

Before the Iowa Public Employment Relations Board
IN THE MATTER OF INTEREST ARBITRATION

DELAWARE COUNTY, IOWA)
(Public Employer))
and)
AMERICAN FEDERATION OF)
STATE, COUNTY AND MUNICIPAL)
EMPLOYEES, AFL-CIO)
LOCAL #1835)
(Certified Employee)
Organization))
Impasse Resolution)
2013/14 contract)

ARBITRATION
AWARD

Ruth M. Weatherly J.D. MBA
Arbitrator
Issued: February 24, 2013

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PUBLIC EMPLOYMENT
RELATIONS BOARD

Public Employment Relations Board CEO #880/2 (Sheriff)
#200/2 (Roads)¹

I. Appearances

For AFSCME Local #1835

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For Delaware County

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II. Jurisdiction and Introduction

This proceeding comes before the arbitrator pursuant to Iowa Code Chapter 20. Delaware County² is a Public Employer

¹ PERB's January 11, 2013 letter notified the undersigned of selection to hear the interest matters of #880/2 (Sheriff) and #200/2 (Roads). Susan Bolte, PERB ALJ also identified the Parties' pending related grievance matter. The Parties subsequently requested the procedure described in footnote 8. Further, Attorney Peters communicated with the undersigned via email on January 30: "Robin and I have agreed that any formal awards will just be for the Roads unit. The Sheriff has a separate contract but whatever happens on Roads for wages and insurance will be followed by the Sheriff's unit."

under the Public Employment Relations Act. The County and AFSCME Local 1835³ are bound by their current Collective Bargaining Agreement⁴ (hereinafter "CBA") effective from July 1, 2012 through June 30, 2013. The CBA, at Article 1, paragraph 2, specifies the bargaining unit as:

" . . . all employees of the Delaware County Secondary Road Department employees but excluding therefrom the County Engineer, Assistant County Engineer, Maintenance Foreman, Bridge Crew Foreman, Office Manager, and all others excluded under Section 4 of the Act."⁵

On January 11, 2013, I received PERB's notification that the parties had selected me to hear this matter. We subsequently agreed upon the February 1, 2013 hearing date.⁶ The proceeding (beginning at about 9:30 a.m. and concluding at approximately 3:30 p.m.) was held in the Delaware County Courthouse in Manchester, Iowa. About 12 interested persons (including advocates and witnesses) were present for part or all of the hearing. As required by PERB rule, the undersigned audio-recorded the hearing. Neither party sought subpoenas or other evidentiary processes.

Each party submitted an Exhibit binder (both accepted into

² Hereinafter "the County"

³ Hereinafter "AFSCME" or "the Union"

⁴ County Exhibit 12; Union Exhibit CC

⁵ Certified by PERB, Case #318, November 14, 1975. Union Exhibit Q-1

⁶ At the request of the parties, as communicated via Attorney Peters' January 25, 2013 letter, a one-day hearing conducted on February 1, 2013 included coverage of the issues of wages and insurance, as well as two issues of disputed negotiability, affecting this interest/impasse case. As the parties requested (via the Peters January 25 letter) and as the undersigned agreed, "Rather than divide this grievance/interest arbitration into two separate arbitration hearings, we plan to present all issues to you on February 1st . . . it will result in a grievance award and interest arbitration award." At the request of the County, and with AFSCME's concurrence at the hearing, due to time constraints associated with securing an appropriate insurance contract from the County's carrier, the undersigned provided the grievance award on February 15, 2013.

the record) portions of which were reviewed by the advocates at hearing. In addition to the advocates' presentations, testimony was given by:⁷

For AFSCME Local 1835:
Douglas Bush
Equipment Operator

For Delaware County:
Shirley Helmrichs
Member, County Board of
Supervisors

The parties had the opportunity to present all evidence and oral argument in support of their respective positions, and had full and fair opportunity to examine one another's evidence and testimony, and to offer rebuttal. Post hearing briefs were neither sought nor filed.

