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PUBLIC EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF ARBITRATION BETWEEN

DELAWARE COUNTY)
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)
Public Employer)
)
and)
)
AMERICAN FEDERATION OF STATE,)
COUNTY, AND MUNICIPAL)
EMPLOYEES,)
AFL-CIO, COUNCIL 61, LOCAL 1835)
)
Employee Organization)
)

**SUPPLEMENTAL
ARBITRATION AWARD
CEO #200/2**

Terry D. Loeschen, Arbitrator

APPEARANCES

FOR AFSCME COUNCIL 61, LOCAL 1835
Robin R. White, Union Representative

FOR DELAWARE COUNTY
James M. Peters, Attorney

JURISDICTION AND PROCEDURE

This matter arises pursuant to an Application for Rehearing filed by Delaware County (hereafter County or Employer) under Iowa Code 17A.16(2) claiming the original impasse arbitration award of February 29, 2012, exceeded the final arbitration offer of AFSCME, AFL-CIO, Council 61, Local 1835 (hereafter Union) concerning insurance. The Union filed a Resistance to the Application, and the County subsequently filed a Reply to that Resistance. On March 24, 2012, the undersigned Arbitrator issued an Order which granted the County's application and set the same for rehearing on April 17, 2012. The scope of the rehearing was limited to the claim asserted by the County in its Application, which may be generally described as whether or not the original impasse arbitration award changed the reoccurring health

insurance plan year referenced in the parties' collective bargaining agreement from April 1 through March 31 to coincide with the bargaining agreement term, July 1, 2012 through June 30, 2013.

The rehearing to resolve the above described issue was held at 10:00 a.m. on April 17, 2012, at the Delaware County courthouse in Manchester, Iowa. Although conducted to clarify the terms of an original award, the rehearing was conducted pursuant to the applicable provisions of Sections 19 and 22 of the Iowa Public Employment Relations Act and all applicable rules of the Public Employment Relations Board. During the course of the rehearing both parties were given a full and equal opportunity to present evidence and argument in support of their respective positions. The hearing was tape recorded by the Arbitrator as required by rule of the Iowa Public employment Relations Board. The parties stipulated and agreed that the Arbitrator has jurisdiction and authority to issue a supplemental arbitration award with respect to the matters asserted in the application for Rehearing Resistance and Reply.

At the conclusion of the presentation of all evidence and argument regarding each party's positions, the record was closed and the matter deemed under submission. Once again the representatives of the parties conducted themselves in a professional and courteous manner. Based on a complete review of all evidence and arguments presented, this supplemental award is issued consistent with the statutory criteria set out in Section 20.22(9) of the Code of Iowa, and within the time limits set out in Section 20.22(1) and Public Employment Relations Board rules for the issuance of impasse arbitration awards.

IMPASSE ITEM IN QUESTION

In the interest of clarity the final impasse arbitration offers on insurance as presented to the Arbitrator at the original hearing are set out as follows:

1. County final offer:

Change from Wellmark UQ5/QPT to C59/ALG effective April 1, 2012:

Office visit co-pay \$15 increases to \$20

Co-insurance of 10%/20% increases to 20%/30%

Emergency room co-pay of \$100 increases to \$150

Drug plan of \$10/\$25/\$40 increases to \$8/\$35/\$50

2. Union final offer:

Article 29

- a. Insurance current CBA
- b. Change all dates on Article 29 to reflect contract term

Note: No reference is made to final offers on wages as that impasse item is not a subject of the rehearing.

DISCUSSION AND ANALYSIS

In the present proceeding the issue to be resolved is whether or not the original impasse arbitration award changed the health care plan year of April 1 through March 31 of the following year to the bargaining agreement year of July 1, 2012 through June 30, 2013.

In their collective bargaining for a July 1, 2008 through June 30, 2010 agreement the parties agreed to the following language in Article 29, Insurance: “The Employer has the option to have the health insurance plan year end on March 31, 2009.” The Employer made that change with Wellmark Blue Cross/Blue Shield. The change for the insurance plan year to end on March 31 each year continued on to the present 2010-2012 bargaining agreement, and is referenced by language in that agreement which provides that, after employee contributions, the Employer will pay remaining premiums for Wellmark Blue Cross/Blue Shield UQ5-QPT “effective April 1, 2011.”

As in preceding agreements, contract language also provides that before making any proposed changes in the plan, provider or self funding of group medical or hospital insurance the Employer shall submit the proposed change to the Union. The agreement specifically states: “No change will occur without the written consent of the Union, which consent shall not be unreasonable withheld. Any disputes regarding lack of consent will be resolved through the grievance procedure in the labor agreement.”

The County claimed the Arbitrator misinterpreted the union’s final offer on insurance. It based that claim on its perception of various statements made by the Arbitrator in the original award. For example, the Arbitrator stated at page 13 of the original award: “The core of the parties insurance impasse dispute is the effective date of the County proposed plan.” The County’s final impasse offer on insurance sought a change effective April 1, 2012. While the

County's concern is understandable, it did misinterpret this statement. The insurance plan year ends March 31. This is three months prior to the labor contract year ending June 30. This required the County to seek the Union's consent to a change in coverage prior to April 1, 2012. The Union's refusal to consent, in turn, generated the grievance arbitration. The dispute continued as a part of the negotiations impasse between the parties as to the terms of a collective bargaining agreement for July 1, 2012 through June 30, 2013. The net result was the combined grievance arbitration/impasse arbitration requested by the parties.

