

**Before the Arbitrator Nancy D. Powers**

In the Matter of Interest Arbitration between:

Black Hawk Count, Iowa, Employer

and

Public Professional and Maintenance  
Employees Union, Local 2003, Union

March 4, 2012

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For the Union: Joe Rasmussen  
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For the Employer: Michael M. Galloway  
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**Statement of Jurisdiction**

Black Hawk County and PPME Local 2003 have engaged in collective bargaining for a contract covering the bargaining unit of most employees of the County's Country View Care Facility and County Youth Shelter for a one year period from July 1, 2012 to July 1, 2013. After unsuccessful mediation, the

parties requested arbitration pursuant to §20.22 of the Iowa Code (Iowa Public Employment Act). The undersigned was selected by the parties to hear the case. A hearing was conducted on February 20, 2012 in Waterloo, Iowa. Both parties had an opportunity to present evidence and arguments in support of their respective positions.

### **Items at Impasse**

At the arbitration hearing, the parties agreed to shift differential language and the movement of a sentence in Overtime to the section on Work Week and removed them from consideration of the arbitrator.

The items at impasse are: **leaves of absence, hours of work, overtime, transfers, evaluations, insurance and wages.** The Union made proposals on all issues. The County made proposals on leaves, insurance and wages.

Under §20.22 of the Iowa Code, the arbitrator has the authority to select from either offer on each impasse item to comprise the final contract, along with the issues not in dispute.

### **Background Facts**

Black Hawk County includes the major cities of Waterloo and Cedar Falls, Iowa. It also includes two institutions of higher learning. The County's population is about 131,000.

The County has nine bargaining units covering various groups of employees. Three units are represented by AFSCME, three are represented by PPME, two are represented by Teamsters, one is represented by CWA. The only contracts open for the year July 1, 2012 to July 1, 2013 are two PPME units. All the other units have contracts open in 2013 or 2014.

The parties began bargaining shortly after the implementation of Chapter 20 – Iowa's Public Employment Relations Act in the mid-70's. The bargaining relationship was amicable until a tentative agreement was rejected by the Board of Supervisors in 2003, forcing an arbitration. From that time on, the parties have had an acrimonious relationship, with arbitration again in 2006 followed by numerous negotiability determinations, which removed all permissive language from the contract – 29 issues in all. The County has had 11 fact-findings and arbitrations since 2003.

Subsequent to the 2006 fact-finding and arbitration, the parties have entered one-year agreements with no changes in contract language. According to the Union, the employees have “bought” no change in insurance coverage with lower wage increases.

### **Factors to Consider in Fashioning an Award**

Iowa Code §20.22 provides as follows: 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 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.

The County and the Union agreed that the County's ability to pay for the Union's proposal was not at issue, thus the

last two factors listed in the Iowa Act are not at play, except for the “interests and welfare of the public”.

### **Comparability Group**

The parties have used a comparability group of the 6 eastern Iowa counties in the top 10 counties in Iowa in their earlier bargaining. As times have changed, only one other County in the comparability group continues to operate a County home – that being Dubuque County. The County provided settlement data from Counties in the 10 county largest group. Settlements from City bargaining units throughout the state and Counties throughout the state were also noted by the County.

The County presented settlement data for all the other bargaining units in Black Hawk County. The County's position was that this bargaining unit should be awarded the same across-the-board wage increase as all the other County bargaining units.

The Union resisted this argument, claiming there was no history of “pattern” bargaining in Black Hawk County, but that

“whipsaw” bargaining was more the norm. The Union contends the Iowa statute requires comparison with “other public employees doing comparable work” which does not include all the other employees in Black Hawk County. The Union provided data on the contract and settlements for Dubuque County as well as various bargaining units represented by PPME.

### **Final Offers of the Parties**

#### **1. Leaves of Absence**

**Union:** Add to the FMLA provisions coverage for military service members. Change the start of funeral leave use to a day designated by the employee.

**County:** Change eligibility for an unpaid leave by requiring all casual day leave and sick leave benefits to first be exhausted. Add to the FMLA provisions coverage for military service members, and change existing language.

#### **2. Hours of Work**

**Union:** Add to a section a definition of the work day and work week with a guarantee of every other weekend off.

**County:** No change

### **3. Overtime**

**Union:** Add to the voluntary overtime distribution language that opportunities to work will be listed by the shift and station of the overtime assignment.

