Alaska residents has caused a reduction in income to the Municipality of Anchorage with respect to its income obtained from garnishing Alaska PFDs of individuals who owe various fines or judgment amounts to the Municipality of Anchorage. *Id.* Tax revenue has also dropped. The Municipality argues that it has not budgeted for the amount of raise increase as sought by the Plumbers 367.

Plumbers 367 submitted evidence and argued primarily that while Municipal budgetary problems may very well be real, the labor costs for Plumbers 367 members who are employed with AWWU are in fact not reflected in the Municipal budget. It is acknowledged that there are sixteen members of Plumbers 367 who are direct employees of the Municipality. These include plumbing inspectors and several other personnel whose labor costs are within the Municipal budget. However, the large bulk of Plumbers 367, 128 members, are employed at AWWU. Testimony and evidence was presented on this issue. The Municipal budget was submitted by MOA (MOA Exhibit 17), and the AWWU budget was submitted by Plumbers 367 (Ex. 1).

Exhibit I consists of a partial AWWU Pro Forma Financial and Operating Report for a portion of 2016. The most significant finding on this issue is that the Municipal budget in fact does not include as a labor cost the 128 AWWU Plumbers 367 members. The sixteen members who are direct Municipal employees would be contained as labor costs within the MOA budget. However, this is a relatively small percentage. AWWU is subject to rate setting through the Alaska Public Utilities Commission, RCA. The labor costs of the Local 367 members are contained as the line item in the AWWU financial statements as an Operating Expense/Labor and Overtime. These AWWU labor cost numbers are separate from labor costs contained in the Municipal budget. On the other hand, it is MOA which negotiates wage rates for AWWU, and the Municipal Assembly which must approve AWWU's budget.

The financial and budgetary pressures on the Municipality of Anchorage are real, and the loss of state revenue sharing, loss of garnishment income, and increased costs and expenses create significant and real financial pressures on the Municipality of Anchorage budget. In assessing the economic feasibility category under AMC 3.70.110, the evidence presented somewhat favors MOA. However, this is only one factor to be considered, and Plumbers 367 makes strong arguments that the AWWU employees are paid, as a practical matter, through utility rates approved by RCA, and not by tax revenue.

#### **D. Cost of Living.**

Mixed evidence was presented by the parties on this topic. Studies using different parameters were submitted as evidence. (See Plumbers 367 Exs. C and

D). Contradictory evidence was submitted both that the cost of living was higher in Fairbanks than Anchorage, and lower in Fairbanks. The evidence on this topic is inconclusive and neutral. This factor has no practical impact one way or the other on this decision.

**E. Parties' Bargaining History.**

The parties bargaining history was considered. It is noteworthy that although the parties have had substantial disagreement including litigation to the Alaska Supreme Court over similar issues in the past, the arbitrator was impressed with the high level of professionalism, integrity and competence demonstrated by all witnesses who testified, representing both sides. The parties work together on a daily basis, and appear to have an excellent working relationship, in a practical sense. The parties' bargaining history, noted above and throughout this decision, is not definitive nor determinative as to the issues to be decided. There is not a clear pattern in the history other than a history of protracted and contested negotiations of past CBAs; yet at the same time, the parties work well together to deliver vital utility services to the Anchorage public.

**F. Comparable Wage Rates, Public Sector/Private Sector.**

These two factors of public and private sector comparable wages will be considered together.

A significant portion of the evidence, documentation, testimony, and argument at the hearing related to the issue of comparable wage rates paid by other utilities. I have carefully reviewed the documents submitted, as well as the testimony on these

topics. Overall, the evidence submitted on this issue strongly favors the position of Plumbers 367. This is a complex subject, and will be summarized as follows.

Plumbers 367 submitted comparable wage rates from a number of both private and public utilities in Anchorage and throughout Alaska. (Exs. F, G, H, and a Binder of Comparables, Nos. 1-9.) These included a private water utility, Golden Heart Utilities located in Fairbanks, Alaska; a comparable public utility, ML&P; Municipal Operating Engineers; IBEW mechanics and machinists; private utility wage rates for Enstar; and Chugach Electric "outside employees." In addition, Plumbers 367 submitted evidence of comparable wage rates with regard to the Anchorage Police Department, IAFF (Firefighters), Operating Engineers for the Port of Anchorage, and water utilities provided by Doyon Corp. to the JBER and Fort Wainwright military bases, as well as the Barrow water utility in Utqiagvik, Alaska.

