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PUBLIC EMPLOYMENT
RELATIONS BOARD

BEFORE THE IOWA PUBLIC EMPLOYMENT RELATIONS BOARD (PERB)

IN THE MATTER OF ARBITRATION)
)
BETWEEN)
)
THE STATE OF IOWA, DEPARTMENT OF)
ADMINISTRATIVE SERVICES, EMPLOYER)
)
-- and --)
)
AFSCME COUNCIL 61,)
UNION.)
)
_____)

Marvin Hill
Arbitrator

Health Insurance

**Successor collective bargaining
agreement**

Appearances

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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

AFSCME Iowa Council 61 (the “Union” or “Labor Organization”) is a public employee union representing approximately 18,900 state employees. Negotiations between AFSCME Council 61 and the Department of Administrative Services, the administrative arm of the Executive Branch of Government for the State of Iowa (the “Employer,” “Administration,” or “management”) for a successor collective bargaining agreement for 2013-2016 were successful except for one economic item, health insurance. The parties have stipulated to impasse procedures which culminate in binding arbitrations scheduled for February 11 -14, 2013, before the undersigned Arbitrator.

In a nutshell, AFSCME Council 61 represents approximately 106 local unions across the State of Iowa, bargaining about 140 contracts (R. 154). It has proposed that current health insurance and premium calculation remain the same for the 2013-2015 successor collective bargaining agreement (Appendix A) as it did in the 2011-2013 collective bargaining agreement (UX “D”). As discussed in this opinion, these plans include four (4) programs, designated as follows:

1. Iowa Select;
2. Program 3 Plus (an indemnity plan);
3. Blue Advantage; and,
4. Blue Access.

Post-65 retirees are on their own plan (R. 274).

The first two programs are considered preferred provider programs (PPO) while the latter are managed care plans (MCO, similar to an HMO). The indemnity or traditional plan is where the employee can pretty much go to any doctor, any time, and you just pay your co-insurance (R. 249). There is no network and out of network like there is in the Iowa Select (R. 298). “It’s a true indemnity plan.” (R. 299). For all intents and purposes, there are no differences between Blue Advantage and Blue Access. The only difference is that Blue Advantage has a primary-care physician, so there is a “gatekeeper” in some aspects of the plan. Otherwise, they are almost identical with respect to plan design and rates (Ed Holland, R. 285-286). Significantly, and using the State’s numbers, the HMO plan in Iowa is actually less expensive than the average, with approximately 67% (contracts) of the members enrolled in the HMO. (Holland: R. 299-300). The Union points out that approximately 80 percent are in plans that cost substantially less than the State’s comparables, i.e., public employers in contiguous states and those around the Midwest, “so there would be more than contiguous states.” (R. 301-302). Premium contributions are as follows:

1. Single plan: State pays the full cost of single coverage (“In each year of the Agreement, the State shall contribute the full cost of single coverage.”)(UX D at 61).

2. Family plans: State's monthly contribution to all plans is 85% of the Iowa Select Family. Employees may apply this dollar amount to and of the other plans of their choice. ("Effective January 1, 2012, the State's monthly contribution to all plans shall be eighty-five percent (85%) of Iowa Select. Employees may apply this dollar amount to the plan of their choice.")(UX D at 61).

3. Both spouses are employed by the State: State pays 100% of the family premium ("When a hisband and wife are employed by the State, at the option of the couple, one family plan may be elected. The State's contribution to double-spouse family coverage will be the full premium.")(UX D at 62).

There is no dispute that the parties' bargaining history indicates that since 1977, single employees pay nothing for health insurance (R. 152). Moreover, approximately 85% to 88% of the bargaining unit do not pay anything for family coverage, i.e., they do not pay an additional premium "because they have selected a plan that saves the State approximately \$4,100/year, and for doing that, they pay a little but more as they go, and they don't have to pay an additional premium." (R. 152). State Risk and Benefits Administrator Ed Holland set the number at 89% (R. 240)("Well, I would say basically in all of our plans, the contribution – the folks that actually pay a contribution are about 11 percent, 89 percent is paid by the State, so that's a hundred percent.").

While the Administration's first offer eliminated some plans, the State's final proposal includes all four (4) plans. Significantly, the State's final offer contained no plan design changes, with the exception of a wellness program and an incentive for participating in that wellness program (R. 182-183).¹ However, the Administration is proposing significant changes or, in the Union's view, a so-called "breakthrough" proposal with regard to contributions for singles, families, and double spouses:

Employees who elect Iowa Select or Program 3 Plus, the State will contribute 80% of the total premium of Iowa Select, either single or family, and the employee may apply that dollar amount to either Iowa Select or Program Free Plus.

Employees who elect Blue Advantage and Blue Access, the State will contribute 80% of the total premium of Blue Advantage, single or family, and the employees may apply that dollar amount to either Blue Advantage or Blue Access.

As noted, the State is also offering a so-called "wellness program" that has a \$90/month incentive that employees can use to lower the cost of their health insurance premium if they meet

¹ Q. [By Mr. Shearer]: And your final offer, as you have mentioned, contained all four existing plans, whereas your first offer just had – or eliminated some of those plans?

Why did you bring back in all four plans? Were there coverage issues for some of the employees that you heard?

A. [By Mr. Carroll]: Yes. Initially – I can't speak to why the Blue Advantage came back in, but the Program 3 Plus, we had heard from the Union that there were employees in some of the fringe areas of the State that could not get adequate coverage without the Program 3 Plus, and so in consideration of that, we included it in our final offer. (R. 183).

the criteria of the wellness program. The State is also offering an “opt-out incentive” of \$125 a month to those employees that opt-out entirely from the State’s insurance program.

Finally, the State had eliminated the double spouse 100% premium payment.²

Interestingly, the record indicates that the State “landed” on this offer from a progression of a number of proposals. As outlined by DAS Director Mike Carroll: “It went from AON’s initial recommendation to basically being AON’s initial recommendation with co-pays and deductibles reduced, somewhat, and the wellness incentive increased a bit, to another step where we abandoned AON Hewitt’s recommendation and went to the current plan, with the exception of the one Plan 3 Plus adjustment, and, again, increased the wellness incentive to the same thing we had given SPOC. In our final analysis it went through the current plan throughout, no plan changes whatsoever, and we increased the wellness incentive as that no one was paying, effectively, more than 15 percent of their premium.” (R. 188-189).

In summary, under the State’s proposal all employees will have to pay 20% of the premium, an increase of 100% for singles and doubles as well as 5% for families. This, of course, has resulted in a bargaining impasse between the parties.

* * * *

Pursuant to an agreement concluded by the parties, hearings were held in Des Moines, IA on February 11, 12, and 13, 2013.³ The parties appeared through their representatives and entered exhibits and testimony. Ms. Edie Daniels, CSR, and Ms. Theresa Kenkel, CSR, both of Petersen Reporting, 500 SW 7th Street, Ste 305, Des Moines, IA, executed a transcript of the proceedings, which was received on Monday, February 18, 2013. The advocates filed pre-hearing *Briefs*, which were exchanged through the offices of the Arbitrator. In addition, post-hearing *Briefs* were filed and exchanged through my offices on February 26, 2013. The record

² DAS Director Mike Carroll, asked to explain the State’s offer, provided the short, “Cliff-Notes” version as follows:

Our final offer was for the State to contribute 80 percent of the total premium of Iowa Select, and that the employees may apply that dollar amount to either the Iowa Select overtime Program 3 Plus, which are the two most extensive and rich plans, and the employee would contribute 20 percent of that.

It also proposes that the State contribute 80 percent of the total premium of Blue Advantage, and the employees may apply this dollar amount to either Blue Advantage or Blue Access, which are the two more managed care plans.

So we kind of bifurcated the plans to make it fair to the participants in each plan.

Then we also included a wellness incentive. For people participating in the wellness program, their premium would be reduced by \$90 per month.

Then we included an opt-out option for people that had insurance, through other means, of \$125 a month added to their pay. (R. 187-188).

³ On February 8, 2013, the State, through General Counsel Ryan Lamb, filed a *Motion in Limine* (lim-in-nay; n. Latin for “threshold,” a motion made at the start of a trial requesting that a judge rule that certain evidence may not be considered). The State specifically requested excluding “anything related to negotiations between the parties for the 2013-2015 collective bargaining agreement not related specifically to the topic/issue of health insurance, including, but not limited to: wages or other fringe benefits.” AFSCME responded that same day. The considerations raised by the state in its Motion were resolved in a short pre-trial meeting on February 11, 2013.

was closed on that date. The parties agreed that the award would be issued on or before March 6, 2013.

II. ISSUE FOR RESOLUTION

As noted, one *economic* issue remains unresolved: health insurance. All other issues have been resolved. To this end, Appendix "A" is the parties' 2013-2015 successor tentative agreement which, at the direction of the parties, I incorporate as part of a "stipulated award" in this proceeding.