**County:** No change

### **4. Transfers**

**Union:** Add a new section on Temporary Transfers related to temporary daily changes in job assignments to be done by seniority.

**County:** No change

### **5. Evaluation Procedures**

**Union:** Change grievance of evaluations to allow all unsatisfactory evaluations to be grieved.

**County:** No change

### **6. Insurance**

**Union:** Increase the employee's office co-pay from \$15 to \$20. Change drug provisions to match other county contracts. Delete the Lifetime Benefit Maximum per federal law.

**County:** Double in-network deductibles. Increase the employee's office co-pay to \$25. Change drug provisions with a dollar or % cap. Increase in-network out-of-pocket maximums. Delete the Lifetime Benefit Maximum. Increase out-of-network deductibles. Increase out-of-network out-of-pocket maximums.

## **7. Wages**

**Union:** Increase all hourly wage rates by 40 cents effective July 1, 2012, plus step increases for eligible employees during Fiscal Year 2013 as provided for in the current contract.

**County:** Increase all hourly wage rates by 16 cents effective July 1, 2012, plus step increases for eligible employees during Fiscal Year 2013 as provided for in the current contract.

## **Positions of the Parties**

### **Union:**

**Leave:** The current FMLA leave language was voluntarily bargained by the parties in 1995. No other groups, except for PPME represented employees bargained the right to

substitution and designation. After a few years of experience, the Union agreed to language requiring the use of sick leave for an employee's illness, when taking FMLA leave. The Union agreed to delete a section that permitted using the grievance procedure to resolve FMLA conflicts.

The County has tried to restrict this unit's FMLA language at every opportunity. The Employer's proposal would limit employee's rights to any unpaid FMLA leave until all casual and sick leave had been taken.

The parties voluntarily bargained the current language for funeral leave. With cremations and distant memorial services, death may occur far in advance of a funeral. The proposal of the Union does not alter the time that can be taken for funeral leave. It merely allows the employee to designate when the leave occurs.

**Hours of Work:** The Union sought changes in this article in 2006, but no changes were awarded by the arbitrator. At the arbitration hearing in 2006, Sheri Niles told the arbitrator that the

practice at the facility had been to schedule every other weekend off.

In October of 2011 the County issued a new sick leave attendance policy. PPME grieved it. The County resisted and was ordered to arbitration by the Iowa District Court.

During this period, the Union discovered the County was forcing employees who had taken a paid day off on their scheduled weekend, to make up their time off the next weekend when they were not originally scheduled to work. Then the employee has days off added during the week to avoid the payment of overtime. Thus, the Union proposed its change to the language. The County has used this new requirement of "make-up weekends" to punish employees for the use of paid time off to attend family activities. Sunnycrest employees have similar language to that proposed by the Union.

**Overtime:** The current language was negotiated by the parties in 1999-2001. Since 2003 there have been no changes. There are 4 units at the facility, all with different patient bases

and work duties. Employees who volunteer for overtime should be able to know what assignment they will get. Often a volunteer shows up for work only to discover they have been assigned to another unit. The County should welcome this change. It is better to have employees volunteer for overtime, rather than force involuntary overtime.

**Transfers:** The Union contends that employees often come to work to their regular unit only to discover they have been assigned another unit to fill in for an absent employee. Management arbitrarily picks an employee to work another unit often playing "favorites". The current transfer language is seniority based. These daily temporary transfers should be similarly seniority based.

**Evaluations:** The Union argues that it has pursued this language allowing all unsatisfactory evaluations to be grieved, for several years since the 2006 arbitration, to no avail. The Iowa Supreme Court has recognized the importance of this right under Chapter 20. The Union's proposal would only permit grieving evaluations that were an "overall unsatisfactory"

evaluation to be grieved. Over half of the unit is at the top of the salary scale and thus, are barred from grieving an unsatisfactory evaluation, even though it could lead to the employee's termination.