The Municipality of Anchorage attempted to distinguish almost all of the comparable wage information submitted. MOA asserts that these are different industries, private wages are higher than public, involve different skills and work circumstances, and are different utilities. Essentially, MOA argued that almost all of the comparables submitted by Plumbers 367 were not comparable to the work done by Plumbers 367 at AWWU. MOA did submit evidence with regard to wage rates at one comparable utility, Golden Heart Utilities. Golden Heart is a private utility which provides water and wastewater services to the Fairbanks area.

I have reviewed the documents submitted in detail, as well as the testimony on this topic. I find that some, but not all, of the comparable wage information submitted by Plumbers 367 is comparable.

The Anchorage Police Department and Anchorage Firefighters are A-1 employees, as discussed above. The collective bargaining agreements and bargaining history, as well as the respective rights of MOA and employees within those bargaining units, are substantially different from the Plumbers 367 employees. The APD and IAFF are not comparable jobs in terms of their day-to-day job duties and responsibilities. Therefore, the wages submitted by Plumbers 367 with regard to those unions are disregarded as not being comparable. In addition, I have not considered comparable the Doyon utilities wages at either JBER or Fort Wainwright military bases. Although some testimony was submitted on this topic, it was clear that these are not public utilities providing utilities to the general public, but rather are dedicated water utilities for military bases. As such, these may be subject to separate funding and financing, presumably through the federal government and/or military budgets. In addition, since Doyon is a Native Corporation, there may be different financial and business models applied to its contracts as a Native Corporation providing utility services under federal contract. It is not clear based on the evidence provided that these are comparable enough for me to consider them as comparables for purposes of this decision. I have not considered the Barrow utility wages to be comparable, due to the remote location and relatively smaller size of that utility compared to the AWWU utility in Anchorage. Finally, regarding the MOA Port Operating Engineers, there was insufficient evidence presented for me to draw a comparison with Plumbers 367.

I have considered the other wastewater and water utility, Golden Heart Utility, to be comparable. I have also considered the public employees of IBEW, IBEW

technical, the Teamsters employed by the Municipality, and ML&P to be comparable. There was testimony with regard to the respective job duties of these various other companies and disciplines as compared to the Plumbers 367. While no exact comparison of each job position can be drawn, general comparisons can be made. In addition, I have considered the private utilities Enstar and Chugach Electric to be comparable. In particular, Enstar, Chugach and ML&P provide utility services to Anchorage residents which are generally similar to AWWU, in that these services, and the need for reliable and safe utility services, are vital to the health, welfare and safety of the Anchorage public. Safe, consistent and uninterrupted electricity, gas and heat, and clean and reliable water and wastewater service, are expected and demanded by the public as part of the normal expectations of modern life. These are important utilities, which provide vital services to the residents of Anchorage. Although some of these are private rather than public entities, they are generally comparable with regard to their duties, responsibilities, and many of the technical aspects of the day-to-day duties. Even though the specific technical duties related to electricity and gas line maintenance, as opposed to water and pipe repair and maintenance, are different, generally these are comparable for purposes of determining wages.

A significant amount of evidence was presented on this issue. The comparable evidence presented, including the evidence presented by MOA, establishes overwhelmingly that the comparable wage for similar job categories, in both public and private utilities, water, and non-water utilities, are almost all substantially higher than the wage paid to Plumbers 367. For purposes of

illustration, several examples will illustrate this fact. For example, a meter reader at AWWU receives 6 percent less pay than at Chugach, 14 percent less than a meter reader for ML&P, and 37 percent less than the same job with Enstar. (Ex. 7.) A Treatment Operator III, which is a mid-level treatment plant operator at AWWU, is paid \$37.48 at AWWU, and \$49.35 at ML&P, a difference of 31 percent for the same position.