By way of similar example, the Arbitrator stated at page 9 of the original award: "Further the Union wants the insurance coverage year to coincide with the collective bargaining contract year." The term "coverage" means the level of benefits provided under the County health care policy. Regrettably, the following word "year" may have caused confusion as to the intended meaning of the statement. It is clear that the Union's position was that the current "coverage" existing on April 1, 2011 be continued for the remainder of the current labor contract ending June 30, 2012. This was the subject of the grievance arbitration. It is also clear that the Union's impasse position is that this same existing coverage be continued for the term of the July 1, 2012-June 30, 2013 bargaining agreement. This was the subject of the impasse arbitration. Except by inference in the language contained in its final impasse arbitration offers, the Union did not present any evidence at the original impasse hearing supporting a change in the health care plan year. While the Union's final offer on wages, which contained the phrase "and change all dates within CBA to reflect 1 year contract," could have been read "on its face" as requesting change in the health care plan year, it was part of its wage offer and not its insurance offer. Further the Union wage offer was not awarded, so any potential claim of plan year change was rendered moot.

Adding to the confusion was the Union's Resistance to the County's Application for Rehearing. In the Resistance the Union appeared to misinterpret the relationship between the insurance plan grievance award and the impasse arbitration award. It stated the County was not awarded the insurance plan change for the life of the collective bargaining agreement which is July 1, 2012 through June 30, 2013.

The related grievance award precluded the County proposed change in benefits or coverage for the remainder of the current labor agreement, i.e. from April 1, 2012 through June 30, 2012. The impasse award accepted the Union final offer to continue existing insurance

coverage for the term of the subsequent bargaining agreement, i.e. July 1, 2012 through June 30, 2013. However, this does not change the language in the Insurance Article which allows the County to seek coverage changes to be effective on April 1, 2013 provided it obtains the Union's written consent. In the absence of that consent the parties may be forced to resort to their internal grievance procedure as was the case this current year. This situation may occur again because, as stated in the original award, the Arbitrator is required to select the most reasonable offer on each impasse item under the criteria set out in Section 20.22(9) of the Code of Iowa. An arbitrator has no authority to change a final offer or award a final offer in part. A final offer on an impasse item must be selected "in total." Again, see Maquoketa Valley Community School District v. Maquoketa Valley Education Association, 279 N.W.2d 510, 513 (Iowa 1979). There was no authority to rewrite language in Article 29, Insurance.

At the rehearing the County vigorously opposed any inference that the Union's final insurance offer changed the health insurance plan year to the fiscal year. The County unequivocally claimed that at no time in the course of any negotiations did the Union raise the question of an insurance plan year change. Its Counsel stated that any such proposal would have set off "bells, whistles and fireworks" for the County. Supervisor Helmrich persuasively testified that she participated in all of the bargaining sessions and she never understood the Union insurance proposal to change the plan year. If the County were to purchase a three month plan in order to then convert to a fiscal year the County would have to be rerated by Wellmark Blue Cross/Blue Shield. This obviously could result in changes in premiums. The County has now purchased an insurance contract with Wellmark for April 1, 2012 through March 31, 2013. There was no evidence of any change in coverage now provided under the current bargaining agreement.

The County requested the Union Representative be called as a witness, and she agreed to do so without objection. Her testimony was honest and forthright and she must be complimented for her integrity. She stated the Union had never made a proposal to the County to change its insurance plan year. The Union proposal was intended to change the dates for insurance coverage to coincide with the term of the collective bargaining agreement. How the County acquires the coverage is not the primary concern. The Union's objective was to assure the bargaining unit that the current plan, more appropriately stated, current benefits continue through June 30, 2013.

In the original impasse arbitration award of February 29, 2012, the undersigned Arbitrator did not intend to change the County health insurance plan year. I did not have authority to alter an insurance contract between the County and Wellmark Blue Cross/Blue Shield. An impasse arbitrator's obligation is to award the most reasonable final offer "in toto." There is no authority to award a final offer in part or to rewrite any final offer. The final offers of the parties were awarded verbatim as presented. The original impasse award does not change the plan year.

However, for the sake of clarity, it should be noted that while the original impasse award does indicate that current health plan coverage and benefits continue through June 30, 2013, there is no change in the health plan year resulting from the Union's final offer. Therefore the County is not precluded from seeking a change on April 1, 2013 provided it can obtain the Union's written consent. In the absence of that consent, existing coverage and benefits continue for the term of the 2012-2013 collective bargaining agreement.

As indicated above it is the task of an impasse arbitrator to award the most reasonable offer based on consideration of certain statutory criteria. Implementation of the award is generally a matter left to the parties. However, only as a suggestion to the parties it appears that Union Rehearing Exhibit C accurately reflects what was intended by the Union and does not change the health insurance plan contract year. This comment is offered by way of dicta and is not to be considered as binding on either party.

In summary the undersigned Arbitrator did not have authority to change, alter, amend or modify the health insurance plan contract year between the County and Wellmark Blue Cross/Blue Shield. I specifically conclude and specifically find that the original impasse award dated February 29, 2012 did not change the existing health care plan year.

Based upon the above discussion and analysis and a review of all evidence I hereby issue the supplemental award set out below.