III. POSITION OF THE EMPLOYER

The position of the Administration, as outlined in its pre- and post-hearing *Brief* and opening statement, is summarized as follows:

A. Scope of the Arbitrator's Authority

The Administration first points out that under Iowa Code Section 20.22, the parties are to submit their final offer on each impasse item in dispute. Iowa Code Section 20.22(7) requires that, when making this decision, the Arbitrator "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 the 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 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.

Moreover, Section 17.6 of the Act provides:

No collective bargaining agreement or arbitrator's decision shall be valid overtime enforceable if its implementation would be inconsistent with any statutory limitation on

the public employer's funds, spending overtime budget, or would substantially impair or limit the performance of any statutory duty by the public employer.

Further, Iowa 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."⁴

It is mandated by the legislature that the arbitrators consider each of the factors of Section 20.22(9) when rendering an award. The weight to be accorded each factor is left to the panel to determine under the circumstances of each case. *Moravia Community School Dist. v. Moravia Educ. Ass'n*, 460 N.W.2d 172,180 (IA Ct. App.1990). See also, *Maquoketa Valley Community School District v. Maquoketa Valley Education Association*, 279 N.W.2d 510, 513 (Iowa, 1979)(requiring an interest arbitrator to select final offers on each impasse item "in toto," with the term "impasse item" being defined as a Section 20.9 subject of bargaining).

Management submits that the above-cited criteria shall be referred to as bargaining history, comparability, interests and welfare of the public, and power to tax. These categories are implemented, as well as other cited criteria (such as the absence of a meaningful *quid pro quo*), discussed *infra*, under the "other relevant factors" criterion.

B. The Burden is on the Moving Party, in this case the State of Iowa, to Show that its Proposed Changes to the Health Insurance Language are more Reasonable than the Union's Final Offer Maintaining the "Status Quo"

The Administration readily acknowledged that it has the burden to show that the changes it proposed to health insurance are more reasonable than the Employee Organization's proposal which is no change at all.

In support of its position that its final offer on health insurance should be awarded, management points out that the requirements are set forth in Health Benefits, Article IX (Wages and Fringe benefits), Section 4 (Health Benefits), of the 2011-2013 collective bargaining agreement (UX "D" at 60-63). In summary, four (4) health insurance plans are offered to covered employees and their families: (1) Program 3 Plus, (2) Iowa Select, (3) Blue Advantage, and (4) Blue Access. Program 3 Plus is an indemnity plan and is the most expensive. Iowa Select is a PPO. Blue Advantage and Blue Access are both MCOs (similar to HMOs).

Currently, the Employer is required to pay eighty-five percent (85%) of the total health insurance premium of the Iowa Select Plan for employees who elect family coverage. This amount is then applied to any of the four plans selected by the employee (resulting in a zero percent premium contribution from employees who elect family coverage in either of the MCO plans).

⁴ For the record, this award is issued with due regard and application for all of the cited statutory criteria.

Further, under Article IX, Section 4 (A), the Employer is required to pay one hundred percent (100%) for all single plans and double spouse plans.

Management insists that the evidence record warrants premium sharing by the bargaining unit which will place Iowa more in line with other employers, both public and private sector.

C. The Employer's Health Insurance Proposal in a Nutshell

Management asserts that in an effort to become more in line with similarly-situated public and private employers, to account for actual and projected increases in health care costs caused by changes in the health care industry and market place, and to adjust to the requirements of the Patient Protection and Affordable Health Care Act ("PPACA")(also known as "Obama care"), the Employer has proposed changes to Article IX Section 4, of the current collective bargaining agreement. While the particular changes to the current agreement are contained in the Employer's final offer, a description of those changes is illustrative of their reasonableness and minimalist nature, management asserts.

The Administration submits that health insurance benefits currently in place and their respective contribution levels in effect as of January 1, 2013, will continue through December 31, 2013, without change. Throughout the life of the new collective bargaining agreement, the Employer will also continue to offer all four (4) insurance plans described above (Program 3 Plus, Iowa Select, Blue Advantage, and Blue Access) without any substantive changes to the design of the plans (except that the plans will meet PPACA requirements, i.e., they will include the provision of preventative care benefits without cost to the employee). Unlike the current health benefits offerings, in 2014 and 2015 the Employer will also offer a comprehensive wellness program to employees covered by the collective bargaining agreement that will include: a health risk assessment, biometric screening, and engagement activities. Employees covered by the parties' collective bargaining agreement who successfully complete the prescribed components of the comprehensive wellness program⁵ will receive a monthly decrease in their insurance premium of \$90, which equates to annual premium decrease of \$1,080.

Additionally, the Employer will pay covered employees \$125 per month if they opt out of the Public Employer's health insurance coverage. Management points out that this change puts money in the pocket of employees who have health insurance coverage available elsewhere, and at the same time decreases the amount of taxpayer dollars spent on premiums for health insurance that is not currently being used.

Importantly, the percentage of the total health insurance premium paid by the Public Employer will be decreased to eighty percent (80%). Admittedly, argues the Administration, this decrease will result in an increase in the percentage of the total health insurance premium paid by

⁵ As will be discussed *infra*, this is all that is known about the Administration's wellness program proposal. Absent is any indication what is required to "earn" the \$90 rebate or credit.

the employee. The impact on the employee's increase in premium percentage, however, is minimized by the wellness incentive of ninety dollars (\$90) per month that will directly reduce the employee's premium contribution, management asserts. After accounting for the wellness premium incentive, the effective percentage of the total health insurance premium that an employee who elects single coverage in the Blue Access plan will be less than one percent (1%) (which equivocates to \$4.38 per month) The maximum percentage of the total premium paid by any employee who elects family coverage under any of the plans will be approximately fifteen percent (15%) as long as they participate in the wellness program. *Id.*

All in all, the State submits that its proposal on health insurance is an incremental step toward the market-place average and best practice, which have both changed dramatically as is summarized in the evidence record.

D. The Parties' Bargaining History Favors the State's Proposal

Management contends that the parties' bargaining history reveals that its proposal is not unprecedented, at least with respect to plan design and the premium contribution by employees. The Administration points out that up until the start of the twenty-first century, the State paid seventy percent (70%) of the total health insurance premium for family coverage (i.e., employees electing family coverage paid as much as thirty percent (30%) of the total health insurance premium).

It should be noted, however, that just like the current collective bargaining agreement, employees were under prior agreements typically able to take that premium contribution from the Employer and apply it to less costly plans (and thereby decrease the employee's premium contribution percentage).

For convenience, management submits the State's percentage premium contributions for *family coverage* under past collective bargaining agreement's are summarized as follows:

1999-2001

January 1, 2000, 70% of Plan 3 Plus

2001-2003

July 1, 2001, 70% of Plan 3 Plus

January 1, 2002, 80% of Iowa Select

January 1, 2003, 80% of Iowa Select

2003-2005

July 1, 2003, 80% of Iowa Select

January 1, 2004, 82% of Iowa Select

January 1, 2005, 85% of Iowa Select

2005-2007

January 1, 2005, 85%

January 1, 2006, the difference between Iowa Select and \$155.48

July 1, 2006, 85%

2007-2009

85% of the Iowa Select Premium

2009-2011

On January 1, 2010, the Public Employer's contribution would be equal to the difference between the total premium for Iowa Select and \$224.96 (the Employee share).

On July 1, 2010, the Public Employer would contribute 85% of the Iowa Select Plan.

On January 1, 2011, the Public Employer would contribute 85% of the Iowa Select Plan.

Management argues that the collective bargaining agreements between the parties since 1999 show an increase in the percentage of premium contributions by the Employer in almost every collective bargaining agreement with little or no change to the design of the plans. None of these increases in contribution by the Employer resulted from an arbitrator's decision that the increase was reasonable or necessary.

Admittedly, the past agreements also show that employees who elect single coverage were required to pay zero percent (0%) of the total health insurance premium. Requiring those single employees to now pay less than one percent (1%) if they select Blue Advantage is reasonable in light of the increases in health care costs, changes in health care law, and industry best practices. Even employees who elect single coverage under the costly and arguably antiquated indemnity plan (Program 3 Plus) will only be required to contribute less than nine percent (9%).

With respect to the bargaining between the parties during these negotiations (for the 2013-2015 successor collective bargaining agreement), the Employer made significant efforts to present an acceptable proposal to the Employee Organization on health insurance. Originally, in its initial proposal to the Employee Organization on November 30, 2012, the Employer followed its expert's recommendations with regard to making changes to the design of its plans (and eliminating its costly and arguably antiquated indemnity plan (Program 3 Plus) as well as one of its MCO plans (Blue Advantage)). Despite retreating from changes to plan design and tripling the value of the wellness premium incentive (from \$30 to \$90), the Employee Organization refused to enter into any meaningful discussions concerning changes to health insurance. This fact is supported by the Employee Organization's final proposal which offers no change whatsoever to health insurance and the Public Employer's final proposal which includes minimal change.

In summary, the bargaining history between the parties clearly supports the conclusion that the Employer's final position on health insurance is far more reasonable than the Employee Organization's. The bargaining history shows that parties have in the recent past refused to account for the changes in the health care industry. During these negotiations, the Union again refused to address the change in circumstances and offer any legitimate movement in health insurance. At some point in time, and that point is now, making minimal changes to health insurance in this collective bargaining agreement is more reasonable than making no change at all.

