Black Hawk Co. / P.P.M.E. Local 2003 (Custodial)
2004-2005
CED 77
SECTOR 2

AWARD

In the Matter of:	)	
	)	
Black Hawk County	)	
Public Employer	)	
	)	Micheal L. Thompson
and	)	
	)	Arbitrator
Public Professional and Maintenance	)	
Employees, IUPAT Local 2003	)	
Public Employee Organization	)	
	)	

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Appearances:

For the Employer:

Gary Ray, President Ray and Associates
Donald Hoskins, Attorney
June Watkins, Humans Resources Director
Terri Shiles, Administrator

For the Public Employee Organization:

Joe Rasmussen, Business Representative
Sue Pittman
Marlene Honoker
Frank Sullivan

STATEMENT OF JURISDICTION

The matter proceeds to an arbitration hearing pursuant to the statutory provisions established in the Public Employment Relations Act, Chapter 20, code of Iowa. The above named arbitrator was selected from a list furnished to the parties by the Public Employment Relations Board. An interest arbitration hearing was held on May 27, 2005 at 9:00 am at Waterloo, Iowa. The hearing was electronically recorded. At the hearing the parties (Black Hawk County hereinafter Employer and Public Professional and Maintenance Employees, IUPAT Local 2003 hereinafter Union) were given the full opportunity to introduce evidence, facts, and arguments in support of their respective positions. Upon the basis of the evidence, facts, and arguments presented, the following award was made.

STATEMENT OF THE ISSUES and POSITIONS OF THE PARTIES

For the Employer:

Article 9 Leaves of Absence

Section 1: Change the first sentence to read:

Upon giving reasons satisfactory to the Employer, an employee may be granted a leave of absence without pay fro a period of time mutually agreeable between the employee and the department head.

Section 6: Change Last sentence of second paragraph to: The employer may not designate leave taken pursuant to the Agreement, which was not requested under the FMLA as FMLA leave, except in the case of the personal FMLA illness of the Employee the Employer may designate absences eligible for FMLA as FMLA and require the use of accumulated sick leave.

Delete the last paragraph of grievability of FMLA or state laws pertaining to it. (PERB case).

Article 21 Job Classification and Straight-time Hourly Wage Rates (Change to read)

Section 2: Reference I made here to exhibit "B", Labor and Salary Schedule for the 2006 fiscal year which shall become effective on the beginning of the pay period closest to July 1, 2005, and shall remain in effect during the term of this Agreement. The 2006 Fiscal year salary schedule shall be an increase of two and one-fourth per cent (2.25%) over the previous year's salary schedule. In addition, the employees eligible to receive an in-grade pay increment shall do so pursuant To Article 36 of this agreement.

Article 23, Insurance – current contract except as follows:

Add letter of agreement provision of equal monthly deductions.

Section 1: The employer will provide permanent full-time employees and their Dependents the Employer's Preferred Provider group health and dental insurance Upon completion of their probationary period in Article 8 Section 2. Effective July 1, 2005 employees electing single coverage shall contribute twenty-five dollars ($25.00) and employees electing dependent coverage shall contribute seventy-five dollars ($75.))) toward the cost of the monthly premium. (Remainder of paragraph Current Contract)

Co-payment $15 (per P.P.O. office visit

Article 31 CASUAL DAYS Add to the current Section 4 of the following:

Emergency shall be defined as a sudden unforeseen and unexpected happening or occurrence requiring the employee's attendance.

Exhibit "B" – Change Salary schedule as follows:

Change heading dates form 07-0104 to 6-3005 to 7-01-5 to 6-30-06.
The salary schedule for 2005-06 will increase 2.25% across the board and shall Become effective at the beginning of the pay period closest to July 1, 2005.

Black Hawk also proposes the deletion of the following language from the collective bargaining agreement based upon the fact that the Iowa Public Employment Relation Board has ruled in Cases No. 7012 and 7029 attached hereto, that the following language is a permissive subject of bargaining and therefore, the County is not required to bargain over this language and can choose to delete the language form the collective bargaining agreement which the county elects to do.