SUPPLEMENTAL IMPASSE AWARD

1. Insurance

I hereby award the final arbitration offer of the Union as follows:

Article 29

a. Current collective bargaining agreement

b. Change all dates on Article 29 to reflect contract term

2. Wages

As contained in original award dated February 29, 2012.

This award is effective for a collective bargaining agreement in effect from July 1, 2012 through June 30, 2013. This award does not change, amend or modify the health insurance plan contract year in effect between Delaware County and Wellmark Blue Cross/Blue Shield.

April 27, 2012



Terry D. Loeschen, Arbitrator
960 Orchard Lake Drive
Daleville, VA 24083
540-992-4446
(cell) 540-526-4454

CERTIFICATE OF SERVICE

I certify that on the 27th day of April, 2012, I served the foregoing Supplemental Award upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Mr. James M. Peters
Simmons Perrine Moyer Bergman PLC
115 3rd Street S.E. Suite 1200
Cedar Rapids, IA 52401-1266

Ms. Robin White
1633 265th Avenue
Earlville, IA 52041-8669

I further certify that on the 27th day of April, 2012, I will submit this Supplemental Award for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, IA 50319.



Terry D. Loeschen
Arbitrator

IN THE MATTER OF ARBITRATION BETWEEN

DELAWARE COUNTY)
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)
 Public Employer)
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 and)
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 AMERICAN FEDERATION OF STATE,)
 COUNTY, AND MUNICIPAL)
 EMPLOYEES,)
 AFL-CIO, COUNCIL 61, LOCAL 1835)
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 Employee Organization)
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ARBITRATION AWARD
CEO #200/2

Terry D. Loeschen, Arbitrator

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PUBLIC EMPLOYMENT
RELATIONS BOARD

APPEARANCES

FOR AFSCME COUNCIL 61, LOCAL 1835

Robin R. White, Union Representative

FOR DELAWARE COUNTY

James M. Peters, Attorney

JURISDICTION AND AUTHORITY

This arbitration arises pursuant to an independent impasse agreement of the involved parties and pursuant to the provisions of Sections 19 and 22 of the Iowa Public Employment Relations Act, Chapter 20, Code of Iowa (hereafter the Act).

The undersigned Arbitrator was originally selected by Delaware County (hereafter County or Employer) and AFSCME, Council 61, Local 1835 (hereafter Union or AFSCME) to resolve a grievance arbitration dispute. In the interim period between selection and hearing date, the parties again contacted the Arbitrator advising of their mutual agreement to present their impasse arbitration dispute along with the grievance arbitration in one combined hearing.

These two types of arbitration involve different standards of procedure and proof. Because of those differences, the grievance has been determined in a separate award and is not considered in the present award.

The parties' current collective bargaining agreement in effect from July 1, 2010 through June 30, 2012 contains the following independent impasse procedure agreement:

ARTICLE 13

MEDIATION AND IMPASSE PROCEDURE AT CONTRACT REOPENING

1. In the event the Employer and Union have not reached an Agreement by the November 15 immediately preceding the June 30 expiration date of the Agreement, the following procedure shall be followed:
 - (a) On or before November 15, each party shall provide written notice to the Iowa Public employment Relations Board at Des Moines, Iowa, of their Bargaining relationship and request appropriate assistance through the mediation services of that office.
 - (b) In the event an Agreement has not been reached by January 1, the parties will meet to select an impartial arbitrator. Should they be unable to mutually agree upon such arbitrator, they will immediately jointly request the Iowa Public Employment Relations Board to provide a panel of five (5) qualified arbitrators from which one (1) will be selected through the process of alternate strikes.
 - (c) In the event the parties have not reached Agreement by January 15, they shall immediately in writing so notify the arbitrator previously selected certifying to such arbitrator each issue upon which impasse has been reached and the respective final proposals on same. The arbitrator shall promptly conduct a hearing relating to the impasse issues and shall consider in addition to any other relevant factors the bargaining history of the current negotiations, a 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 the factors peculiar to the area and classifications involved; the interest and welfare of the public, the ability of the Employer to finance economic adjustments, and the affect (sic. effect) of such adjustments on the normal standard of services; and the power of the Employer to levy taxes and appropriate funds for the conduct of its operations.
 - (d) The decision of the arbitrator on each impasse issue shall be rendered in writing on or before February 15 and shall be binding upon the parties unless contrary to law.

In addition the parties agreed to the following stipulations at the hearing which are a part of the record before the present Arbitrator: (1) That one combined hearing would be held to resolve both a grievance arbitration and final offers in impasse arbitration between the parties, but two separate awards would be issued by the Arbitrator. (2) That all prior steps in both the grievance procedure and impasse procedure have been completed or waived. (3) That there was a timely exchange of final impasse offers between the parties. (4) That the arbitrations were properly before the Arbitrator and the Arbitrator has jurisdiction and authority to issue a final award in each case. (5) That the County would proceed first in the presentation of evidence. (6) That the Arbitrator was granted an extension of time to issue awards to March 1, 2012.

The arbitration hearing was held February 7, 2012 at the Delaware County Courthouse in Manchester, Iowa. The hearing commenced at 9:30 a.m. and concluded at approximately 2:00 p.m. During the course of the hearing both sides were provided a full and equal opportunity to present evidence and argument in support of their respective impasse positions. Both parties were offered an equal opportunity for cross examination of witnesses, if desired. The hearing was tape recorded by the Arbitrator as required by the rules of the Iowa Public Employment Relations Board. Both sides were represented by skilled advocates. The undersigned Arbitrator appreciates the professional and courteous manner in which the case was presented.