At the beginning of the hearing, the Parties identified two issues of disputed negotiability. The Parties requested the arbitrator to petition PERB for a negotiability determination. That Petition was filed February 6, 2013.⁸ After consultation with Susan Bolte, PERB ALJ, the undersigned proposed (via February 11 email to Mr. Peters and Ms. White) and received the Parties' agreement for issuance of this Award (without consideration of the negotiability issues) by February 25, 2013. *This Award is subject to and contingent upon a subsequent PERB ruling on the negotiability matters.*

III. Impasse Items

The Parties agreed the impasse items are:

- 1) Insurance (CBA Article 29)
- 2) Wages (CBA Exhibit A)

⁷ The parties' advocates waived witness oaths/affirmations.

⁸ Subsequently identified by PERB Scheduling Order as Case No. 8613

- 3) Performance of bargaining unit work by department head/management staff (CBA Article 23)
- 4) Definition of "temporary employee" (CBA Article 2)

III. Additional Background

Relevant additional background includes:

- Delaware County, with the county seat at Manchester, is one county "in" from the eastern border of Iowa, and in the northernmost 1/3 tier of counties, situated on the east-west 4 lane divided Highway 20. Delaware County's 2010 population was 17,764.⁹
- The Bargaining Unit includes about 24 persons in 6 job positions.¹⁰
- There were no tentative agreements on the items at issue.¹¹
- The Parties' wage costing analyses differed, albeit apparently slightly.¹²
- 22 persons in the bargaining unit subscribe to the County health insurance plan: 1 single, 9 employee & spouse, 1 employee & child(ren), and 11 family¹³
- The health insurance plan applicable to bargaining unit employees covers 95 County employees, retirees, and COBRA participants
- The record indicates the Parties have conducted 5 impasse arbitrations, in 1994, 2000, 2005, 2010, and 2012. All involved wages, and health insurance was

⁹ County Exhibit 5, page 2

¹⁰ County Exhibit 1, page 1

¹¹ County Exhibit 4

¹² e.g., The County bases its 59 cent wage offer on 3% of "average was used during negotiations of \$19.77" (County Exhibit 2) while the Union used "average wage of \$20.75." (County Exhibit 3)

¹³ County Exhibit 1, page 3

also an impasse item in 2000, 2010, and 2012.¹⁴

IV. Relevant CBA Provisions

The Parties' 2012-2013 CBA includes provisions, at Article 13 "Mediation and Impasse Procedure at Contract Reopening," in the event the Parties "have not reached an Agreement by the November 15 immediately preceding the June 30 expiration date of this Agreement." Section 1 (c) of that Article specifies the decision criteria consistent with the Iowa Act, Section 20.22 (9). CBA Article 13 Section 1 (d) requires:

"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."

This Award is issued on February 25, 2013, as referenced in the final paragraph of "Jurisdiction and Introduction" above.

V. Statutory Criteria

Section 20.22(9) of the Iowa Public Employment Relations Act requires that an impasse resolution arbitration award be restricted to "the most reasonable offer," in the judgment of the arbitrator, "of the final offers on each impasse item submitted by the parties." The Act (at Section 20.22, subsection 7) specifies the criteria to be used by an arbitrator in assessing the reasonableness of the parties' positions:

¹⁴ Based upon listing at page 4 of Arbitrator Loeschen's 2/29/12 Award, and updated based upon that Award.

In addition to any other relevant factors;

- past collective bargaining contracts between the parties, including the bargaining that led to those contracts
- comparison of wages, hours, and conditions of employment of the involved employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved
- the interests and welfare of the public, the ability of the employer to finance economic adjustments, and the effect of such adjustments on the normal standards of service
- power of the public employer to levy taxes and to appropriate funds to conduct its operations

VI. The Parties' Final Positions

The final offers are summarized:

The County¹⁵

- Insurance: Change from Wellmark UQ5/QPT to C62/ALG effective April 1, 2013 through March 31, 2014¹⁶
 - * deductible - no change from 2012-2013 CBA
 - * OPM - no change¹⁷
 - * office visit co-pay increases from \$15 to \$20
 - * ER co-pay increases from \$100 to \$150
 - * Rx drug plan changes from \$10/\$25/\$40 to \$8/\$35/\$50
 - * Increase monthly employee contributions:
 - single from \$10 to \$20
 - non-single from \$20 to \$40
 - family from \$30 to \$50
- Wages: Increase of 59 cents added to full contract rate for all job classifications (representing 3% of average wage used during negotiations)
- Deletion of Article 23, Paragraph 1, which under the

¹⁵ County Exhibit 2

¹⁶ The related prior Grievance Arbitration Award, issued February 14, 2013 makes the proposed effective date change (from July 1, 2013 to April 1, 2013) moot. I also recognize that the County's identified ending date of the insurance provisions, March 31, 2014, is beyond what will be the ending date of the Parties' 2013-2014 CBA; see discussion of that issue, below.

¹⁷ The County uses Group Services Inc. (also referred to as the "Safety Fund") as administrator for self-insuring to "buy down" the deductible and out-of-pocket maximum (OPM) applicable under the Wellmark policy.

current CBA allows performance of bargaining unit work by Department head or management staff "but not to the extent of replacing a bargaining unit employee who is otherwise available for work."

- Definition of temporary employee - no change from current CBA, Article 2, Contract Term definitions, ". . . to extend for a period of less than six (6) months."

The Union

- Wages: 83 cents, 4% of Union average wage of \$20.75¹⁸
- Current (2012-2013) plan, except that employee contributions to premium payments increase by \$10 per month for each category of coverage
- Maintain current CBA language, Article 23
- Modify the current CBA Article 2 definition of temporary employee, revising "six (6)" months to four (4) months

VII. Analysis and Conclusions - Pursuant to the Statutory Criteria

Past contracts between the parties, including bargaining leading to those contracts

As noted above,¹⁹ the Parties' CBAs have been resolved through interest arbitration four times previously between 2000 and 2012. Thus, at least to the issues at impasse in those arbitration proceedings, bargaining did not result in contract settlements. Given that bargaining took place and in some years culminated in arbitration, the following is instructive for the instant decision:

- annual increases (for the representative Maintainer Operator position) from 1985/86 through 2012/13 averaged 3.63%²⁰
- the County admits that while the CBA terms provide wages and benefits that are "way ahead" the County is

¹⁸ County Exhibit 3

¹⁹ page 4, "additional relevant background"

²⁰ Union Exhibit E-1

also "not seeking to change that"²¹

- Based upon the record and evidence, the County proposed an employee contribution (\$10.00) toward "the cost of family health insurance" for the July 1, 2001 CBA - over a decade ago; the \$10 (single) \$20 (employee & spouse or child(ren)) and \$30 (family) contribution came via Arbitrator Perry's award in 2010,²² and has not changed since then

Comparison of wages, hours and conditions of employment, to those of other employees doing comparable work, with consideration given to factors peculiar to the area or to the classifications involved

Based on review of the Exhibit binders, I find the following:

- the County proposed list for the most part has history as a basis supporting its use
- distance from Delaware County and closer proximity to central Iowa detract from the use of Tama, Poweshiek, and Hardin Counties
- the counties for which the most current wage settlements (2012 or 2013) were listed (Buchanan, Fayette, Jackson, and Jones) averaged 2.125%²³; adding consideration the 7/1/13 increases for contracts beginning 7/1/11 or 7/1/12 (Benton, Cedar, Clayton, and Grundy)²⁴ results in 2.1375% average increase *However, none of those counties and bargaining units appear to have, in the viewed period, implemented significant structural changes in the health insurance plans.*
- the details of the County proposed changes to the health insurance plan are by no means onerous burdens on the bargained-for employees when compared to those for Fayette, Benton, Bremer and Buchanan counties²⁵ or when compared to the broader County list²⁶
- Local 1835 employees continue to be well-protected

²¹ As stated at hearing

²² County Exhibit 18

²³ Union Exhibit P, pages 2 & 3

²⁴ County Exhibit 6, page 1

²⁵ Union Exhibit P, page 4; no detail is listed for a tiered Rx drug plan for 2 of the counties