**Insurance:** All of the changes in employee health insurance over the years have either been voluntarily negotiated by the Union or the Union's position was awarded by the Arbitrator. 41 employees take single coverage. 53 employees take family coverage. 24 employees take no coverage. The Union argues that the County's proposal is unaffordable by most unit members and will result in fewer employees taking health insurance. The Union's proposal on prescription drugs is the same as found in other bargaining unit's contracts. If the County's wage and insurance proposal is adopted, employees will get essentially no wage increase at all. The County presented no justification for its proposal. The County's insurance fund is healthy. The County's contribution to the fund was reduced last fiscal year and is not planned to increase next year.

**Wages:** Step increases this year for 52 employees will cost 24 cents per hour or 1.6%. The Union's 40 cent per hour proposal is affordable and supported by bargaining unit history, comparable group's increases and is the most reasonable offer. By reducing wage increases for the other bargaining units to cents per hour instead of percentages, the average wage increase is 43 cents. This unit suffers when across-the-board increases are awarded in percentages, only widening the gap between these employees and other higher-paid county workers.

The Union argues that the County is financially healthy and this bargaining unit's proposals are "reasonable". These employees are some of the lowest paid in the County and least able to absorb increased insurance costs and low wage increases. There is no pattern bargaining in Black Hawk County. The County has "bullied" the weakest bargaining unit into a low-cost multi-year contract and tried to force it on all the other bargaining units. Employees are frustrated with the refusal of the County to bargain even the simplest house-

keeping proposals after a heavy-handed stripping of permissive language from the contract.

Sunnycrest of Dubuque County makes between 8% and 13% more in wages than the Black Hawk County home's most populated wage classifications. Sunnycrest employee's pay less towards their health insurance premiums. Sunnycrest workers got a 2% wage increase for 2012 and a .5% increase for 2013. Country View employees should be awarded the Union's offer on wages to make them competitive with Sunnycrest.

**The County:**

The establishment of an Enterprise Fund which covers the Country View care facility was to provide better transparency for citizens to be able to assess the financial facts about the County Care Facility. The \$325,000 first year surplus is not a big number when compared with the cost of the parties' offers and the volatility of federal and state reimbursements. While the County does not make an argument that the Union's offer is unaffordable, the question to the arbitrator is what is the most reasonable based on external and internal comparables and

feasibility. Settlement trends have plummeted over the last year. Property tax revenues have declined dramatically because of the housing crisis.

**Leaves:**

The County contended that employees should be required to use their sick leave before taking unpaid FMLA leave. The Union's argument about designating the beginning of funeral leave can be accomplished with the current contract language.

**Hours:**

The County contended that current language works fine and that the Union's language is a substantial change which has not been justified by the Union.

**Overtime:**

The County contended that current language is working and gives the County the flexibility it needs to fill vacancies.

**Transfers:**

The Union wants to add a whole new section to the contract. Current language works well.

**Evaluations:**

The County resists any changes. The Union has shown no problems or need for the contract language change.

**Insurance:**

The County has proposed no increase in the contributions by employees. The only increase they will see will be when they use the insurance. The County preserves a cap on prescription drugs. The County is trying to gain consistency across bargaining units in its insurance plans. Currently, there is no consistency. Increasing the deductibles to \$500 and \$1,000 would be more consistent with other bargaining units. The County estimates a 7% increase in insurance premiums for 2012. Statewide, employees are shouldering more health insurance costs. This unit should do the same.

**Wages:**

The County admits Black Hawk County care facility employees are paid less than Dubuque County's Sunnycrest employees. The County also argues that these financial times are not the time for makeup increases.

The County contended that external comparables for the 10 county group range from 1.5% to 2.3% with an average across-the-board increase of 1.92% for wages.

Statewide city settlements average 1.89% with 79% of the contracts including insurance changes.

Statewide county settlements average 1.96% with 63% making insurance changes

The County presented arbitration awards for cities and counties in 2009-10 and 2010-11. They averaged 1.82% and 2.08%.

Internal settlements and consistency are the most important considerations according to the County. Non-bargaining unit employees in Black Hawk County received a 1.5% increase. The clerical bargaining unit agreed to a .10 and .10 increase, as did the nursing bargaining unit and the maintenance unit. Secondary roads agreed to a .5% mid-year increase, as did the sheriff bargaining unit. The conservation bargaining unit took a wage freeze with no steps. The health unit took a wage freeze with step movement as did the CWA

Country View unit. The Union's proposal is way out of line with these settlements.