At the conclusion of the presentation of all evidence and arguments offered in support of or opposition to each party's impasse positions, the record was closed and this impasse arbitration deemed under submission. Based upon a thorough review of all evidence presented at the hearing, including all exhibits of both parties, and consideration of the arguments presented, this impasse arbitration award is issued consistent with the applicable statutory criteria set out in Section 20.22 (9) of the Act. Further this award is issued within the time limits stipulated and mutually agreed to by the parties.

BACKGROUND

Delaware County is located in the Northeast quadrant of the State of Iowa with a geographical area of approximately 578 square miles. It has a population of 17,754 based on the last census. The city of Manchester is the County seat.

The present bargaining unit consists of 25 employees in the County Secondary Roads Department. The County's only other bargaining unit is also represented by AFSCME Local 1835.

The County and the Union have a collective bargaining history that dates back to 1977. They are currently in the second year of a two year collective bargaining agreement. Over the years the parties have had at least four impasse arbitrations. Those occurred in 1994, 2000, 2005 and 2010. All four of those arbitrations involved wages, but health insurance was an impasse item only in 2000 and 2010. (See Union Exhibits M through P) It became clear during mediation that the parties could not resolve their differences on either wages or insurance. The County proposed a 2% wage increase and changes in health insurance, which may be generally summarized as a change in Wellmark Plans with increases in employee cost for co-insurance, office visits, emergency room and prescription drugs; the change to be effective April 1, 2012. (It should be noted that the County's health care plan runs from April 1 through March 31 of the following year.) The Union proposed a 2.5% wage increase and that health insurance continue as now provided in the current 2010-2012 contract. (It should also be noted that the current contract provides the current health coverage was effective April 1, 2010 and any proposed change during the contract term must be submitted by the Employer to the Union for its written consent.) The above described impasse generated the present arbitration.

IMPASSE ITEMS

1. INSURANCE

COUNTY FINAL ARBITRATION OFFER

Change from Wellmark UQ5/QPT to C59/ALG effective April 1, 2012:

Office visit co-pay of \$15 increases to \$20

Co-insurance of 10%/20% increases to 20%/30%

Emergency room co-pay of \$100 increases to \$150

Drug plan of \$10/\$25/\$40 increases to \$8/\$35/\$50

UNION FINAL ARBITRATION OFFER

Article 29

- a. Insurance current CBA
- b. Change all dates on Article 29 to reflect contract term

2. WAGES

COUNTY FINAL ARBITRATION OFFER

2% increase in wages

UNION FINAL ARBITRATION OFFER

Article 27

2.5% wage increase and change all dates within CBA to reflect 1 year contract

7/1/12 – 2.5% ATB

(See County Exhibit 2 and Union Exhibit A-5)

ARBITRATION CRITERIA

Section 20.22(9) of the Act sets forth the criteria by which an arbitrator is to select, under subsection 11, “the most reasonable offer “on each impasse item submitted by the parties. Section 20.22(9) specifically provides as follows:

The arbitrator or panel shall consider, in addition to other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties, including the bargaining that lead 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 classification involved.
- c. The interests and welfare of the public, the ability of the public employer

to finance economic adjustments, and the effect of such adjustments on the normal standard of services.

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

Moreover Section 17.6 of the Act provides:

No collective bargaining agreement or arbitrator's decision shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget, or would substantially impair or limit the performance of any statutory duty by the public employer.

Further, PERB Rule 621-7.5(6) states: "The arbitration hearing shall be limited to those factors listed in Iowa Code Section 20.22 and such other relevant factors as may enable the arbitrator or arbitration panel to select the fact-finder's recommendation (if fact finding has taken place) or the final offer of either party for each impasse item."

This award is issued with due regard for all of the above statutory criteria. However little weight can be given to the ability of the Employer to finance the proposed economic adjustments and any effect such adjustments on the normal standard of services because no evidence was presented by either party regarding the County's ability or lack of ability to pay for the proposals or offers involved in this impasse. No financial exhibits were presented by either side with respect to the financial condition of the County. No arguments were offered concerning ability to pay.

The authority of the Arbitrator is also subject to the standard set forth in Maquoketa Valley Community School District v. Maquoketa Valley Education Association, 279 N.W.2d 510,513 (Iowa 1979) which requires an arbitration panel or single arbitrator to select final offers or the fact-finding recommendation on each impasse item "in toto" (with the terms "impasse item" being defined as a Section 20.9 subject of bargaining).

It is the duty of the Arbitrator to arrive at a decision based upon the factors listed in Section 20.22(9) of the Act and such other relevant factors as may enable the Arbitrator to select the final offer of one party or the other. The statutory duty of the Arbitrator is to select the most reasonable offer on an impasse item. Section 20.22 (11) of the Act states "A majority of the panel of arbitrators (in the present case a single

arbitrator) shall select within fifteen days after its first meeting, the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties, or the recommendations of the fact-finder on each impasse item.” (Emphasis added)

Therefore, with respect to insurance, the undersigned is to select the County offer in total (change in plan with employee cost increases effective April 1, 2012) or the Union offer in total (current contract plan changing all dates in the insurance article to reflect effective date of contract term, (July 1, 2012-June 30, 2013). With respect to wages, the choices are the County offer of a 2 % increase or the Union offer of a 2.5% increase.