Article 3 Non Discrimination in Employment Delete all language.

Article 4 Employer Rights Delete all language.

Article 6 Grievance Procedure and Arbitration
Delete from page 2 "The employer will follow a progressive discipline procedure based upon the seriousness of the offense."

Delete from page 4 "The grievances and disciplinary matters are confidential."

Article 9 Leaves of Absences Delete the following language:
"Any violation of the FMLA or of any state law relating to family and medical leave shall be subject to the grievance and arbitration provisions of this agreement. Any remedies applicable to any other violation of this Agreement shall be applicable to any violations of such laws."

Article 10 Military Leave Delete all language.

Article 11 Bulletin Boards Delete all language.

Article 12 Rules Delete all language.

Article 13 Visitation Delete all language.

Article 15 Steward Delete all language.

Article 16 Hours of Work and Overtime Delete the following)

Section 2 Shifts Defined "The employee's work schedule will be posted by the Employer three (3) weeks in advance."

Section 3 Shifts Differential Article C "Only part-time employees may be Assigned to a swing shift."

Section 8 Work Schedule Delete all language except for " Employees shall not be required to furnish their own replacement in order to have time off request approved.

Article 17 Sick Leave Section 3, Procedures of Sick leave Usage Delete phrase"ans shall not be used as the basis for discipline of the employee.

Article C . items 3-6 delete all language

Section 7, Sick Leave Bonus Delete phrase "or be paid four (40 hours of straight-time pay." Also delete the sentence "Those employees electing to be paid for their accrued sick leave casual time will be paid on the first pay period following the completion of the quarter. Annually, employees will choose to be paid or accrue time off for their earned sick leave casual bonus."

Article 20 Transfers Delete Section 1 Permanent transfers within a Job classification ...

Article 23 Insurance
Delete Section 6, Insurance Conversion upon Retirement

Article 27 Vacations Delete phrase "or receive reimbursement upon termination."

Article 33 Meals Delete all language

Article 34 Uniforms Delete all language.

Article 35 Annual Physicals Delete all language.

(The following summarizes the employer's position)

WAGES

2.25% ATB plus step movement 6.43 TPA

INSURANCE

Employee Contribution/Deductible
Single: $25.00
Family: $75.00 plus $25.00
Co-pay $15.00 office visit plus $5.00

LEAVES

Union Leave: Current contract
Unpaid Leave: Length as mutually agreed
FMLA Leave: Employer can designate personal illness as FMLA leave
Casual Leave: Add definition of emergency

EVALUATION

Current contract

DUES DEDUCTION

Add language as per fact finder

PERMISSIVE LANGUAGE

Delete language per PERB ruling

For the Union:
Issue # 1 Hours of Work

Article 16, Hours of Work and Overtime

A. MOVE to Section 2, Shifts Defined in Article 16, from Section 8 the following Sentence:

Employees shall not be requ9ired to furnish their own replacement in order to have a time off request approved.

B. REPLACE Section 8, Work Schedule, of Article 16, with the following:

The hours of work and rotation of days of work shall be as follows for full-time employees in the job classifications listed below:

Building Maintenance Mechanic -- Courthouse
6:30 a.m.-3:00 p.m. with 30 minute unpaid lunch – Monday through Friday

Property Maintenance Assistant – Courthouse
6:30 a.m.-3:00 p.m. with 30 minute unpaid lunch – Monday through Friday

Building Maintenance Mechanic – Country View
6:00 a.m.-2:00 p.m. with 30 minutes paid lunch –Monday through Friday

Building Maintenance Assistant – Country View
7:00a.m. -3:00 p.m. with 30 minute paid lunch—Monday through Friday

Building Cleaner – Courthouse
8:00a.m. –5:00 p.m. with 60 minute unpaid lunch – Monday through Friday

Driver – Country View
Five 8-hour shifts per work week with 30 minute paid lunch

Building Cleaner and Lead Building Cleaner—Country View
First shift: 6:00 a.m. – 2:00 p.m. with 30 minute paid lunch
7:00 a.m. –3:00 p.m. with 30 minute paid lunch
9:00 a.m.–5:00 p.m. with 30 minute paid lunch
Rotation of five 8-hour shifts per week with 2 weekends (Saturday and Sunday) off followed by 1 weekend on-duty.