E. Comparability Criteria, Specifically Settlement Trends, and Internal and External Data, Favors the State's Proposal

Management argues that relevant comparability data includes current settlement trends, external comparables, and internal comparables. According to the Employer, the comparability evidence shows that its final position is more reasonable than the Employee Organization's final position.

Internal Comparables. To this end, the Administration submits that its final position on health insurance contains health insurance provisions that are substantially the same as the insurance provisions that the Employer recently negotiated and agreed to with the State Police Officers Council ("SPOC"). SPOC members include, but are not limited to, employees of the State of Iowa Departments of Public Safety and Natural Resources. The 2013-2015 SPOC collective bargaining agreement health insurance provisions agreed to by the Public Employer and SPOC are as follows:

SECTION 2 Health and Dental Insurance

* * *

The State will pay eighty percent (80%) of health insurance coverage under Alliance Select. The State shall also provide a wellness program to members. Members who participate in the wellness program will receive a sixty two dollar (\$62) monthly reduction in their portion of the health insurance premium and their premium contribution will not exceed fifteen percent (15%). Council members and the State shall each share equally (50/50) in any increase or decrease in the monthly premiums for Alliance Select in 2014-2015.

Participation in the wellness program is voluntary but will require that employees complete an annual biometric screening and a Health Risk Assessment (HRA) by a date determined by the State but prior to the start of the plan year. Some employees may also be required to participate in health coaching which will consist of participating in a monthly call with a health coach.

As noted, the Public Employer will pay eighty percent (80%) of the total health insurance premium for both family and single coverage. The premium paid by an employee will then be offset by a wellness incentive of sixty-two dollars (\$62) per month. When put into effect, SPOC members will pay no more than fifteen percent (15%) of the health insurance premium if they participate in wellness. Additionally, SPOC members who choose to opt out of the State's health insurance coverage will receive a \$125 monthly payment. As stated above, the settlement with SPOC is similar to the Public Employer's final position on health insurance with the Employee Organization.

Moreover, the Administration notes that employees of the Board of Regents, another wing of Iowa's executive branch, also contribute a greater percentage of the total health insurance premium (20%) than members of the Employee Organization.

External Comparables. Management submits that the health insurance benefits currently offered AFSCME are more expensive and richer than most other similarly-situated employers. In fact, the Employer's health insurance offerings rank at or very near the top of the comparator groups.

In support of this conclusion, the Administration submits the following for consideration:

Aon Hewitt Health Benefits Study. Management points out that it consulted with Aon Hewitt in the summer and fall of 2012 regarding its health insurance benefit offerings. Aon Hewitt provided the Public Employer with The Aon Hewitt State of Iowa Benefits Project Final Report-Revised. The Aon Hewitt Health Benefits Study included the use of three data sources including the 2012 Aon Hewitt Health Care Survey, the Aon Hewitt Health Value Initiative ("HHVI"), and the Aon Hewitt Benefit Index. While all three (3) sources were relevant, the primary source for Aon's conclusions and recommendations for the Public Employer was the Benefit Index. This tool allowed Aon Hewitt and the Employer to create a customized comparator group, including thirteen (13) states, and thereby ensure a fair and accurate comparison. Using the Benefit Index, Aon Hewitt compared the average plan values for employees of the Public Employer with average plan values for employees of states contiguous to Iowa, as well as other states and selected private employers in Iowa. Aon Hewitt's findings favors the Administration's final offer.

Management notes that Aon Hewitt utilized four comparator groups: (1) State Peers: 13 states were used as bench-marks (Colorado, Florida, Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, New Jersey, Ohio, Oklahoma, South Dakota and Wisconsin); (2) Non-State Salaried Peers: 14 employers with an Iowa presence with significant salaried employee populations (3M Company, Allina Hospitals & Clinics, BJC Health System, Cargill Incorporated, ConAgra Foods, Inc., Deere and Company, E.I. du Pont de Nemours and Company, Hallmark Cards, Inc., Nationwide Mutual Insurance Company; Pella Corporation, The Principal Financial Group, Rockwell Collins, Inc., United Health Group and Wells Fargo & Company), (3) Non-State Union Peers: 10 employers with an Iowa presence and union employee populations (3M Company, Alcoa, Inc., AT&T Midwest, Caterpillar, Inc., ConAgra Foods, Inc., Deere & Company, E.I. du Pont de Nemours and Company, Exelon Corporation,

Great Plains Energy and Rockwell Collins, Inc.) and (4) All Peers, consisting of all 36 employers previously listed.

Within the Benefit Index, management argues, the peer average is normalized to 100. Thus, an index value of 105 indicates that the value of that benefit is 5% above average of the comparator group. A ranking is also assigned to show how the organization ranks relative to the other employers.

When compared to the thirteen (13) states, the Benefit Index reveals that the Public Employer's employer paid benefit value for medical benefits is 124.9 and the total value is 111. The Public Employer's plan ranked first in employer-paid value and between first and second for total value.

When compared to all thirty-six (36) peers, the Public Employer's health benefits had an employer-paid benefit value of 124.9 and total value of 111.7. Again, the Public Employer's ranking was at or near the top (between first and second for employer paid value and between second and third for total value).

The Public Employer's results for the Hewitt Health Value Initiative ("HHVI") are also striking. HHVI is used to evaluate plan design, plan performance and competitive positioning in the marketplace. It is the largest health care study of its kind. It revealed that the employer subsidy for the Public Employer averages are 96.4% of the total cost of its health plan, whereas it is 79.5% for other employers in the HHVI database (420 employers and 1,800 health plans and 15.2 million participants across the United States). For union employers in the HHVI database, the average is 87%. The plan costs for the State are \$12,685 per employee per year, for union employees in the HHVI database, it is \$11,375, and for all employers it is \$10,602. According to this analysis, the State's costs are \$2,083 per employee, per year above the benchmark. For employee only coverage, the cost to the State is \$8,085 per year per employee while the benchmark is \$5,690 per employee per year, a difference of \$2,395. According to this data, the State's health plan costs are eighteen percent (18%) to twenty percent (20%) higher than the overall labor market and larger employer groups.

In addition to the benchmarking data, Aon Hewitt also reviewed claims data from the State's health plan which revealed that State employees would benefit from a plan design revision in conjunction with a wellness program. Currently, CBA-covered employees of the Public Employer are admitted to the hospital at a thirty percent (30%) higher rate than other customers of the Public Employer's insurance provider (Wellmark). Hospital care for CBA-covered employees with cardiovascular disease is nearly double that of other Wellmark customers. In addition, claims costs associated with musculoskeletal conditions in CBA-covered employees have increased in the last year by almost \$2 million. Further, based on the claims analysis, CBA-covered employees have abnormally high conditions associated with lifestyle choices such as obesity and anxiety, which in turn have a direct impact on high blood pressure, high cholesterol, back and joint disorders, diabetes and depression. If the Public Employer focuses its wellness plan on these specific conditions, it will reduce health plan costs, and most importantly improve the health of the CBA covered employees.

Aon Hewitt also made four (4) significant recommendations regarding the Employer's health benefits plan. First, Aon Hewitt recommended that the State move the employee premium cost share to at least twenty percent (20%) employee paid, which is typical in the marketplace for health plans. Second, Aon Hewitt advised that the Public Employer move from single/family premium tiers to at least three (3) or four (4) tiers (employee, employee plus spouse, employee plus children, and family rates), as that is what is common in the marketplace. The third recommendation from Aon Hewitt included some fairly significant changes to medical plan design including the addition or increase of co-payments, deductibles, coinsurance and out-of-pocket maximums in order to align with the market and to increase consumerism by employees, so employees are more thoughtful in considering the use of health care dollars prudently to reduce the over-utilization of the plan and plan costs. The fourth and final recommendation made by Aon Hewitt is that the Employer offer a robust wellness program and provide an incentive for employees to participate so that medical issues are diagnosed and treated earlier and in an appropriate setting.

In summary, in management's eyes the Aon Study leaves little doubt that its current plan is "rich" in comparison to other similarly-situated employers (R. 177) and, further, that change is needed for both the benefit of the Public Employer and the members of the Employee Organization. Given that the State's benefits are by and far ahead of the state and private comparables, management contends that its final offer should be awarded.

F. The Current Health Insurance Benefits Offered by the Public Employer will be Dramatically Affected by PPACA, also Known as "Omaha Care"

Management asserts that the current health plan is so rich it will be taxed as a "Cadillac plan" in 2018 if no changes are made. To this end management argues that the projected tax liability for 2018 is \$2,060,000. Without change, the tax liability will continue to rise every year after 2018. Simply stated, changes to the plan are necessary as a result of the change in federal law.

G. Additional Studies Supports Management's Proposal

Management maintains that in addition to the Aon Study, another relevant study is the National Compensation Association of State Governments (hereinafter "NCASG") 2012 Joint Fringe Benefits Survey. Participating states providing data include Nebraska, Kansas, Indiana, Missouri, Wisconsin, North Dakota and South Dakota.