²⁶ County Exhibit 8, page 3

from financial risks of major or frequent health problems by the deductible and OPM structure of the County proposal for changes in the health insurance plan

I recognize that health insurance plan changes proposed by the County can have initial negative financial results for individuals in situations like that of Mr. Bush. The County's position is that they are "way ahead" on both wages and health insurance benefits, and that they are not seeking to change that.²⁷ Thus if the County changes health insurance benefits in order to moderate increases in premiums, the overall effect on Roads employees should be balanced with wages. This makes the Union position on wages the most reasonable.

Interests and welfare of the public, ability of the employer to finance economic adjustments, and effect of adjustments on normal standards of service

There was no testimony or evidence indicating that implementing either the proposals made by the Union or the County would affect the County's ability to finance economic adjustments, or that such would affect normal standards of service. County testimony suggested that some county residents/taxpayers have concerns about the "rich" benefits afforded the bargained-for employees. Such views or concerns are not uncommon when private versus public sector compensation issues are addressed. In any event, taxpayer perceptions as described are not a basis for decision making in this matter.

Power of the employer to levy taxes and appropriate funds for operations

²⁷ Statement on behalf of County at hearing

No evidence or testimony addressed the power of the County to levy taxes or to appropriate funds for its operations, thus it is not a basis for the decision herein.

Other relevant factors:

1) *CBA Language Changes*

Whether because "health insurance is clearly the fighting issue here"²⁸ or for other reasons, there was effectively no testimony or evidence regarding the contract language (that is, Article 2 and Article 23) impasse items. Thus, the undersigned has no knowledge of whether or to what extent the Parties have bargained on these issues, or how the same issues are addressed by other public employers and their bargained-for employees with job duties similar to those of the Roads employees herein. Further, with the exception of limited facts gleaned from Arbitrator O'Brien's October 23, 2012 Grievance Arbitration decision,²⁹ I have no knowledge of how or to what extent the proposals for changes in Article 2 and Article 23 language are based upon operational workplace or working condition problems. No decision should be made by a neutral on an issue for which sufficient background is lacking.

Granting a party's requested language change would allow it to gain through arbitration what it has not been able to achieve via negotiation,³⁰ or, as is possible in this matter, when negotiation has not been sufficiently pursued. As stated by Arbitrator Hoogeveen:

²⁸ Quoting Arbitrator Perry from his 2/15/2010 Interest Arbitration Award in which the County and the Union were also parties.

²⁹ Union Exhibit R

³⁰ paraphrasing the language used by Arbitrator Hoogeveen in the June 7, 2010 ruling regarding Glenwood CSD/Glenwood EA, at page 10.

“. . . neutrals are (and should be) reluctant to impose a significant structural change unless there is compelling evidence that such a change is needed for the purpose of equity and that the other party has shown intransigence in addressing the issue.”³¹

2) *Health Insurance*

The ever-present economic reality of significant increases in the charges for health care, and the rates of increases in health care insurance premiums are well known. Too often, increases in health care prices and in insurance premiums are untenable burdens on employers, and on employees as individual recipients of health care. While it might well be the desire or the objective of an employer to insulate its employees from the economic consequences of health care price or insurance premium rate increases, that realistically may not be possible to accomplish. The problem is, unfortunately, exceedingly complicated, and bigger than any employer, the public or private sectors of employers, and bigger than any group or groups of employees, bargained-for or otherwise. The County's increase in insurance costs, "Countywide," with no change in benefits and structure from the 2011-2012 provisions is \$218,877, or 20.8% increase for the family policy, compared to just over 11% increases for each of the prior 2 renewal periods.³² As Mr. Peters stated at hearing, the County "is not on a good trend" for health insurance rate increases.

³¹ At page 11, in the above cited case; this language is representative of similar views expressed by neutrals in many other cases. See, for example, Arbitrator Loeschen's discussion at page 12 of his 2/29/2012 interest award for the parties herein, and see Arbitrator Stone's discussion, Iowa PERB 05 ARB 213, at page 13.