As is stated above this award must be made with due consideration given to the statutory criteria and be the most reasonable offer consistent with the criteria mandated by law.

COMPARABILITY

The parties have only a few differences concerning an appropriate comparability group. The County proposes the following ten counties are the most appropriate group: Benton, Bremer, Buchanan, Cedar, Clayton, Fayette, Grundy, Jackson, Jones and Winneshiek. (See County Exhibit 5) All are similar in population, and all are located in the Northeast quadrant of the state. The County contends that its proposed group was used by previous arbitrators in the last three impasse arbitrations between the parties.

The Union uses all of the above listed counties as comparable, but also adds Hardin, Poweshiek and Tama counties to the group. (See union Exhibits D-Z, D-3, D-4, D-5, J-Z and J-3) While the additional three counties are very similar in population to Delaware County, Hardin and Poweshiek are a bit removed geographically. However, the present Arbitrator can not discern a viable reason why Tama County should not be a part of the comparability group. It should be noted that the population of Tama County exceeds Delaware County by three persons. It is every bit as close to Delaware as is Winneshiek. Comparison to Tama County is a valid and viable comparison.

The present Arbitrator agrees with the prior arbitration decisions that the County's proposed group is appropriate, but also concludes that comparisons to Tama County have probative value.

The parties have differences with respect to the viability of internal comparisons. The County contends that the Sheriff's Department bargaining unit settlement provides a valid comparison because it accepted the change in insurance plans and a 2% wage increase. However, it should be noted that the evidence presented by the Union shows that the jailers in that unit receive a 2% increase, while the Deputy Sheriffs agreed to wages consisting of 87% of the Sheriff's salary. Nonetheless the County argues that the other unit's acceptance of the plan change is persuasive support for a decision that this same change be imposed on the present unit in this award, and a 2% wage increase is appropriate.

The Union objects to the County's claims and contends the deputy sheriffs and jailers were much different so internal comparison has limited value. (See Union Exhibits D and K) It argues that the Sheriff's Department unit obtained a three year contract with certain reopeners and other benefits which mitigate against any valid comparison.

While internal comparability is a factor which may be considered, and in some cases may be persuasive, in the present case external comparability must be given greater weight. The statutory criterion is that of public employees doing comparable work. The present Arbitrator is unwilling to conclude that the work requirements of the Sheriff's Department are similar to the duties required in the Secondary Roads Department. There is a dissimilarity of hours, wages, vacations, holidays and numerous other conditions of employment. There are numerous unit determination decisions by the Iowa Public Employment Relations Board where it has refused consolidation of a law enforcement unit with other units of the same employer due to a dissimilarity of interest. The County's internal comparison has been considered, but the Arbitrator concludes that this comparability, while relevant, is less persuasive than the evidence presented concerning comparable counties. The differences in the two units are greater than their similarity.

FINDINGS AND CONCLUSIONS

1. Insurance

Because the insurance impasse item presents the greater dilemma for the Arbitrator, this subject of bargaining will be considered first in this award.

In simple terms the County desires to change the health care plan effective April 1, 2012. The Union wants to retain the current health care plan with no change on April 1, 2012. Further the Union wants the insurance coverage year to coincide with the collective bargaining contract year. The County wants to save money by avoiding escalating health insurance premium costs. The Union objects to increased cost sharing being imposed on bargaining unit members.

Historically the parties have a generally good bargaining history with respect to insurance. However, insurance was an issue in the 2010 and 2000 impasse arbitrations. In all other years the parties were able to resolve their differences, if any, at the bargaining table. In 2011 the County absorbed an 11.2% increase in premium cost.

A projected 11.5% increase for 2012-13 caused the County to seek the change in plans. The County contends that the current plan will increase in cost \$116161. A change in plans will still have an increase of \$76098., but saving a difference of \$49063. However, under the proposed plan change, employee percentage payment of co-insurance, co-payments for office visits, emergency room co-payments and drug costs will all increase. This cost increase was the genesis of the current impasse.

Although employee increase in health insurance cost sharing has been the subject of two prior impasse arbitrations, evidence of their bargaining history shows they have generally enjoyed a good relationship in negotiating health care issues. In negotiations for their 2004-05 labor agreement the parties agreed to include a provision in the contract to the effect that the County could seek changes in the health care plan during the term of the agreement by first submitting the proposed changes to the Union and receiving the Union's written consent to any change; with the added proviso that the Union consent would not be unreasonably withheld. This concept and its specific contract language remained the same in 2005-06, 2006-07 and 2007-08 collective bargaining agreements. The parties mutually agreed that the Employer had "the option to have the health insurance plan year end on March 31, 2009." (See Union Exhibit S) This caused the current bargaining agreement language which provides that the Wellmark Blue Cross/Blue Shield UQ5/QPT plan is effective April 1, 2011. The result of the above described mutual agreements is an insurance year which is different than the labor

agreement year or fiscal year. This difference has now become “a fighting issue” between the parties in the current impasse.

The County’s final impasse offer unequivocally seeks a change from Wellmark UQ5/QPT to C59/ALG effective April 1, 2012. (County Exhibit 2) The Union’s opposing final offer is equally clear that the current UQ5/QPT be retained with a change of all dates on Article 29 (Insurance) to reflect contract term. (Union Exhibit A-5) The Union’s final offer eliminates the difference between the health insurance plan year which the County wants to continue, and the bargaining agreement year, or term. This presents a significant legal dilemma for the Arbitrator which is discussed in more detail below.