In management's view, the study shows that the Employer pays a greater percentage and a greater total premium amount for employee health benefits than most if not all of the other states. The NCASG survey also shows that the average employer premium contribution for

these seven (7) states is 85% for single PPO coverage, 76% for family PPO coverage, and 88% for both single and family HMO coverage.

H. Aon Hewitt Recommendations vs. Public Employer’s Final Proposal

Management points out that Aon Hewitt made a number of recommendations which included: (1) employees pay a twenty percent (20%) premium contribution for all health benefit plans, (2) significant plan design changes made to the health benefit plans in order to achieve market norm, (3) additional tiers of coverage, and (4) eliminating Program 3 Plus and Blue Advantage. Aon Hewitt also made recommendations for the State’s wellness program.

The Administration submits that its final proposal is a far cry from the proposal recommended by Aon Hewitt, insofar as it is more costly and minimalistic. Still, management argues that some change must be made in order to account for the change in conditions and circumstances. Thus, the Administration proposes a twenty percent (20%) employee premium contribution for all health benefits plans and the addition of an employee wellness program.

Moreover, under the Employer’s proposal if an employee participates in the wellness program then the employee’s premium will be reduced by \$90 a month, resulting in employee premium contributions as low as .93% but not exceeding 15.21%. The Public Employer will also pay employees who opt out of the Public Employer’s health insurance coverage \$125 per month. The table immediately below demonstrates the favorability of the Public Employer’s proposal, especially when the wellness incentive is applied, compared to other states.

Table 1: State Employee Monthly Premium Contribution and State Employer Contribution Percentage

State	PPO Employee	PPO Family	HMO Employee	HMO Family	State Contribution % Employer	State Contribution % Family
Average of 13 States	\$103.96	\$390.12	\$120.42	\$472.85	89%	78.80%
State proposal (Iowa Select/Blue Advantage)	\$154.99	\$358.37	\$94.38	\$216.55	80%	80%
State proposal (Iowa Select/Blue Advantage) with wellness incentive applied	\$64.99	\$268.37	\$4.38	\$126.55	91.61%/99.07%	85.02%/88.31%

Data from Aon Hewitt Benefit Index

The Administration believes that its proposal is an incremental effort to slow the trend via (1) a wellness program with a premium differential incentive and (2) consumerism (increase in

premium contribution by employee). While the cause and effect relationship of a wellness program is obvious (at least in management's eyes), the increase in premium contribution by an employee on its face may appear to be mere cost shifting. In fact, that is not the case. Some premium cost shifting is necessary as it forces employees who currently pay nothing for their health insurance to realize that health care costs are connected to their health. As noted by Aon Hewitt, a totally free health care plan incents unhealthy choices which lead to chronic medical conditions. Said another way, bringing consumerism into the equation is a benefit to both parties as it improves employee health and decreases total cost.

Based on the evidence about external comparables, it is clear that the Public Employer's final proposal is more reasonable than the final offer of the Union.

I. The Interests-and-Welfare-of-the-Public Criterion Supports Management's Final Offer

Although the Employer is not entering a plea of "inability to pay," the Administration submits that prudent expenditures must be made in today's uncertain economy. While it is true that the State is currently experiencing a General Fund Budget Surplus, it could quickly become depleted due to economic downturn and/or increased general fund appropriations, as seen in FY 1999 – FY 2001 and FY 2006 – FY 2010, respectively.

Moreover, providing a healthcare plan that will be taxed as a "Cadillac" plan under PPACA and incents employees to make poor healthcare decisions is not a fiscally responsible option for either the Public Employer or the Employee Organization no matter the current status of the budget. Thus, it is clear that the Public Employer's position is one that is better suited for the best interest and welfare of the public than the position of the Employee Organization, in the Administration's eyes.

J. The Power-to-Tax Criterion Supports Management's Final Offer

The Administration contends that if AFSCME's Final Offer were accepted and the State was to experience a dramatic swing in the surplus as seen in FY 1999 – FY 2001 and FY 2006 – FY 2010, the State of Iowa may be forced to increase taxes in order to maintain a sufficient balance in the General Fund. This possibility supports management's final offer.

* * * *

In conclusion, the evidence record demonstrates that the Employer should prevail in this arbitration as its proposal is more reasonable than that of the Employee Organization. Despite AFSCME's refusal to address the need to change the current health insurance offerings in the collective bargaining agreement, one cannot deny that the data demands the contrary as evidenced by the changes made by other similarly-situated employers. Over the last decade,

other public- and private-sector employers have made significant changes to plan design, implemented wellness programs, and increased the premium contribution required from employees. The Public Employer and the Employee Organization have ignored these trends and issues, and taken no action to account for their impact. At some point in time, as costs continue to increase and laws like PPACA take effect, the Public Employer and the Employee Organization will have no choice but to make a change to the health insurance benefits in the parties' collective bargaining agreement.

III. POSITION OF THE UNION

As noted, AFSCME proposes no change to Health Benefits language, specifically Article IX Section 4, of the 2011-2013 collective bargaining agreement. Throughout the current negotiations, AFSCME firmly stood by its position that despite the change in conditions and circumstances, the health insurance provisions in the parties' collective bargaining agreement would not be significantly changed on a voluntary basis.

The position of the Union, as outlined in its pre- and post-hearing *Brief*, is summarized as follows:

A. "Breakthrough" Analysis is Required in this Case

The Union initially submits that since the State has asserted a substantial change in the contribution employees will have to pay towards the premium, it bears a heavy burden. To this end the Union points out that the undersigned Arbitrator has laid out the approach taken with these types of proposals in *City of Des Moines, IA and Des Moines Police Bargaining Unit Ass.*, PERB Case 05-FF-0203 at 11-13 (2005) as follows:

The Administration proposes a co-called "break-through item" or significant change in the existing benefits scheme, namely, that the successor collective bargaining agreement contain, for the first time, a premium-sharing provision for employees who elect family coverage. The proposal, by all accounts, is modest (See, Health Plan Exhibit 1): the employee still pays nothing towards the cost of the premium for single coverage, but will pay \$28.52/month for family coverage (\$28.52 represents approximately 5.0% of the difference between the family and single premium)

There is no question that the City has one of the most generous health insurance programs both in the State of Iowa and, also, relative to other large cities in America, the LEXUS of plans. (See, City Ex. 7) There is also no serious dispute that with insurance costs increasing at exponential rates, private and public sector employees are seeking to shift some of the burden to employees. Gone are the days where employers pay the "full

boat” of insurance costs. In this respect, the Union is on its last legs of holding on to an employer pay-all insurance provision, at least when external data is considered.

Still, the Administration, as the moving part, has the burden to plead and prove that sufficient justification exists for an interest arbitrator/fact-finder to award (recommend) a “breakthrough” item such as its proposal in this case, especially when the Union demonstrated that it gave up concessions to the Employer to maintain this benefits. See, City of DeKalb (Goldstein, June 9, 1988) (where the Arbitrator stated: “[i]nterest arbitration...is designed to merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria.”); Village of Arlington Heights and IAFF (Briggs, January 29, 1991) (“Interest arbitration is artificial. It is a substitute for the real thing – a voluntary settlement between the parties themselves through the collective bargaining process. Thus, the primary function of an interest arbitrator is to approximate through the decisions what the parties would have agreed to had they been able to settle the issue themselves. It is therefore appropriate for an interest arbitrator to evaluate the traditional factors which affect the outcome of public sector labor negotiations and to shape the interest arbitration award accordingly. It is important to recognize the nature of such a task. It is simply educated guess work, for two reasons. First, the interest arbitrator must essentially guess what the parties would have agreed to, subject to the traditional influences, market and otherwise. Second, the interest arbitrator must evaluate the influences themselves, most of which are extremely complex and ill-specified ... the party wishing to change the status quo must present compelling reasons to do so.” (Emphasis added)), Will County and MAP, Chapter 123 (McAlpin, October, 1998)(“When one side wished to deviate from the status quo ... the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is places on those who wish to significantly change the collective bargaining relationship.”)

Arbitrator Elliot Goldstein explained what the proponent of a breakthrough change must show as follows:

In order to obtain a change in interest arbitration, the party seeking the change must at minimum prove:

- (1) that the old system or procedure has not worked as anticipated when originally agreed to;
- (2) that the existing system or procedure has created operational hardship for the employer (or equitable or due process problems for the union); and
- (3) that the party seeking the change must persuade the neutral that there is a need for its proposal which transcend the inherent need to protect the bargaining process.