³² County Exhibit 8, p. 1

Mr. Douglas Bush's testimony was compelling. While his situation, with regard to numbers of medical visits and long term use of prescribed medications may not be the norm among the bargained-for group of employees, his situation is also likely not entirely unusual. While the Union by implication³³ is cognizant of sharing the burden of insurance rate increases, it is not viable to expect the County to fully insulate any or all employees from the economic consequences of particular individual health situations.

3) Effective dates of health insurance changes

The County final offer proposed changes under a Wellmark policy "effective April 1, 2013 through March 31, 2014." My Award, 2/15/2013 on the grievance matter related to health insurance changes as of April 1, made moot the question of that proposed beginning effective date. I do not take the position that because an April 1, 2013 effective date is not possible, the entirety of the County final offer on health insurance is thus "off the table," and not available for me to select as the substantively more reasonable of the two positions herein. It would be inconsistent with the purposes and objectives of this impasse resolution process to eliminate from consideration the County proposal on health insurance on what amounts to a technicality. Further, both Parties were obviously aware that an April 1, 2013 "start" date for health insurance changes was an open question, subject to the pending grievance arbitration. Neither the County nor the Union can be held to have assumed or understood that if the April 1, 2013 date would

³³ Based upon the Union's final offer provision for \$10 monthly increase in employees' premium contributions

not be used as the start date for the health insurance changes, the result would be a default demise of the County health insurance proposal.

After having many times read and contemplated Arbitrator Loesch's analysis of the similar issue in his February 29, 2012 interest ruling³⁴ involving the Parties to this current matter, I take the following position. Clearly, I do not have the power under the applicable statute to mandate insurance provisions for the Parties' CBA between beyond the end date of the next CBA. By logical extension of the analysis of the "start date" issue discussion above, while the actual text of the County proposal contemplates a contract with Wellmark ending date of March 31, 2014,³⁵ the decision on the merits of the Union versus the County proposals on health insurance are based upon the substance of each, not the date of an insurance contract with a carrier, and *this decision is limited to the applicable new CBA period*. A decision that defaulted the insurance issue to the Union based on a factor other than the substance of the proposals would be contrary to what must be the expectation of the parties, that is, that they would receive due consideration of the merits and balance of interests of their respective positions.

VIII. Award

For the reasons stated above, and in particular after due consideration of all statutory requirements and all the

³⁴ Specifically, from mid-page 13 through mid-page 15 thereof.

³⁵ An additional technical deviation of the substance of the County proposal versus the text of its proposal relates to the deductible and the OPM. Apparently, what the County provides through the "Safety Fund" is separate from and better than either the "UQ5/QPT" or "C62/ALG" Wellmark contracts specify.

evidence, testimony, and arguments presented by the parties, as to the issues at impasse, I find most reasonable and thus:

- 1) For the period of July 1, 2013 through June 30, 2014, unless the Parties determine otherwise pursuant to Article 29 under that July 1, 2013 CBA, the County's proposal for health insurance changes is hereby awarded. Please note that implementing such changes under a Wellmark product of a particular identification number is not considered necessary to the implementation of this award.
- 2) For the period beginning July 1, 2013, wages are increased by 83 cents per hour.
- 3) The County position is awarded on Article 2; that is, the provision concerning "temporary employee" remains as it appears in the 2012-2013 CBA
- 4) The Union proposal on Article 23, paragraph 1 is awarded; that is, the language remains as it appears in 2012-2013 CBA.

Respectfully submitted,



Ruth M. Weatherly, J.D., MBA, Arbitrator

date: 2/24/2013

Attached: Certification of Mailing

CERTIFICATION of MAILING

I hereby certify that on the 25th day of February 2013, I served the foregoing Opinion and Award on the following parties, by e-mail attachment at their e-mail addresses as noted below; and further, copies of the Opinion and Award were served on the parties at their respective postal addresses, by USPS mail with appropriate postage prepaid on February 25, 2013.

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