City of Cherokee / IUOE Local 234

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IOWA EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN	)	
	)	
THE CITY OF CHEROKEE, IOWA,	)	
	)	Hugh J. Perry, Arbitrator
PUBLIC EMPLOYER,	)	
AND	)	
	)	Award issued:
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 234,	)	June 14, 2006
	)	
EMPLOYEE ORGANIZATION.	)	

APPEARANCES:

FOR CITY OF CHEROKEE:
Wally Miller, Jr., Attorney
Dennis Henrich, Mayor

FOR IUOE LOCAL NO. 234:
MacDonald Smith, Attorney
Kevin Holzhauser, Business Rep.

BACKGROUND

The City of Cherokee, population 5369, is the county seat of Cherokee County located in northwest Iowa. There are two bargaining units in the City, a police unit, and this unit which includes 12 employees consisting of the deputy clerk, administrative assistant, full time fire department employees, street, sanitation, water and cemetery employees. The employees bargained as an independent local for several years. For the current contract, July 1, 2005 - June 30, 2006, they affiliated with IUOE Local 234. The Police Unit is in the middle of a multi-year contract which ends on June 30, 2007. This is the first time to arbitration for this bargaining unit. The new contract will date from July 1, 2006 to June 30, 2007.

This year the parties engaged Fact-finding which resolved several issues and now proceed to arbitration to resolve the remaining issues. The parties have extended the bargaining time lines to allow for completion of the bargaining process to be accomplished no later than June 15, 2006. Otherwise, they have engaged statutory arbitration which requires that the Arbitrator, after considering the statutory criteria set forth in Section 9 of The Public Employment Act (Chapter 20), to award the position of the party or Fact finder on **each** impasse issue that is determined to be the most reasonable. The impasse issues which remain undecided are: **Hours**, **Insurance** and **Vacation**. A hearing was held at the Cherokee City Hall on May 30, 2006.

COMPARABILITY

The Fact- finder found fault with both parties' comparability groups and fashioned one of his own, cities within the geographic area of similar population to Cherokee, namely Algona, Estherville, Harlan, Emmetsburg and Orange City. Also to be considered as secondary cities were LeMars and Spencer. It is difficult to find fault with this grouping if one adheres to the premise that comparability data should be gleaned from the geographical area (labor market) and consist of employers with similar populations. However, any comparability analysis should be utilized as a guide, to measure the reasonableness of the parties' proposals. Bargaining history and factors unique to the bargaining unit and employer at hand must always assume prime importance.

IMPASSE ISSUES

The impasse issues to be decided are **Hours**, **Insurance** and **Vacation** for the contract year July 1, 2006 to June 30, 2007.

CURRENT CONTRACT

Hours - There are two components to the hours issue. The first concerns itself with the work day for employees in the water department. Currently these employees work from 7:00 AM to 3:30 PM with a one-half hour lunch as provided in Section 8.2 of Article 8, Work Schedules. Employees in the street and sewer departments work from 7:00 AM to 4:00 PM with a 1 hour lunch period. Clerical employees work from 8:00 AM to 4:30 PM. Firemen work rotating shifts from 7:00 AM to 3:00 PM and from 3:00 PM to 11:00 PM. The second component of the hours issue deals with Section 8.5 of Article eight. The language currently provides, among other things, that *Employees shall receive a paid one-half (½) hour lunch near the middle of Employee's shift.*

Insurance - The City pays 100% of the health insurance premium for an employee and his/her dependents. The insurance carrier is Welmark Blue Cross/Blue Shield. There are four different plans offered: Employee: cost $333.61/month, Employee/Spouse: $683.24/month, Employee/Child: $631.53/month and Family: $1,023.85/month. These are current rates. They are projected to increase some 10% for the next contract. The parties have negotiated higher deductibles and coinsurance in recent years, however, the City pays these costs through a self insurance feature. Employees in the police unit also enjoy health insurance fully paid by the City. Notably, that contract provides that *When all other employees...are contributing toward their health plan, the Cherokee Policeman's Association agrees that it will begin contributing a like amount.*

Vacation - The current vacation benefit is as follows: 0-1 years of service, 5 vacation days; 2-6 years 10 days; 7-14 years, 15 days; Over 15 years 20 days.