While the Administration has demonstrated that when compared to other cities, its proposal is more reasonable than the Union's status quo position, I am convinced that, as of the hearing date, the parties have not explored alternative ways of dealing with the insurance –cost problem in collective bargaining. What is before me is a one-year collective bargaining agreement, short in duration by any consideration. **With some hesitation, I am not recommending any change in the current program.** Of significant in this decision is the fact that in prior bargaining the Union has apparently given up some benefits to which it otherwise would have achieved but for the present insurance allocation. Accordingly, I am reluctant to recommend a change when on party “paid for” the current allocation in prior bargaining. As I have said in a prior case:

A neutral should keep in mind that, at one time a party may have “paid dearly” for a particular item and, thus, should proceed with caution before drafting an award that would upset the “quid pro quo.” In this respect, the parties' bargaining history may be particularly important in formulating fact-finding recommendations or interest awards. For example, a party desiring an insurance package where the employer pays the full cost of coverage, with no employee deductible, may elect to take a relatively small salary increasing in return for such a package. In a fact-finding proceeding the following year, it is argued that the employees have fallen behind and, thus a substantial salary adjustment must be granted to remove this inequity.

After posing the above question, my argument is that arbitrators and factfinders must take into account the prior bargaining that led up to the current contract, otherwise irreparable damages may be done to the parties' collective bargaining relationship. Simply stated, concessions made in good faith at the bargaining table should not be used as a starting base to gain additional contract concessions from a neutral. Both labor and management should fear neutrals that do not take into account the “deals that are cut” in prior negotiations. What was gained at bargaining should not be lost the following years by arbitral fiat. Nothing can be more detrimental to good faith negotiations.

Bettendorf Community School District and Bettendorf Education Association (February 2, 1991) (unpublished)(emphasis mine), as cited in *City of Des Moines, IA & Des Moines Police Bargaining Unit Association* (2005) at 11-13 (emphasis in original).⁶

The Union argues that the above analysis applies here and warrants a decision in favor of retaining the *status quo* in health insurance benefits.

⁶ In *City of Des Moines & Des Moines Police Bargaining Unit* (2005), Arbitrator Lon Moeller adopted my recommendation on wages (3% across the board) and insurance (*status quo*).

B. Internal Comparables Favors the Union's Position

While the Union is mindful of one settlement, that of SPOC, it nevertheless asserts that the SPOC matter is not relevant to AFSCME's case.

Specifically, the Union points out that the State Police Officers Council (SPOC) has settled their 2013 -2015 Agreement with the State. SPOC is a bargaining unit representing conservation officers, park rangers, special agents, fire inspectors, troopers, and trooper pilots. They are the first and only group to settle with the State. The other units which have not settled and whose contracts are open and in general can be described as follows:

State of Iowa Bargaining Units (Bargained by the Iowa Department of Administrative Service):
AFSCME Master Agreement -General Government and Regents - AFSCME Iowa Council 61
UE/IUP Agreement – Science Unit/Social Services Unit - UE/IUP

State of Iowa Bargaining Units (Bargained by the Board of Regents):
University of Northern Iowa Faculty Agreement (Faculty at the University of Northern Iowa) – Employee Association
University of Iowa Hospital (Hospital RN3's and Others) – SEIU
University of Iowa COMMS (Graduate Students) – SEIU

Iowa Judicial Branch (Bargained by the State Court Administer)
Judicial District #1 – Judicial District Employees – PPME
Judicial District #2, #3, #4, #5, #6, #7 and #8 – Judicial District Employees – AFSCME
Iowa Council 61

The Union concedes that under the new agreement, the SPOC insurance contribution will be 20% for all participants. Assuming without conceding that this unit is an appropriate marker for internal comparison, the Union argues that their agreement was a tradeoff. The SPOC unit accepted a bonus, which not including step increases and other economic improvements, resulting in a 1.5% pay increase during each contract year. **During negotiations, AFSCME elected to maintain their current insurance and forego any wage increase, a fact important to the resolution of this case, the Union submits.**

Moreover, SPOC as a bargaining unit does not compare well with AFSCME. First, there are only approximately 600 members in the unit. Their bargaining unit comprises of approximately ten (10) classifications; while AFSCME has approximately 1,500. Likewise, the pay grades for SPOC are not diverse. For example, their least paid bi-weekly for a Special Agent I is \$1,636, with a top of position of Senior Trooper Pilot at \$2,837.60. See Union Exhibit J, pg. 46. While AFSCME's wages range from pay grade 10, minimum of \$817.60 biweekly, all the way up to a maximum under pay grade 55 of \$9,740.00 biweekly. As a result of the forging, using SPOC as a comparable would be the equivalent of the "tail wagging the dog."

Nor do they share any past bargaining history of comparability with AFSCME's health insurance, the Union points out. Based upon their prior agreements, all family employees have been required to pay 15% of the premium plus a 50/50 split of any premium increase. Also, they only have one plan: Alliance Select. As noted, state employees covered by the AFSCME collective bargaining agreement have four (4) health insurance plans upon which their premium is paid. Under the new SPOC agreement, employees will have to pay 20% on both single, double spouse and family health insurance plans. It is not comparable, according to the Union, and thus should not serve as a bench-mark jurisdiction.

C. External Analysis Favors the Union's Case

The Union notes that Iowa Code Section 20. 22(9)(b) specifically states that the proper comparison is to other public employees doing comparable work. No mention is made of the private sector. Thus, any comparison to the private sector is not valid.

More relevant is the comparison of other public employees doing similar work, and as it was pointed out in Union Exhibit A and through the testimony of Steve Kreisberg, the State of Iowa compares favorably when it comes to premium *costs* for unionized public employees.

D. The State's Ability to Pay and Fund AFSCME's Proposal is Beyond Question

The Union contends that the State's revenues are robust and that the State has more than ample budget resources including reserves to fund the proposal. Furthermore, the current health insurance plan has resulted in the reduction of premiums, not an increase. Finally, the State has not entered an inability to pay argument. As such, this criterion favors the Union's final offer.

E. The Parties' Bargaining History Favors the Union's Proposal

According to the Union, bargaining over the current health insurance benefits and contributions began in 1997. Over 15 years of bargaining has resulted in a benefits program that is both beneficial to the State and to its employees, resulting in lower overall premiums to the State of Iowa which has resulted in savings to its employees.

The Union points out that before the Arbitrator is a "breakthrough" proposal that radically alters this past bargaining history without any rational basis or *quid pro quo* to the employees. The State has not, nor can it prove that health insurance as bargained has not worked as anticipated when it was bargained, that the existing health insurance creates hardship or that there is any need which transcends the inherent need to protect the bargaining process. More importantly, there is no inability to pay based upon economic factors, and to the contrary, rates have fallen as a result of the current benefit package.

An arbitrary 20% across the board insurance premium contribution is inherently unfair. As pointed out above, a pay grade 55 has a maximum bi-weekly salary of \$9,740.00. The payment of a 20% premium contribution by that employee would constitute a considerably smaller percentage of their overall income when compared to a bargaining unit member under a minimum pay grade 10 earning only \$817.60 bi-weekly. Such a desperate impact within the bargaining unit is better left to negotiations than being imposed by an arbitrator.

For the above reasons, the Union requests that its health insurance proposal be awarded.

IV. DISCUSSION

A. Statutory Criteria, Iowa Code §20.22 (9)

There is no dispute that the jurisdiction of an arbitrator in a “final-offer” Iowa arbitration is limited to selecting either the final position of the Public Employer or the entire final position of the Employee Organization. Thus, an arbitrator does not have discretion to award part of either party’s positions. *See, Maquoketa Valley Community School Dist. v. Maquoketa Valley Ed. Ass’n*, 279 N.W.2d 510 (Iowa 1979). Additionally, an arbitrator shall not vary from the presented final positions, even on language issues. Clear and simple, Iowa Code Section 20.22(11) requires the arbitrator to select the most *reasonable offer* on each impasse item applying the statutory criteria. Unfortunate (or not), there is no Solomon-like “splitting of the child.”⁷ Therefore, with respect to insurance, the undersigned is to select the State’s final offer in total or the Union’s offer, in this case *status quo*, or no change to the current collective bargaining agreement. As noted, the award must be made with due consideration given to the statutory criteria and be the more reasonable offer consistent with the statutory criteria mandate by law. *See, Delaware County & AFSCME Council 61, Local 1835, Supplemental Arbitration Award, CEO #200/2 (Loeschen, 2012)*(awarding the Union’s final offer on insurance, noting that an arbitrator is without power to split the difference).⁸

Furthermore, “It is well settled that where one or the other of the parties seeks to obtain a *substantial* departure from the party’s *status quo*, an “extra burden” must be met. Additionally, where one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits at a *de minimis* level) or to markedly change the product of previous negotiations, the onus is on the party seeking the change.” *See, e.g., Village*

⁷ Cf. 1 Kings 3, 24-27. “And the king said, ‘Bring me a sword.’ When they brought the king a sword, he gave this order, ‘Divide the child in two and give half to one, and half to the other.’ Then the woman whose son was alive said to the king out of pity for her son, ‘Oh, my lord, give her the living child but spare its life.’ The other woman, however, said, ‘It shall be neither mine nor yours. Divide it.’ Then the king spoke, ‘Give the living child to the first woman and spare its life. She is the mother.’”

⁸ Interestingly, in his opinion the Arbitrator wrote: “By way of the dicta the parties are urged to make insurance their first priority for negotiations for [the successor collective bargaining agreement]. A mutually negotiated result is far superior to one dictated by an arbitrator.” *Loeschen* at 15.