In reviewing the evidence which was submitted by both sides on the Golden Heart Utilities wages, the numbers were different and difficult to reconcile. (MOA Ex. 11 and Plumbers 367 Ex. F.) However, they are relatively close and some general facts could be determined from the Golden Heart exhibits. The Golden Heart entry level Trainee and starting Operator 1 positions do receive a lower pay scale than the AWWU Treatment Operator 1. These entry level positions are the only instance in all of the evidence submitted which I have found comparable, where comparable wages are less than AWWU wages. However, for all other categories, the Golden Heart Utility wages are higher than AWWU wages, for the same or similar job positions. Even using the Municipality of Anchorage's Exhibit 11, which is the Golden Heart wage comparison, and setting aside the entry level trainee and lower level one employees, all of the wages paid by Golden Heart are substantially higher than the wages for the same positions compared to the wages paid by AWWU. The percentages range from a shortfall of 5 percent up to 11 percent in comparing the Golden Heart Utility wages as compared to AWWU.

In comparing all of the other utilities' similar wage categories to the AWWU plumbers and pipefitters (specifically, as contained in Plumbers 367 Exhibits F and

H), the shortfall in AWWU current wages ranges between 4-6 percent lower wages on the low end, up to 38 percent lower wages on the high end. Overall, the great majority of the job categories at AWWU are paid in the range of 20-30 percent less at AWWU than comparable job positions at all other comparable utilities.

Even using the Municipality of Anchorage's submittal, the shortfall in job wages is in the range of 5 to 10 percent, which is the lowest difference found in the evidence submitted.

Therefore, in viewing the evidence on balance, after thorough review, the comparable public sector and public sector wage rates favor the position of Plumbers 367.

#### **G. Employers Past Practice.**

This category is neutral, and as an historical perspective is already outlined above in discussion of the parties' bargaining history.

#### **H. Impact on Personnel and Morale.**

The Municipality of Anchorage and Plumbers 367 both presented testimony on this issue. There was some evidence presented that the wage differential going back for a number of years to the 2011 timeframe has had a negative impact on morale, and some evidence that AWWU employees have left for other jobs, particularly after they have received their initial training within the Municipality. The Municipality argues that there is a low vacancy rate for open AWWU jobs, they are easy to fill, and the workforce is productive and has good morale. The evidence on this particular point favors MOA.

#### **IV. ARBITRATOR'S DECISION**

In considering the issues presented herein, the arbitrator has given the greatest weight to (1) the evidence of comparable wages, and (2) all of the evidence on both sides regarding economic feasibility. In viewing the totality of testimony, exhibits and evidence presented, as well as the legal arguments of counsel, the arbitrator hereby decides as follows:

1. The arbitrator selects, between the two options, with no discretion to craft a compromise or other resolution, the "last best offer" of Plumbers and Pipefitters Local 367, as reflected in Plumbers 367 exhibits and MOA Exhibit 2. The Plumbers 367 proposal submitted on 7/17/16 at 1:56 p.m., as its last best offer on Section 5.1 Wage Rates, and Section 11.1 – 11.3 Wage Scale, states as follows:

Wages paid to employees shall be as specified in Article 11 to this Agreement. All employees will be compensated under a pay range and step system. The wages specific in Article 11 of this agreement shall be adjusted during the life of this agreement as follows:

1. Effective the first full pay period after Assembly approval, employees will receive a Step increase of 5% (new step 3);

2. Effective the first full pay period of 2017, employees will receive a one and one-half percent (1.5%) increase;

3. Effective the first full pay period of 2018, employees will receive a one and one-half percent (1.5%) increase;

4. Effective the first full pay period of 2019, employees will receive a one and on-half percent (1.5%) increase.

2. With respect to other issues, based on the non-opposition of Plumbers 367, the arbitrator selects the Municipality of Anchorage's last best offer made on October 31, 2016 at 5:11 p.m., on all other categories as follows:

Section 4.2.3 Holiday Pay. (See MOA Ex. 1, page 2 of 11.)

Section 5.3.1 Overtime. (See MOA Ex. 1, page 4 of 11.)

Section 6.1 Health and Welfare Program. (See MOA Ex. 1, pages 5 and 6 of  
11.)

Section 8.9 AWWU Work Rules. (See MOA Ex. 1, page 7 of 11.)

DATED this 15<sup>th</sup> day of February, 2017.

By 

Matthew K. Peterson  
Arbitrator and Factfinder