PROPOSALS OF THE PARTIES AND FACT-FINDER'S RECOMMENDATION

Hours

The **City** proposes that the hours of the water department employees be changed to 7:00 AM to 4:00 PM with a one hour lunch. The City contends that this would make the hours of these employees consistent with those of the street and sewer employees. This would help the City to avoid overtime when the Water Department employees are working with Street and Sewer employees on common projects. Also, it would help avoid public confusion regarding the City's work day.

The City contends that it was never its intent that all employees in the bargaining unit be afforded a paid one-half hour lunch period as indicated in the contract. Rather, it was the intent that the fire employees be afforded this benefit in recognition of the fact that they had to remain on call during this time. At the hearing the City indicated that it had not paid these employees (except for the fire employees) for a one-half hour lunch break during the current contract. The City contends that the language of 8.5 providing a paid one-half hour lunch break to all employees was a drafting error and a mistake. The City notes that the Union is currently grieving this issue and that the question of whether it has been properly grieved is before the District Court on a Motion for Summary on an action by the Union to Compel arbitration.

The **Union** proposes that the language of 8.2 regarding Water Department Employees working 7:00AM to 3:30PM remain unchanged. It urged that the City had pointed out no particular problem with the hours of these employees other than its desire to make uniform the hours of the water, sewer and street employees. The Union points out that the issue of the one-half hour paid lunch for these employees is the subject of a current grievance and that litigation is pending in district court. The issue would best be resolved through the grievance procedure.

The **Fact-finder** recommended no change in the hours language. He was not persuaded that the City had demonstrated sufficient reason to extend the work day for the water employees. He cited the lack of no evidence regarding the frequency of overtime paid to water employees required to stay beyond 3:30PM to complete a project with the sewer and street employees. Further, he indicated that the history of the language was not made clear. In sum he felt there were too many unanswered questions to recommend a change in this language.

He also recommended no change in Section 8.5 providing for paid one-half hour lunches to the employees. He commended the issue to the grievance procedure. Once the issue is resolved there it can be addressed in bargaining for the subsequent contract. He felt that he had insufficient information, i.e. bargaining history, concessions made, etc. to recommend a change in this language.

Insurance

The **City** proposes that these employees pay 15% of the cost of their dependent health insurance. The City noted the escalating cost of this benefit and pointed to the

cities in its comparability grouping, the overwhelming majority of which required some contribution of their employees toward the cost of dependent insurance, most more than 15%. It noted that the police employees would contribute a like amount if the City prevailed here and that it would require employees outside the bargaining units to contribute a like amount.

The **Union** urged that the current insurance benefit continue. It noted that this was an important benefit which had been bargained for by these employees. It pointed out that a 15% contribution by employees who use family insurance could negate any wage increase this year (3% - ranging from $.35 to $.44 per hour). The Union calculated the cost of the City's proposal to be $.31 to $.61 per hour depending on which dependent plan an employee took. The Union noted that all but 3 employees use dependent insurance.

Fact-finder Recommendation. The Fact finder recommended no change in the parties' health insurance benefit. (At Fact-finding the City proposed that employees contribute 50% toward the cost of dependent coverage.) The Fact finder noted that while many other comparable employers require some contribution by employees toward the cost of dependent health insurance, the City had not offered a *quid pro quo* in exchange for this important benefit change. He encouraged the parties to revisit the issue next year when the police bargaining unit would also be negotiating a new contract.

Vacation

The **City** proposes that the current vacation benefit remain unchanged. It argues that the comparability data does not support 5 weeks of vacation after 20 years. Further, the City contends that this is an important issue as it operates small departments and having one individual absent on vacation presents problems. While vacation is an important earned benefit the current vacation benefit is adequate and shouldn't be expanded. It notes that employees here earn 4 weeks of vacation sooner than their counterparts in comparable communities.

The **Union** proposes that an employee's vacation benefit be increased to 5 weeks after 20 years of service to the City. It notes that it presented a more aggressive proposal at Fact-finding i.e., to compress the time required to earn existing vacation as well as adding 5 days after 20 years but that the Fact-finder declined to recommend this. He did recommend an additional 5 days of vacation after 20 years of service. The Union contends that this benefit recognizes long term loyal service to the City and is supported by the comparability data.

Fact-finding Recommendation. The Fact-finder recommended that an additional 5 days of vacation after 20 years of service be added to the vacation schedule. He cited both internal (Police Unit) and external comparability to support his recommendation.