The County insurance plan covers 95 employees, of which 25 are members of the current bargaining unit. (See County Exhibits 8p.8 and 1p.1 and Union Exhibit G) Within the unit 2 members take single insurance, 11 select employee-spouse coverage, 2 take employee-child(ren) and 10 opt for full family insurance. Current monthly premium costs are single--\$372.56, employee-spouse--\$763.01, employee-child--\$705.26 and family--\$1143.40. Employee premium contributions per month are \$10.00 for single, \$20.00 for single/spouse or single/child and \$30.00 for family. The current plan is known as Wellmark UQ5-QPT. In addition the County retains another company to administer a separate fund which the County also funds and is used to buy down the deductible and out of pocket maximum in the UQ5-QPT plan so that no employee incurs out of pocket maximum expense in the excess of \$500.00 for either single/other or family coverages.

The County received a projected increase in current plan premiums from Wellmark of 11.5% for the next year. County Exhibit 8 shows its calculation of premiums under the current plan for the following year, including the cost of continuing the supplemental buy down fund which caps the out of pocket maximums. The County points out this is the second year it will incur a double digit increase in premium costs. It projects a county wide employee increase in cost if the current plan is continued of \$116161.00.

In an effort to avoid the premium increases, the County proposes a change to Wellmark plan C59-ALG. The County proposed plan presents a 6.7% premium increase

as opposed to 11.5% received from Wellmark. It contends this reduction in cost will save the County \$49063.00. However, a change in plans results in the increased costs to individual employees as shown in the County's final arbitration offer. Although employee sharing in premium costs would remain unchanged, employees will be required to pay increases in co-pay for doctor office visits, emergency room usage, prescription drugs (except for generic drugs) and co-insurance. The County claims the co-insurance increase from 10%/20% to 20%/30% is of little effect because the maximum out of pocket cost does not change due to the supplemental "buy down" fund administered through Group Services Inc.

The Union opposes a change in the health plan and it argues that the change will result in increased costs which negatively impact its members. The Union vigorously takes the position that the current UQ5-QPT plan be continued. It claims the office co-pay and drug increases do not apply to the out of pocket maximum. It argues that the cost savings proposed by the County is much smaller with respect to the bargaining unit alone. (See Union Exhibit G) Further, the bargaining group is being forced to absorb a disproportionate share of the projected savings in a total insured group of 95 employees. It also maintains that the County has long been a leader in insurance when compared to other comparable counties, and there is no viable reason why that relative rank should not be maintained. The Union presented a number of exhibits demonstrating its claimed increases in healthcare costs for its members. (Union Exhibits H-1, H-2, H-3, I-1, I-2, I-3, I-4, I-5)

In considering the criteria of past collective bargaining agreements between the parties, including the bargaining that lead up to such contracts, the undersigned Arbitrator finds that the parties have for the most part been able to resolve their differences through the collective bargaining process. For example, the parties were able to voluntarily agree to change to the current UQ5-OPT plan. There was mutual agreement to move to an April 1-March 30 insurance plan year. In summary, for years the parties have been able to agree on health insurance without a great deal of conflict. The result has been health insurance coverage better than most of the counties in the comparability group at a favorable cost to County employees. The historical comparison favors the Union position of a continuation of the current plan.

At the same time the County cannot be faulted for its desire to save insurance costs. The Board of Supervisors are only doing what they were elected to do, which is to operate the County in a fiscally prudent manner.

Historically the parties have rather consistently agreed upon a very favorable health insurance plan with extremely modest cost to the individual employee. It is readily understandable why the bargaining unit now resists what it perceives to be a drastic change. Many Arbitrators in Iowa have expressed the view that with impasse items which represent a radical change in long standing contractual arrangements, that, as a general premise, changes sought are better made by the parties themselves in the “give and take” of bargaining. A frequently stated rationale for this premise is because in the bargaining process there are frequently both “give and take” compromises in other contract areas to which an arbitrator is not privy. This is the so called “quid pro quo” for contract change which is not apparent in the present dispute. Many arbitrators place a heavy burden on the moving party in such circumstances to show a compelling need for change, or that the status quo has become highly burdensome to the party seeking the change. While consistent yearly increases in premium costs can certainly be considered burdensome, there is no evidence of lack of ability to pay. Rather the historical criteria is to the contrary; that the parties have long opted to maintain high quality health coverage at minimal employee cost. The County’s advocate several times referred to the current plan as a “rich” plan. The Union representative conceded that it was, in fact, a “rich” plan. The question to be resolved is whether or not there is a compelling need to change.

With respect to the statutory criterion of a comparison of wages, hours and conditions of employment of involved public employees with those of other public employees doing comparable work, the Arbitrator finds that the County compares very favorably with others in the comparability group.

Delaware County has the lowest deductible/out of pocket maximum of any in the group except for one other county which is the same. (See County Exhibit 8, p.4) The County compares most favorably on employee cost for office visits and emergency room care. With respect to the percentage of co-insurance, 3 comparable counties start at 20%, 3 start at 10%, 1 at 15%, 1 with 0% and the rest are unknown. The County proposed change to 20% appears to be in the middle. A review of the comparable counties

presented by both sides show 7 below \$10.00 on generic drug costs and 8 at or below the preferred drug cost. The Arbitrator concludes that the County compares favorably with others of like kind. However, there is no evidence in the record to accurately show costs incurred by the comparable counties in providing their respective insurance plans.