Laundry Worker and Lead Laundry worker – Country View
First Shift: 6:00 a.m. – 2:00 p.m.
7:00 a.m. – 3:00 p.m.
9:00 a.m. – 5:00 p.m.
Second Shift: 2:30 p.m.—10:30 p.m.

Third Shift: 4:00 a.m. – 12:00 noon

All shifts have a 30 minute paid lunch break, and a rotation of five 8-hour shifts per work week with every other weekend (Saturday and Sunday) off.

Cook – Country View

4:30 a.m. – 12:30 p.m. with 30 minute paid lunch

11:30 a.m. – 7:30 p.m. with 30 minute paid lunch

Rotation of 40 hours per week with every other weekend (Saturday and Sunday off and either a Friday and Tuesday off or Thursday and Monday Off.

Food Service Worker – Country View

5:00 a.m. – 1:00 p.m. with 30 minute paid lunch

6:00 a.m. – 2:00 p.m. with 30 minute paid lunch

11:30 a.m. – 7:30 p.m. with 30 minute paid lunch

Rotation of 40 hours per week with every other weekend (Saturday and Sunday) off and either a Friday and Tuesday off or Thursday and Monday Off.

Issue # 2 – Leaves of Absence

Article __, Union Leave

Add a new article entitled Union Leave to read as follows:

Employees designated as stewards or bargaining team members by the Union shall receive a paid leave of absence as Union Leave for the employee's hours of work necessary to attend joint collective bargaining negotiations, mediations, fact-findings, interest arbitrations, or steps of the grievance procedure with the Employer.

Issue # 3 – Evaluation Procedures

Article 22, Evaluation

Delete from the last sentence in Article 22 the following ..... if it results in the loss of a merit increase.

Issue # 4 – WAGES

Article 21, Job classifications and Wages

Change Exhibit B, Labor & Trades Salary Schedule for FY05, referenced in Section 2 by increasing each hourly wage rate by three and one-half percent (3.5%) effective July 1, 2005, with step advancement each year for the eligible employees.

Issue #5 -- Insurance

Article 23, Insurance

A. CHANGES the second sentence in Section 1 of Article 23 to read:

Effective July 1, 2005, employees electing single coverage shall contribute twenty-five dollars ($25.00) and employees electing dependent coverage shall contribute sixty dollars ($60.00) toward the cost of the monthly premium rate.

C. CHANGE the fifth sentence in Section 1 of Article 23 to read:

The employer shall deduct the employee's monthly contribution for that month's coverage from the employee's first and second paychecks of each month in as equal amounts as possible.

Issue #6 – DUES DEDEUCTION

Article 30, Dues Check-off and Indemnification

Add to Article 30 the following:

The employer shall deduct the monthly contribution for Union dues from the employee's first and second paycheck of each month in as equal amounts as possible.

PERMISSIVE SUBJECTS OF BARGAINING

PPME Local 2003 is opposed to the unilateral removal by the Employer of any Permissive language in the current collective bargaining agreement. Should the Employer take such a unilateral action, them PPME insists that Article 4, Employer Rights, be deleted.

Fact-finder Recommendation

Issue #1 -- Hours of work

Union's fact-finding proposal to replace stripped language with starts and end shift times and rotations corrected to reflect current schedules.

Issue #2 -- Leaves of Absence

Current contract with no changes

Issue #3 – Evaluation procedures

Current contract with no changes

Issue # 4 – Wages

2.25% wage increase, plus step increases per current contract language. The fact silent on start day – July 1 or the pay period closest to July 1.

Issue # 5 – Insurance

Employee contribution for single coverage will remain at $25 but contribution for family shall be increased to $75, that the existing co-pay of $10 per office visit and the deductible levels at $250 single and $500 family be retained without change.

Issue # 6 -- Dues Deduction

That the agreement reached during fact-finding be implemented.