These parties would do well to copy Arbitrator Loeschen’s mandate.

of *Maryville and Illinois Fraternal Order of Police*, Case S-MA-10-228 (Hill, 2011). As stated by Arbitrator James Cox in *Village of Broadview and FOP*, ILRB Case No. S-MA-06-145 (Cox, 2007)(“*Village of Broadview*”), arbitrators have held that:

In addition to compelling need and evidence of a *quid pro quo*, the moving party must offer evidence of repeated good faith attempts at the bargaining table to secure agreement from the other side. ‘*The party seeking the change has the burden of showing not only a clear justification for the proposal but also that it was unable, despite repeated attempts, to obtain relief at the bargaining table.*’ *Village of Elk Grove*, at pp. 67-68. If the collective bargaining process is to be protected, evidence of the parties’ negotiations must be examined. Without such evidence, there is danger to the bargaining process if a change to the *status quo* were granted. . . *A change to the status quo should not be granted when the moving party conveys a proposal late in the bargaining process... Only after the moving party is able to carry the burden of compelling need, quid pro quo, and exhaustive, good faith collective bargaining, should external and internal comparability and other Section 14 factors be examined by an arbitrator.*”

Village of Broadview, *supra*, at 3-4 (emphasis supplied)

While the above principles have been articulated by numerous arbitrators hearing cases in Illinois (see citations), arbitrators operating under the Iowa statute have applied the same criteria. See, e.g., *City of West Des Moines & IBT 238* (Perry, 2010)(stating, “while not necessarily revolutionary [a two-tiered insurance proposal for new employees], this proposal is a substantial departure from the way health insurance has been bargained here in the past. I am not persuaded that the Union has had the full opportunity to evaluate this approach or these plans. * * * I am not convinced that the parties are unable to bargain some substantial changes to be achieved between these parties [that] would be far preferable to one imposed by the City or this Arbitrator.”); *City of Clinton, IA & Clinton Police Department Bargaining Unit*, PERB Case CEO #162/3 (Miller, 2006)(rejecting the employer’s plea for a change in insurance benefits, observing: “Interest fact-finding and arbitration often confronts neutrals with resolving demands that represent innovative and/or significant structural changes to an agreement previously negotiated by the parties. Such situations should be approached with extreme caution. Accepting such demands too readily may well result in establishing a new or substantially modified agreement provision that the party seeking change would not have been able to achieve in a face-to-face negotiations. Such a result is contrary to the fundamental objective of fact finding and interest arbitration. The evidence and arguments by the party seeking change should be compelling. In addition, since the proposal significant change surfaces in negotiations, there must be an equitable *quid pro quo* for some other concession, with the evidence in support of the change showing what the parties would have deemed to be an appropriate compromise or trade-off. Absent such strong evidence in support of innovate or significant structural change, demands of this nature should ordinarily be rejected by neutrals and left to the parties to resolve in future rounds of collective bargaining negotiations.” *Miller* at 7); *City of Cherokee, IA & IUOE, Local 234* (Yaeger, 2006)(declining to recommend changing the status quo, reasoning: “another important factor to be considered when a party is proposing a significant change in the negotiated *status quo* of a fringe benefit is whether the proponent of the

change has shown that a legitimate problem exists which requires attention, that its proposal reasonably addresses the problem, and that the proponent of the change has offered an appropriate *quid pro quo* in return the agreement to the change.” *Yaeger* at 23); *Dubuque County & Dubuque County Deputy Sheriff’s Association* (Loeschen, 2008)(“Many arbitrators in Iowa have expressed the view in interest arbitration cases, with impasse items which exclusively address contract language or which represent a radical change in long-standing contractual arrangements, that as a general premise, the changes sought are better made by the parties themselves during the ‘give and take’ of the collective bargaining process. An often stated rationale for this premise is because in collective bargaining negotiations there are frequently both give and take compromises in other contract areas to which the arbitrator is not privy. This is the so-called *quid pro quo* which is not apparent in the present case.” *Loeschen* at 8).

While it can be argued that there are no *significant* “breakthrough” items in this case, the Administration’s desire to establish employee contribution rates at 20 percent, more than a *de minimis* jump from the *status quo* of zero, this item comes close to significant breakthrough, and should be treated as such.

B. Focus of an Arbitrator in a Interest Dispute

As I pointed out in the *Des Moines Police* decision, *supra*, arbitrators and advocates are unsure whether the object of the entire interest process is simply to achieve a decision rather than a strike, as is sometimes the case in grievance arbitration, or whether interest arbitration is really like mediation-arbitration, where, as noted by one practitioner, “what you do is to identify the range of expectations so that you will come up with a settlement that both sides can live with and where neither side is shocked at the result.” See, Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics and Equity: Discussion*, in *Arbitration – 1976, Proceedings of the 29th Annual Meeting, national Academy of Arbitrators* (B.D. Dennis & G.C. Somers, eds) 159, 186 (BNA Books, 1976).

A review of case law and the relevant literature indicates that arbitrators attempt to issue awards that reflect the position the parties would have reached if left to their own impasse devices. Recently, one Arbitrator/Mediator traced the genesis of this concept back to Arbitrator Whitley P. McCoy who, in the often-quoted *Twin City Rapid Transit Company* decision, 7 LA (BNA) 845, 848 (1947), stated the principle this way:

Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of the contract rights ought to be. In submitting . . . to arbitration, the parties have merely extended their negotiations, having agreed upon . . . [T]he fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to? . . . [The] endeavor is to decide the issues as, upon the evidence, we reasonable negotiators, regardless of their social or economic theories, might have decided them in the give and take process of bargaining.

See, *City of Galena, IL*, Case S-MA-09-164 (Callaway, 2010).

Similarly, Chicago Arbitrator Harvey Nathan, in *Sheriff of Will County and AFSCME Council 31, Local 2961*, Case S-MA-88-9 (1988), declared that the award must be a natural extension where the parties were at impasse:

[I]nterest arbitration is essentially a conservative process. While obviously value judgments are inherent, the neutral cannot impose upon the parties' contractual procedures he or she knows that parties themselves would never agree to. Nor is his function to embark upon new ground and to create some innovative procedural or benefits scheme which is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining." *Will County Board and Sheriff of Will County v. AFSCME Council 31, Local 2961* (Nathan, Chair, 1988), quoting *Arizona Public Service*, 63 LA 1189, 1196 (Platt, 1974); Accord, *City of Aurora*, S-MA-95-44 at p.18-19 (Kohn, 1995).

. . . The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations is to place the onus on the party seeking the change....In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

- (1) that the old system or procedure has not worked as anticipated when originally agreed to or
- (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and
- (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.

Sheriff of Will County at 51-52 (emphasis mine), as cited in *City of Danville*, S-MA-09-238 (Hill, 2010); See also, *Sheriff of Cook County II*, at 17 n.16, and at 19. See generally, Marvin Hill & A. V. Sinicropi, *Winning Arbitration Advocacy* (BNA Books, 1998)(Chapter 9)(discussing the focus of interest neutrals).

Chicago Arbitrator Elliott Goldstein had it right and said it best: “Interest arbitrators are essentially obligated to replicate the results of arm’s-length bargaining between the parties, and to do no more.” *Metropolitan Alliance of Police, Chapter 471, FMCS 091103-0042-A (2009).*⁹

There is no question that arbitrators, operating under the mandates of the Iowa statute, apply the same focus as articulated by Arbitrator Goldstein and others. Interest arbitration is not the place to dispense one’s own sense of industrial justice similar to the former circuit riders in the United States, especially in the public sector.¹⁰ Careful attention is required regarding adherence to the evidence record put forth by the parties and, however difficult, coming up with an award that resembles where the parties would have placed themselves if left to their own devices. There is indeed a presumption that the bargains the parties reached in the past mean something and, thus, are to be respected.

C. The Union’s Comparables are More Relevant than the Employer’s Bench-Mark Jurisdictions

As noted, the statute requires the Arbitrator to consider the criterion of “comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work given consideration to factors peculiar to the area and the classifications involved. Significantly, the Code does not specify the weight to be given to any specific criterion in any specific dispute.

⁹ See also, *City of East St. Louis & East St. Louis Firefighters Local No. 23, S-MA-87-25* (Traynor, 1987), where the Arbitrator, back in 1987, recognized the task of determining where the parties would have landed had management been able to take a strike and the union able to withhold its services. In Arbitrator Traynor’s words:

Because of the Illinois law depriving the firefighters of the right to strike, the Union has been deprived of a most valuable economic weapon in negotiating a contract with the City. There seems to be little question that if the firefighters had been permitted to strike, and did so, insisting on increased wages, public pressure due to the lack of fire protection would have motivated the City Council to settle the strike by offering wage increases.

Id. at 11.