The present Arbitrator is unable to give much consideration to the criterion of interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effect of such adjustment on the normal standard of services. There is no evidence whatsoever in the record regarding the financial condition of the County. Neither side presented any financial exhibits. No claim was asserted with respect to lack of ability to pay the cost of the Union's arbitration proposals. Other than a comment from the Union Advocate that the cost of its proposals did not affect taxes which were already fixed, no evidence was presented regarding the power of the Employer to levy taxes and appropriate funds for the conduct of its operations. In the absence of any economic evidence, the Arbitrator can only assume that while not necessarily desirable from the opposing party's viewpoint, any of the offers are affordable.

Regardless of the foregoing analysis and discussion, the core of the parties insurance impasse dispute is the effective date of the County proposed plan.

For fiscal years 2008-09 through 2011-12 the collective bargaining agreement has continued the language which permits a health insurance plan commencing April 1. County proposals to change the plan effective April 1 and thus before the end of the contract term have been subject to the union's written consent. This is a rarely seen provision in labor agreements. The overwhelming majority provide that the insurance year coincides with the contract term. The County's arbitration offer for a 2012-13 bargaining agreement specifies an April 1, 2012 effective date for its proposed new health care plan. The Union objects to any implementation April 1, 2012, and its arbitration offer clearly proposes that all dates in the insurance article be changed to reflect the contract term. Neither side requests a multiyear contract. In the absence of mutual agreement to a multiyear contract, this award is limited to a collective bargaining agreement commencing July 1, 2012 through June 30, 2013. The evidence is undisputed that the parties current agreement expires June 30, 2012.

The County's arbitration position if awarded, which is objected to by the Union, has the net effect of requiring the Arbitrator to modify the existing collective bargaining agreement and requires an award with respect to insurance in excess of one year.

In the last impasse arbitration between the parties in 2010, Arbitrator Hugh J. Perry was requested to award an insurance change requiring employee contribution to premiums. However, he was not faced with the present dilemma because the parties had mutually agreed upon a two year contract (2010-2012) and neither side objected to the April 1 insurance date. Further the County's final insurance offer in that case did not request an effective date prior to July 1, 2010.

After extensive research, the present Arbitrator has not been able to find any legal authority which permits an impasse arbitrator to modify a current collective bargaining agreement. A thorough review of the statutory process, court decisions and Public Employment Relations Board rules regarding impasse procedures indicates that the impasse arbitrator's obligation is to determine what the future collective bargaining agreement shall be.

Further, an impasse arbitrator does not have authority to award a multiyear contract in the absence of mutual agreement of the parties to submit a proposed term in excess of one year to arbitration. See Benton County, 82 PERB 2180, see also 82 PERB 2182. The basis for this restriction is found in the fact that the duration or term of a collective bargaining agreement is essentially a permissive subject of bargaining. "Duration" or "term" was omitted from the mandatory list of subjects of bargaining contained in Section 20.9 of the Act. The net result is the limitation on Arbitrators to award a one year contract in the absence of a mutual request of the parties for a multiyear agreement. For whatever reasons the legislature has never seen fit to modify 20.9 regarding contract length. In the present impasse neither party has requested a contract in excess of one year. This negatively impacts on the Arbitrator's authority to award an insurance position which covers a 15 month period.

Also, the Arbitrator is subject to the restriction set out in Maquoketa Valley Community School District v. Maquoketa Valley Education Association, supra. That Iowa Supreme Court decision mandates an impasse arbitrator to select final offers of either party in total by subject matter. Unlike a Fact-finder, I cannot change or modify a

final offer or “split differences.” For example, awarding the County insurance offer but omitting the April 1, 2012 effective date violates the rule in the Maquoketa decision. Thus the choice is all of the County insurance offer or all of the Union’s insurance. Modifications or omission with respect to either one violates the above described rule of law.

Under the legal constraints imposed on impasse arbitrators, the Arbitrator has little choice but to award the Union insurance proposal as the most reasonable. While I am very aware of the resulting increased costs to the County, the likelihood of prolonged legal proceedings which challenge the authority exercised by the Arbitrator, and their attendant costs could well equal the current projected insurance savings to the County. The above described dilemma falls within the statutory criterion of “factors peculiar to the area” (Section 22.9(b) of the Act).

By way of the dicta the parties are urged to make insurance their first priority for negotiations for a 2013-14 agreement. A mutually negotiated result is far superior to one dictated by an arbitrator. The April 1-March 31 insurance plan year may be a concept whose time has come and gone. Midyear proposed changes in insurance coverage raise the specter of ongoing arbitration disputes between the parties. The give and take of the collective bargaining process is the better solution.