Issue # 7 – Permissive Subjects of Bargaining

No position before the fact-finder.

CRITERIA APPLIED IN MAKING AWARD

The Iowa Public Employment Relations Act contains criteria that are to be used by an arbitrator in judging the reasonableness of the parties' collective bargaining proposals. The Act establishes the criteria that are to be used by interest arbitrators in formulating their awards. Section 22.9 of the Act provides, in relevant part:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effects of such adjustments on the normal standard of service.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

With the criteria mandated for arbitrators firmly in mind and based upon the entire record developed at the hearing, the award contained in this report is formulated

Background

Black Hawk County is located in the north eastern part of the state and it is an urban area that includes Waterloo and Cedar Falls. The parties have engaged in collective bargaining since 1975. While the bargaining relationship has been relatively free of acrimony, impasse procedures have been utilized. The current contract is for the year that begins July 1, 2005, and the parties have been unable to resolve the preceding issues. The Employer and Union have spent considerable time in bargaining and negotiations, including the intervention of a mediator to voluntarily resolve the issues. This effort was unsuccessful and the impasse proceeded to a fact-finding hearing which culminated in the instant arbitration. Both the Union and Employer also filed prohibited practice complaints regarding many of the negotiation issues during the negotiations process The parties have voluntarily agreed to waive any statutory time limitations (which was confirmed by the arbitrator at hearing).

The Union and Employer presented evidence and each asserted their respective positions. The impasse appears to have generated intense feelings for both groups. The subscribed arbitrator has reviewed and considered, at length, the arguments, records, and evidence presented and has carefully considered each point raised by the Employer and Union.

This dispute centers around a number of issues – wages, hours of work, leaves, evaluation, and insurance. While they are separate issues, each impact upon the monetary framework of the County. As part of the arbitration, the economic issues were paramount, and they have created some acrimony. The language issues were equally

acrimonious, and the bargaining relationship is problematic. During the hearing, each party was given ample time to present evidence and testimony regarding their respective position. At the end of the session each party elected to present a closing statement.

Given the history of negotiations, the parties have experience with comparability. The Union and the Employer used different comparability groupings. The Union presented a historical comparability grouping that was extensive including urban counties in eastern Iowa that are part of the ten largest counties – Linn, Scott, Johnson, Dubuque, Clinton, and Black Hawk. The Employer presented a different approach to comparability – an internal (pattern) group, another group of counties (Wiant seven -- Linn, Scott, Johnson, Woodbury, Dubuque, Black Hawk, and Pottawattamie) and the only other county with a comparable facility – Dubuque. Each party argues that its grouping was most appropriate and reasonable. Among the strategic factors for a neutral to consider in making an award is the comparability group. The weight given by the arbitrator is a function of several factors, which include, but are not limited to: geographical proximity, size of population, demographic characteristics, and other relevant financial data. Therefore, it is not necessary to adopt in its entirety, either party's group as most appropriate. However, appropriate weight has been given to each grouping. Before noting the comparability group, it should be noted that the parties spent considerable time detailing the reasons for using its comparability group. This was not lost on the Arbitrator. While each used different groupings, many of the external counties overlap each comparability group, and the Arbitrator will consider the common counties. With respect to the internal or pattern negotiation, it is also clear that other arbitrators have reviewed this phenomena, and while the instant arbitrator has not usually

used internal comparability (given the difference in work activities), it is relevant in this arbitration. While the Union argues that there is not pattern bargaining, it is clear that the settlements and contracts are remarkably similar. This does not appear to be a coincidence.

Another strategic factor to consider is bargaining history. The parties detailed the history, and each focused upon the bargaining during the course that led to the arbitration. The Employer raised a critical issue here related to hours – whether the Union ever bargained the issue across the table. Besides this point another major issue impacting upon the bargaining was permissibility. Each party brought this to PERB's attention, and PERB made rulings that had an impact upon the case. The Arbitrator does not find a reason to revisit PERB's rulings. While it is clear that this has altered the contract, the arbitrator does not believe it is strategic to revisit this. The other clear issue in this case is ability to pay. While the Employer does not argue an inability to pay, it clearly asserts a relative inability to pay. The Union argues that there are funds available, although it also indicated that the Board of Supervisors has an agenda to control spending. Both parties identified strategic points, but in the end the Arbitrator found this in not an inability to pay issue.