Management advocate and author R. Theodore Clark has argued that the interest arbitrator should not award more than the employees would have been able to obtain if they had the right to strike and management had the right to take a strike. R. Theodore Clark, Jr., *Interest Arbitration: Can The Public Sector Afford It? Developing Limitations on the Process II. A Management Perspective*, in *Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators* (J.D. Stern & B.D. Dennis, eds) 248, 256 (BNA Books, 1982). Clark referenced another commentator’s suggestion that interest neutrals “must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take a strike.” *Id.* Accord: *Des Moines Transit Co. v. Amalgamated Ass’n of Am. Div.*, 441, 38 LA (BNA) 666 (1962)(Flagler, Arb.) (“It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table.” *Id.* at 671.

¹⁰ In the United States, the act, once undertaken by a judge, of traveling within a judicial district (or circuit) to facilitate the hearing of cases. The practice was largely abandoned with the establishment of permanent courthouses and laws requiring parties to appear before a sitting judge. Source: <http://www.answers.com/topic/circuit-riding>

With exceptions, and as stated by Arbitrator James Scoville, “A general rule in public sector interest arbitration is to use external comparisons for wages and internal comparisons for benefits.” *Central Decatur Schools & Central Decatur Education Ass’n, PERB CEO #127/3* (Scoville, 2004). “This is not invariable, but as Elkouri & Elkouri puts it: ‘Benefits issues, such as health insurance, are often resolved through the use of internal comparables.’” *Scoville* at 4. Particularly relevant in this case, Arbitrator Scoville went on to observe:

Arbitrators are notoriously reluctant to change long-standing provisions of an agreement. Thus, although the parties are encouraged to accept the general validity of the distinctly different uses to which internal and external comparisons are commonly put, this Arbitrator will not use them to destroy a long-prevailing benefit, especially one restored to full coverage through bargaining. (*Scoville* at 5).

In *Macon County Board and AFSCME, Council 31 and Local 612, S-MA-94-70*, Arbitrator Peter Feuille stressed geography and size in selecting comparables. His reasoning is instructive in this case:

I selected 12 comparison counties from the Union’s comparability group that I believe are the most comparable for pay comparison purposes (those listed in UX 3, excluding Madison, St. Claire, and Winnebago Counties). Eleven of these are central Illinois counties in the area bounded generally by Kankakee and Peoria on the north, Springfield on the west, Effingham on the south, and Champaign on the east. These counties fall generally between Interstate 80 and Interstate 70, and they exclude counties in the St. Louis metropolitan area (Madison and St. Clair). It is well known that pay levels in larger metropolitan areas generally are significantly higher than in other areas, and just as it would be inappropriate to compare Decatur-area salaries with those in the Chicago area, so it is inappropriate to use St. Louis area jurisdictions. Five of these counties – Champaign, McLean, Peoria, Rock Island, and Sangamon – are larger (i.e., more populous) than Macon, and seven counties – Christian, Coles, DeWitt, Effingham, Kankakee, Knox and Logan – are smaller than Macon. With the exception of Rock Island and Kankakee Counties, these comparison counties are geographically close to Macon County and these counties include an equitable mix of larger and smaller jurisdictions. These may not be the 12 best comparison counties in the entire state, but they are the most appropriate comparison counties with precise starting salary and maximum information in the record. Feuille at 14-14 (footnote omitted).

Arbitrator Steven Briggs, in *City of Mt. Vernon & IFOP, S-MA-94-215* (1995), likewise found *geographic proximity* and *local labor markets* as primary considerations in selecting comparables:

The selection of appropriate comparables for an interest arbitration proceeding is educated guesswork. No two cities or towns are mirror images of one another; thus, no two are absolutely comparable. The task is made much easier for interest arbitrators if, during the bargaining process, the parties have mutually adopted a set of benchmark

communities for comparison purposes. But that is not the case here. In the present dispute each party has taken a different approach to identifying what it believes is an appropriate comparables pool.

It is axiomatic that communities used for comparability purposes in an interest arbitration proceeding should be located within the same local labor market as the community where the interest dispute exists. That principle has been upheld again and again by interest arbitrators and there is no need to discuss it at length in these pages. Suffice it to say that in attracting and retaining qualified police officers, Mt. Vernon competes with communities lying within a reasonable commuting distance. The City has defined that distance as fifty miles, which is certainly not inordinately restrictive. *Briggs* at 10 (footnote omitted).

Significantly, Arbitrator Briggs found many of the comparables proposed by the Union as “just too far away to be meaningful for comparison purposes.” Briggs determined that Dixon, Macomb, and Jacksonville – more than 100 miles from Mt. Vernon – were inappropriate comparables. He likewise found Mattoon, at 75 miles from Mr. Vernon, “as being outside of the local labor market in which Mt. Vernon competes for police officers.” *Briggs* at 11. Like Arbitrator Feuille, Arbitrator Briggs found inappropriate bench-mark jurisdictions that were close enough to St. Louis to fall within its local labor market. *Id.*

Arbitrator Herbert Berman, in *City of Peru & IFOP*, S-MA-93-153 (1995), likewise provided an analysis of selecting comparables and declared:

Geographic proximity and comparable population are the primary factors used to determine comparability. But these factors only establish the baseline from which comparisons may be drawn. When dealing with a fairly small city like Peru, the proximity of cities of similar population is obviously important; but it is not the sole critical factor. An adjacent city may draw largely from the same general labor market, but the nature of the work performed by the alleged comparable employees as well as bench-mark economic considerations may preclude its consideration for purpose of comparison. At some point, distance may foreclose consideration. Where that point lies is conjectural and might require a detailed study of the labor market and other economic and demographic factors. Without an expert study of hard data derived from reasonable hypotheses, an arbitrator must rely on the limited data available, his experience and his ability to make reasonable inferences and reach reasonable conclusions. As I noted in *City of Springfield & IAFF, Local 37*, S-MA-18 (Berman, 1987), at 26, “[d]etermining comparability is not an exact science.” Or as Arbitrator Edwin Benn wrote in *Village of Streamwood & Laborers Int’l Union, Local 1002*, S-MA-89-89 (Benn, 1989), at 21-22:

The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more toward hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.

In addition to population and proximity, critical factors are the number of bargaining-unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes. *Berman* at 9-10.

Arbitrator Lisa Kohn, in *City of Aurora & Aurora Firefighters Union, Local 99*, S-MA-95-44 (1995) summarized the thinking of the arbitral community on comparability as follows:

Thus, in selecting a comparability group, the arbitration panel should look to “those features which form a financial and geographic core from which a neutral can conclude that the terms and conditions of employment in the group having similar core features represent a measure of the marketplace.” The features often accepted are population of the community, size of the bargaining unit, geographic proximity, and similarity of revenue and its sources. *Kohn* at 7 (emphasis mine).

Arbitrator Charles Fischbach, in *City of Du Quoin & IL FOP* (2008), S-MA-04-075, observed that “external comparability is a crucial factor in interest arbitration because it often receives the most attention from the parties.” *Fischbach* at 23. I submit that the attention is often disproportional to its importance in selecting final offers.

Especially relevant is the fact that arbitrators give greater weight to internal comparability *vis-à-vis* external comparability when health insurance is at issue. *See*, e.g., *Elk Grove Village & Metropolitan Alliance of Police (MAP)* (Goldstein, 1996) (concluding: “the factor of internal comparability alone required selection of the Village’s insurance proposal.” Goldstein observes that arbitrators “have uniformly recognized the need for uniformity in administration of health insurance benefits.”); *See also*, *Loess Hill Area Education Agency No. 13 & Loess Hills AEA No. 13 Education Association, PERB CEO #27/1* (Gallagher, 2008) (“Regarding the Agency’s argument that internal comparables should be more compelling on the insurance issue, this Arbitrator generally agrees.” *Gallagher* at 13. Arbitrator Gallagher further notes: “significant changes in benefits should be bargained for and agreed to in the give-and-take of negotiations.” *Id* at 14); *Winneshiek County & UE Local 869 (Roads Unit)*, PERB CEO #463/2 (Feuille, 2008) (selecting County’s insurance proposal providing no contribution for dependant health insurance, reasoning that internal comparables indicate “the County had not ever contributed toward the cost of dependant insurance for any of its employees.” *Feuille* at 22); *Dubuque Community School District & Dubuque Education Association* (Thompson, 2011) (rejecting employer’s proposal for greater contribution, reasoning: “The Arbitrator is reluctant to change the insurance based upon internal comparability, especially given the fact that other employees receive 75%, not the 71% noted in the Employer’s arbitration position.” *Thompson* at 12); *AFSCME Council 61 & City of Cedar Rapids, IA, PERB CEO #113/2* (T. Gallagher, 2010) (“the use of external comparisons when determining health insurance issues has diminished relevance because of variations from city to city in health insurance plan benefits and in wages and other forms of direct and indirect compensation.” *Gallagher* at 17); *City of Iowa City, IA & Police Labor Organization of Iowa City, PERB CEO #338* (Jacobs, 2011) (“Finally, as many arbitrators have noted, health insurance is uniquely specific to each public employer. It may not be completely accurate to compare ‘costs’ without comparing the plan themselves along

with a variety of other factors in comparing them. *This is why internal consistency is generally the most important factor for such a fringe benefit because of the unique history of each such plan may have and how it may have changed over time with differing concessions, bargaining history and negotiated changes in exchange for other things across jurisdictional lines.*" Jacobs at 10; emphasis mine).