2. Wages

The current content of the parties provides for the following wage rates now in effect:

EFFECTIVE JULY 1, 2011 JUNE 20, 2012

Winter rates effective 12/1 to 4/1

	<u>SUMMER RATE</u>		<u>WINTER RATE</u>
	<u>Reg.</u>	<u>O.T.</u>	<u>Reg.</u>
<u>SIGN PERSON</u>	19.53	29.30	19.69
<u>EQUIPMENT OPERATOR</u>	19.69	29.54	19.69
<u>BRIDGE CREW</u>	19.53	29.30	19.69
<u>MAINTAINER OPERATORS</u>	19.53	29.30	19.69
<u>MAINTENANCE PERSON</u>	19.53	29.30	19.69

<u>SHOP MECHANICS</u>	19.71	29.57
<u>INSPECTOR</u>	20.05	30.08
<u>HEAD MECHANIC</u>	20.16	30.24
<u>PARTY CHIEF</u>	21.28	31.92
<u>ENGINEERING TECHNICIAN</u>	21.28	31.92

The County proposes a wage increase of 2%. The Union proposal is 2.5%

Taking into consideration the difference in winter and summer rates and the number of employees in each classification, the County calculates the average wage to be \$19.51. The Union did not protest the County average wage determination. (See County Exhibit 6 p.1) The county contends its final offer on wages will cost \$23481.06. (See County Exhibit 2) The Union calculates the cost of its final offer to be \$19439.28. However, it uses 19 employees rather than 25 as does the County and does not include the cost of IPERS and FICA in its calculations. (See Union Exhibit C) Also the County used 2080 hours in its computation and the Union used 2088 hours due to leap year. In its Exhibit C the Union claims a cost difference of \$3967.20. In other words it claims its position will cost \$3967.20 more than the County's. In Exhibit C the Union claims the County wage offer amounts to 39¢ per hour while its offer is 49¢ per hour. This 10¢ difference multiplied by 2088 hours for 19 employees generates the Union claim that its proposal only costs \$3967.20 more than the offer of the County.

Historically the parties have, for the most part, been able to resolve their wages differences through negotiations. The current agreement is the result of 2010 impasse arbitration, but, as the award of Arbitrator Hugh J. Perry clearly indicates, insurance was the "fighting issue: in that impasse dispute. There was little difference between the parties and Arbitrator Perry stated that "both proposals would result in a 2% wage increase (more or less)." (See Union Exhibit L) In the present controversy the 2% and 2.5% increases are consistent with the past bargaining history.

As was previously stated, both sides presented comparability exhibits with respect to other public employees doing like kind or similar work. (See County 7 and Union Exhibits D-2, D-3, D-4 and D-5) The Arbitrator has considered all the comparable counties, but has given the most weight to the ten used by the three most recent impasse

arbitrators and to a lesser extent Tama County, all as previously discussed above. Internal comparability was considered in connection with the insurance issue but was of minimum value with respect to wages. Stated again, the Arbitrator believes there is a significant dissimilarity between a law enforcement unit and a roads unit.

The County points out that in comparison, the County's current average wage is above the average wage of the comparable counties in every category. It argues that it is the leader among its selected comparables and its current wages are extremely competitive. The Union does not deny the County's competitive wage position but points out Delaware County does not have longevity pay as is provided in numerous comparable counties, and when you apply the value of the longevity, the County does not lead by much. The Union argues that a 2.5% increase is necessary to simply maintain the employee's current lifestyle.

In a list of known comparable county wage settlements, the average settlement is shown to be 2.3% for the ten counties used in prior arbitrations. It may be argued that this figure is close to either side in the present dispute. At the same time it should be noted that counties with a lower wage rate may end up with a higher percent to remain competitive, while the reverse may be said for those on the high end. Also the data presented does not reflect other concessions which could impact wage settlements.

The Arbitrator has considered the comparability presented by both sides and finds that Delaware County compares very favorably to wages. In short, the evidence presented suggests that unit employees are favorably paid when compared to similar employees in other comparable counties. A 2% increase in wages allows the County to maintain its relative rank with respect to the other counties.

The Arbitrator is very aware of the cost impact for the County generated by this award continuing the current insurance plan. Continuation of the current insurance provides the bargaining unit with a valuable insurance plan not enjoyed by comparable county employees. The County increase in cost without any employee sharing of that increase should be viewed in terms of a quid pro quo on wages to provide the County some limited cost relief. For that reason if no other, the County wage offer is the more reasonable. The Arbitrator finds the County wage offer should be awarded.

Again, remaining statutory criteria regarding ability to finance the proposed economic adjustments, effect on the normal standard of services and the power to levy taxes and appropriate funds have little impact in the present case because there is no evidence regarding ability or lack of ability to pay the cost of the impasse offers under consideration.

Based upon the above analysis and after a thorough review of all evidence, written exhibits, statements of the parties and with due regard for all the statutory criteria set out in Section 20.22 (9) of the Act the Arbitrator renders the award set forth below.

ARBITRATION AWARD

1. Insurance

I hereby award the final arbitration offer of the Union as follows:

Article 29

- a. Current collective bargaining agreement
- b. Change all dates on Article 29 to reflect contract term

2. Wages

I hereby award the final arbitration of the County as follows:

2% increase in all wage classifications

This award is effective for a collective bargaining agreement in effect from July 1, 2012 through June 30, 2013.

February 29, 2012



Terry D. Goeschel, Arbitrator
960 Orchard Lake Drive
Daleville, VA 24083
540-992-4446
(cell) 540-526-4454

CERTIFICATE OF SERVICE

I certify that on the 29th day of February, 2012, 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:

Mr. James M. Peters
Simmons Perrine Moyer Bergman PLC
115 3rd Street S.E. Suite 1200
Cedar Rapids, IA 52401-1266

Ms. Robin White
1633 265th Avenue
Earlville, IA 52041-8669

I further certify that on the 29th day of February, 2012, 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, IA 50319.



Terry D. Losschen
Arbitrator