### **Discussion and Conclusion**

After considering the statutory criteria for determining the most reasonable offer on each impasse item and considering the parties' arguments in support of their positions, I make the following decision:

**Leaves of absence:** I find the Union's position is the most reasonable. The Union negotiated "designation and substitution" language shortly after FMLA was passed. The County offered no good reason to rescind this language. The Union's proposal to allow the employee to designate the commencement of funeral leave results in no cost or serious problems for the County.

**Hours of Work:** I find the Union failed to justify its proposal. An arbitration is pending over the County's institution of a new attendance policy. The Union has not had the guarantee of every other weekend off in the contract before. While the arbitrator agrees in principle that employees should have

predictability in their schedules and the Union's position that every other weekend off had been assured by the County in the 2006 arbitration, the parties should bargain this language. If the County continues to refuse, then arbitration might be the appropriate venue.

**Overtime:** I find the Union has not offered any evidence of a problem the language would solve. It is normal that employees might prefer assignment to one station over another. However, the contract provides the County the flexibility it negotiated to assign employees who volunteer for overtime where it needs them. The employees have the choice to sign up for overtime or not.

**Transfers:** I find the Union's proposal is not the most reasonable. Again, the County has retained flexibility to assign employees where they are needed. The Union made a vague claim that supervisors play "favorites" when making temporary assignments, but no solid evidence was presented. Employees must be ready to work where they are assigned.

**Evaluations:** I find the Union failed to make a case for grieving all unsatisfactory evaluations. It is true that an employee at the top of the wage scale can't grieve an unsatisfactory evaluation, but there was no testimony that this was an actual problem needing a solution. Failing such evidence, the current language of the contract is maintained.

**Insurance:** I find the County failed to make its case. The Union's proposal is the most reasonable. This unit is least able to afford changes in insurance. Granted, the County's offer doesn't require any more contributions from the employee. However, once an employee has a claim, the impact could be devastating. The Union has upped the co-pay from \$15 to \$20. The current insurance requires considerable payment by the employee who uses it. The County offered no financial justification which would convince this arbitrator that such a drastic change in deductibles was called for.

**Wages:** I find the Union has made its case as the most reasonable offer at .40 per hour increase for the unit. This unit is penalized by across-the-board percentage wage increases.

The average increase for other Black Hawk County bargaining units is 43 cents an hour. There is no clear internal pattern which begs this arbitrator to follow.

The County's offer would result in only a 1.14% increase for over half of the bargaining unit, which is at the top of the wage scale. With steps, the offer amounts to 1.99% increase. The Union's offer is a 2.85% increase without steps and 3.70% with steps.

Dubuque's Sunnycrest Manor is the only really relevant comparison to Country View. Granted, I believe the state-wide average settlements are information which is valuable, as are the averages for the top ten counties, but they are not conclusive. Sunnycrest employees make between 8% and 13% more than Country View employees in the same jobs.

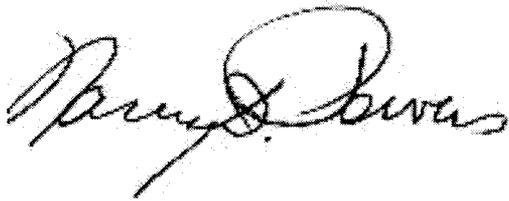
Dubuque settled for a 2% increase in FY 2012, while Country View got a 1.45% increase, placing the Country View employees farther behind Sunnycrest. Some job classifications at Country View go unfilled.

The Consumer Price Index is another relevant consideration. It experienced a 3% increase for 2011.

In conclusion, the Union's offer of a .40 per hour increase and language of Article 14 is the most reasonable offer and is awarded.

### **Award**

The County's position on hours of work, overtime, transfers and evaluations is the most reasonable offer. The Union's position on leaves of absence, insurance and wages is the most reasonable offer. These provisions, along with the remaining articles already agreed to by the parties shall comprise their 2012-13 contract effective July 1, 2012.

A handwritten signature in black ink, appearing to read "Perry J. Bivas". The signature is written in a cursive style with a large, prominent initial "P".

**Nancy D. Powers  
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March <sup>5</sup>~~4~~, 2012

Certificate of Service

I certify that I mailed a copy of my decision in Black Hawk County/PPME  
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