The other strategic issue relevant to this case was whether the fact-finder made an error in making his recommendations. The Employer made numerous arguments related to this point articulating that Arbitrators may address fact-finder error. The Union address this issue differently, as it notes that the Arbitrator is restricted to making a decision that is the Employer's, the Union's or the Fact-finders and that single issues cannot be mixed. The Arbitrator makes note of each argument.

The initial issue is hours. The parties and the fact-finder do not agree on this issue. The Employer asserts that article 16 subsection 2 be replaced and that the start end times would stay the same as the current contract. The Employer also argues that the hours language accepted by the Fact-finder had never been bargained at the table, and that

the fact-finder accepted bare allegations related to the removal of the permissive language – all of which constitutes an error on the Fact-finder's part. Moreover, the Employer noted that the Fact-finder made a flawed decision because it cannot be implemented due to its lack of specificity as well as its inaccuracy. The Union contested whether the issue had been bargained across the table, though it did not directly refute this. The Union asserted that it had taken the initiative to deal with the permissive language stripped from the contract, and that the Union proposal is the only proposal to address the vital mandatory subject of bargaining. The Union also argued that the Fact-finder recommendation was not illegal as it instructed the Employer to negotiate which it has not done. However, the Union also noted that the recommendation was not clear and that the Arbitrator would need to monitor the implementation.

This issue is vexing, as an arbitrator is reluctant to overrule another neutral, as it is difficult to stand in their stead. In this case the evidence is unclear that the fact-finder considered an option that had not been bargained across the table. The parties disagree on this, and it appears that they interpret this to mean different things. This in and of itself is not dispositive, and the arbitrator has to examine the evidence to determine what is compelling. In this case the core issue for the Union is the stripping of the contract which ironically was initiated by the Union in its petition to PERB. The PERB decision

obviously allows for the removal of much of the contract as being permissible. This strategy did not work, and the Arbitrator is being asked to fix the hours component. The Arbitrator finds the Employer evidence to be more compelling specifically related to the negotiations across the table – exhibits do not reflect that the hours issue was discussed across the table. Moreover, the arbitrator finds the fact-finding recommendation to be difficult to implement, and it is unclear how to establish a set of rules that give consistency and flexibility to the Employer and its employees. Thus the Arbitrator rules that the hours section will be changed as per the Employer position – the replacements will be moved to subsection 2 and the start/end times will be as established in the current contract. While this can cause difficulties, it should also be noted that the Employer has indicated an assurance that there will not be a problem, which was another reason the Fact-finder ruled differently.

The second issue is leaves. The Union advocates a change in the contract that adds an article giving stewards time off for performing Union business. The Employer advocates other changes while rejecting the Union proposal for stewards. The Employer calls for changing unpaid leave as mutually agreed and for changing FMLA such that the employer can designate personal illness as FMLA leave. The fact-finder calls for current contract on all issues. The Arbitrator agrees with the Fact-finder in this set of instances -- there is insufficient evidence to warrant a change of the status quo. The Arbitrator rules that the current contract will be followed.

The third issue is evaluation. The Employer seeks to continue the current contract while the Union advocates a change in the contract by deleting the last sentence in the Article 22 – "...if it results in the loss of a merit increase." This issue relates to whether

there is a compelling reason to change the contract. The Union asserts that the stripping of the contract will lead to the a change where employees fear that the Employer will be free to stuff their personnel files with disciplinary actions while the employees will not have any recourse. While the Arbitrator recognizes the chance for this to happen, the Arbitrator agrees with the Fact-finder that there is not evidence of a problem. Additionally, this Arbitrator is reluctant to change the status quo without compelling evidence of a problem. In this case the Arbitrator awards the current contract -- the Fact-finder's position.