DISCUSSION

Hours - The hours issue has two facets. The first deals with the length of the work

day for Water Department Employees. I am not persuaded by the City's arguments to change this benefit. First, I was not provided with the history of this language or the rationale as to how these employees' came to work a different schedule. I am not convinced that the 3:30 PM ending time presents any significant difficulties for the City. A primary reason given for the proposed change, avoidance of overtime on common projects, was not supported with concrete data. The issue of the ½ hour paid lunch appears best resolved in grievance arbitration where it currently heads. The City's contention that this was a mistake and should properly have been only applied to the fire employees may well be the result. However, I am unable to reach that conclusion based on the record before me. A ruling in favor of the City here would still not resolve the question of the City's liability for the current contract. For these reasons, there should be no change in the hours language of Sections 8.2 and 8.5.

Health Insurance - There is no question that the health insurance benefit enjoyed by these employees exceeds that offered similar employees in comparable communities. Most are required to contribute in some fashion toward their dependent health coverage. Such is the undeniable trend. The Police unit appears to have accepted the inevitable, that at some point its employees will be required to contribute toward their family health insurance. However, I am convinced that the best health insurance benefit is one that is negotiated by the parties themselves. This allows for the *quid pro quo* as articulated by the Fact finder. One party gains something in exchange for conceding something else. He found no such *quid pro quo* in the City's insurance proposal. (At Fact-finding the City proposed that employees contribute 50% toward the cost of their dependent coverage, although the Fact finder was free to recommend a smaller contribution). There is no question that the City's proposal here would have significant financial impact upon these employees. As pointed out by the Union, it could negate an employee's wage increase. It is noted that the Police contract will be open next year. Undoubtedly, this issue will be on that bargaining table. I commend to the parties this issue for negotiations for the next contract. The comparability data suggests that a change in these employees' contribution toward dependent insurance is warranted. If the City advances a reasonable proposal to require these employees to bear part of the cost of this important but increasingly costly benefit and the Union stonewalls such, it would appear to do so at its own peril. However, for the contract under consideration the insurance provision should not change.

Vacation - The comparability data provides some support for an expansion of the vacation benefit to 5 weeks after 20 years as proposed by the Union and recommended by the Fact- finder. As indicated by the Union, it is a benefit which rewards long term loyal service to the City. At the same time, it is pay to an employee for time not worked for the City. In a small bargaining unit an employee's absence can create difficulties. The Fact- finder recommended this benefit primarily on the basis of external and internal comparability. He noted that a number of other comparable employers provided a 5 week vacation benefit. He also noted that the City provides its police employees with more vacation than that enjoyed by employees in this bargaining unit. The data indicates that 3 employees would benefit immediately from the Union's proposal. The vacation

analysis appears to run parallel to that on insurance. There is support for the Union's proposal in the comparability data, however, a *quid pro quo* appears lacking. I agree that vacation can be considered recognition of an employee's long and loyal service, however, a measurable number of public employers consider 4 weeks to be a fair benefit and adequate recognition of such service. It is unclear exactly what the City will obtain in exchange for a substantial increase in the vacation benefit. For these reasons, I am not inclined to award an increase in the vacation benefit. As with health insurance, I commend it to bargaining for the succeeding contract.

AWARD

Hours - Union Proposal and Fact-finder's Recommendation, Current contract.

Insurance - Union Proposal and Fact-finder's Recommendation, Current contract.

Vacation - City Proposal, Current contract.

Signed this 14th day of June, 2006

Hugh J. Perry, Arbitrator

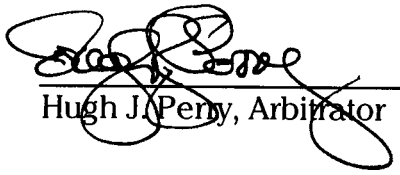
CERTIFICATE OF SERVICE

I certify that on the 14th day of June, 2006, I served the foregoing Award of Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Wally Miller, Jr.
Attorney At Law
216 West Main Street
Cherokee, Iowa 51012

MacDonald Smith
Attorney At Law
503 5th Street.
Sioux City, Iowa 51102

I further certify that on the 14th day of June, 2006, I will submit this award for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.



Hugh J. Perry, Arbitrator