The next issue is wages. The Union seeks a wage increase of 3.5% across the board effective July 1, 2005 with step advancement, which creates a total package of 7.69%. The employer advocates an increase of 2.25% across the board with step movements, which is identical to the Fact-finder's recommendation and reflects a total package of 6.43%. Both groups argue for their respective comparability groups – internal comparability and external comparability. The Arbitrator agrees with the fact-finder's reasoning – there are two internal settlements of 2.25% for PPME units and two settlements of 2.25% for non PPME units and there are higher settlements for other units based upon a two year agreement and as compensation for lower raises over a two year period. On the external basis Dubuque is lower paid than Black hawk while others are higher paid even if one excludes Polk County. Neither the Union or the Employer argues an inability to pay, although the County acknowledges it is limiting expenses including salaries. Given this set of reasons, the Arbitrator awards a wage settlement of 2.25% with step increases – a total package of 6.43%.

Within the context of wages, another issue was raised – when the agreement is

awarded – effective July 1, 2005 or effective after the first payroll date. The Union brought this issue as part of its proposal. It noted that the Fact-finder did not clarify this. The Employer was silent on this, and the Arbitrator notes that the effective date of the pay raise is July1, 2005.

The next issue is insurance. The Employer's position is the following;

Single	$25.00	
Family	$75.00	+25
Co-pay	$15.00 office visit	+$5

The Union position is as follows:

Single	$25.00	
Family	$60.00	+10
Co-pay	$10.00 office visit	

The Fact-finder recommendation is as follows:

Single	$25.00	
Family	$75.00	+$25
Co-pay	$10.00 office visit	

Obviously this issue is related to the economic issue. The Employer argues that it needs an increased contribution by employees based upon a 20% increase in insurance costs. It argues that additional payment by the family and on the co-pay is necessary. The Union argues that there is not a need to increase the contribution based upon comparability, bargaining history, and economic impact. A review of the materials suggests that the employer contribution has been declining, and that this unit is not driving the increase in premiums. The Arbitrator finds the Fact-finder's recommendation to have merit – internally the $75 rate has been agreed to by three units and another unit has a recommendation of a $25 increase to $75 by a fact-finder. Externally, the contributions

vary, and Dubuque (and its Crestline Home) are covered by a non-contributory plan that is hard to compare. With respect to the co-pay -- $10 offered by the Union versus $15.00 by the employer – the data does not suggest that $15.00 is warranted given the income of the employees. Thus the Arbitrator awards an increase of $25.00 on the family and the current contract for single and co-pay – the fact-finder recommendation.

The next issue is Dues Deduction. Since the Employer did not make a proposal and both the Union and Employer agreed at the fact-finding, the following sentence was added to Article 30 – The Employer shall deduct the monthly contribution for Union dues from the employee's first and second paycheck of each month in an equal amounts as possible.

The last issue is related to the permissive subjects of bargaining – the unilateral removal of permissive language by the employer should be prohibited and that the management rights article be deleted as permissive. While this is an ingenuous argument, it is the arbitrator's belief that this is the domain of PERB not the arbitrator. The parties have already used the PER Board in two instances, and it is clear that this fits within their jurisdiction.

AWARD
(Summary)

Hours of work

Employer position Replacements moved to subsection 2 and start/end times in the current contract.

Leaves of Absence

Fact-finder recommendation – current contract

Evaluation

Fact-finder recommendation – current contract

Wages

Fact-finder recommendation – 2.25% increase with steps

Insurance

Fact-finder recommendation –

Dues Deduction

Union position and as per agreement.

Permissive Subjects of Bargaining

Issue with PERB not arbitrator

Dated and signed by:

Jun 10, 2005

Micheal L. Thompson, Arbitrator

Certificate of Service

I certify that on the 10th day of June, 2005 I served the foregoing Arbitration Award upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Gary L. Ray, President
Ray and Associates
Executive Plaza Building
4403 First Avenue S.E.
Suite 407
Cedar Rapids, Iowa 52402

Joe Rasmussen, Business Representative
PPME Local 2003
Box 69
Alburnett, Iowa 52202

I further certify that on the 10th day of June, 2005, I will submit this report for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.

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