Similar to my holding in *Town of Normal & IAFF 2442* (2007), applying the above principles, and conceding that "this analysis is anything but an exact science," I find the Union's internal and external comparability analysis (and numbers) more on point than the Administration's assertions. **Reference to nearby states that collectively bargain health insurance are more telling than public and private-sector employers that do not.** While the State's evidence is more inclusive than mere private-sector references, still I find the Union's analysis, comparing states that bargain and especially states *contiguous* to Iowa that bargain health insurance (see my chart, *infra*), more in line with the thinking of labor arbitrators than the Aon studies¹¹ cited by the State. Editing and cutting the Union's data to just include states contiguous to Iowa reveals the following:

¹¹ Describing the experience of Iowa *vis-à-vis* relevant bench-mark states (i.e., states that actually bargain health insurance), Mr. Kreisberg pointed out that Iowa is actually paying *less* than most of the comparable states:

When we look at this in terms of a compensation basis, *what the employer is actually paying in terms of compensation*, my view is the State of Iowa is getting a great deal under the current arrangements. They're not only achieving stability, and they've gotten people to vote with their feet and move to the less expensive plans, but what we had argued at the table, what the employer ultimately agreed to at the table, has borne fruit. It's led to lower costs for the State of Iowa. So it's one of those stories that we get to talk about as a success, and we don't always get to do that, so when we do get to do it, it's a nice thing. (R. 34).

* * *

Most employers are very well satisfied when their health premiums go up by less than 5 percent. Here they've gone down by almost 7 percent. That's a good deal. It shows a system that's working well.

* * *

Again, from our perspective, it's evidence of a system that's working. It's not a system in trouble, it's not a system in stress, and it's certainly not a system that's putting stress on an employer's budget because we have this essentially flat line on health care costs.

Now, what happens in 2015? You know, we're going two years out, we know projections may not always be accurate, but we'll be back at a bargaining table in 2015. If projections deviate wildly from reality, there will be an opportunity for the parties to address that at the collective bargaining table.

Non-public and non-state employers were never discussed by the parties (R. 393).

STATE PAYMENTS FOR EMPLOYEE HEALTH BENEFITS IN STATES CONTIGUOUS TO IOWA

Illinois (4)	07/01/12	Employee	788.30	
		Employee & 1	1,525.74	
		Employee & 2 +	1,736.64	
Iowa	01/01/13	Single	440.96	Iowa weighted average
HMO Blue Access			1,030.49	Single
				Family
				612.50
				1,088.11
Iowa	01/01/13	Single	707.05	
PPO Iowa Select		Family	1,405.20	
Nebraska	07/01/12	Single	394.40	
PPO		2 party	1,046.76	
Regular		4 party (emp + Children)	810.12	
		Family	1,400.04	
Minnesota	01/01/13	Single	503.20	
HMO		Family	1,400.04	
Wisconsin (14)	01/01/13	Single	533.30	
HMO		Family	1,330.00	

Source: ER "A" at 17-23; endnotes omitted. Missouri is a contiguous state, but has never had collective bargaining, thus it is omitted from the list. ¹²

Consistent with the Union's contentions, ¹³ there is no question that the State of Iowa, even with an older workforce and heavy on the family option, is certainly in line with the cited states *on a cost basis*.

Further, as discussed *infra*, the State's proposal lacks compelling internal comparability, even for the management sector it controls. ¹⁴

¹² I concede that one has to take into account what the plan provides. To illustrate, there may be a significant difference between the HMO for Minnesota and Iowa's Blue Access. As Mr. Klinck testified, discussing UX "A": "We don't know for each of those states, based upon the information that was provided, what mandatory benefits are provided in each of those states." (R. 442). The table I constructed is what it is, simply showing what the contiguous states provide with respect to costs only for a specified insurance plan, without getting into coverages, co-pays, deductibles, etc. This is not an inappropriate analysis, as Mr. Klinck suggests (R. 443). In the end, the fact that Iowa's plan is 10% greater than the AON universe, with an employer-paid value greater than one (R. 446), is not dispositive of this dispute. Iowa may indeed be the "richest state no matter what," which, by itself, does not mean the analysis is over and the State's final offer is awarded on this basis only. For the record, I will credit this part of the overall argument to the State regarding Iowa's plan.

¹³ Asked to describe what an appropriate benchmark comparable would be, Mr. Kreisberg responded: "We would say the contiguous states of Illinois, Nebraska, and Minnesota comprise that, and perhaps grudgingly you might put in Wisconsin at this point, and in a broader sense, as a guidepost, we would say other states that collectively bargain with their employees would be an appropriate consideration to look at in terms of comparability, what have others achieved through the collective bargaining process at the state level." (R. 423).

¹⁴ To be fair, this arbitration is arguably *sui generis* (Latin, sui ge-ner-is. adjective unique, peculiar, on its own). Mr. Lamb defined the internal comparables as SPOC and IUP. Mr. Homan maintained "I don't believe there is an appropriate

D. The Parties' Health Insurance Proposals

California Arbitrator Ronald Hoh, in *Black Hawk County, IA & IBT 238, PERB CEO #783/Sector 2* (2003) observed the problems that surface in insurance arbitrations:

It has unfortunately become virtually axiomatic in interest arbitration cases that employers and employees are faced with double digit (and sometimes high double digit) percentage increases in health insurance costs, and that bargaining table decisions regarding how those increases are to be met involve substantial economic impact upon both employers and employees alike. In such circumstances, the parties have little alternative other than to either seek new insurance cost bids for coverage they can live with, and/or to closely monitor costs claimed by medical providers to assure that the parties receive the highest possible “bang for the (insurance) buck.” It is hoped that both the County and all of its unions work together to assure that such a result occurs given the significant increased costs involved.

That being said, it is the criteria for arbitrator awards set forth in Section 22.9 of the Act which must provide the framework here for the arbitrator’s determination of the “most reasonable” of the parties’ final offers.

Currently employees do not pay for health insurance. The Administration’s final offer on insurance is, by all accounts, a Draconian¹⁵ measure for the bargaining unit and the undersigned Arbitrator. Its proposed allocation of employee-paid costs of premiums at twenty percent (20%) is arguably reasonable (ten percent would have been a better number if the Administration wanted to implement an incremental approach, as it claims, given the parties’ bargaining history and *quid-pro-quo* analysis, discussed *infra*), especially in these economic times where most units are moving from 90/10 allocations to 80/20 sharing agreements. Specifically, the Employer asserts that a single employee who selects Blue Advantage and participates in the wellness program will pay 0.93%, or \$4.38 (R. 186). The approximate maximum that an employee would pay if he or she elects family coverage would be 15% for the Plan 3 Plus (R. 186). On their face, both are reasonable options.

Working in the Union’s favor, there is no cap regarding what an employee would be required to pay. Arbitrator James R. Cox, in *City of Davenport, IA & Davenport Association of Professional Fire Fighters, IAFF Local 17*, PERB 190-3 (2003), reasoned that “considering the volatile and unforeseeable nature of insurance premium costs and the significance of such costs for both the City and employees, it is not reasonable to institute such a contribution formula

internal comparable.” (R. 228). Both Mr. Lamb and Mr. Homan are not wrong. What is relevant, however, is what the Administration does with the people it can control, the non-unit management employees.

¹⁵ Latin. Adjective. From the Athenian law giver Draco. 1. of, pertaining to, or characteristic of Draco or his code of laws. 2. (often lowercase) rigorous; unusually severe or cruel; Draconian forms of punishment. See, [wikipedia.org/wiki/Draco_\(lawgiver\)](http://wikipedia.org/wiki/Draco_(lawgiver)).

without a cap.” Cox at 3. Accord: *City of Dubuque, IA & Dubuque Association of Professional Firefighters, Local 353* (Hoh, 2007)(recommending that parties adopt an insurance proposal with a cap limiting the amount an employee is required to contribute toward health insurance).

Also, I do not view the SPOC unit as a truly comparable unit, given its small size (600 state patrol & park rangers, general law enforcement) relative to AFSCME (18,868) and the fact that SPOC will receive a wage increase in the successor collective bargaining agreement (a one percent “bonus” every six months, equivalent to a 1.5% increase/year). It is not affiliated with a union (R. 134). SPOC has but one plan (R. 135). Similarly, the 100 employees who voluntarily agreed to a 20% premium expense cannot legitimately be considered a “comparable,” as that analysis is traditionally applied.

As noted, the Employer, in support of its proposal, points out that with the wellness incentive applied, its contribution to Iowa Select/Blue Advantage, approaches 92%. See, Table 1: State Employee Monthly Premium Contribution and State Employer percentage, *Pre-Hearing Brief* at 16. Currently, the State has a one percent participation rate in its wellness program (Klinck: R. 332). **While no means dispositive, one problem for the Administration is in the details regarding the so-called “wellness” component.** As proposed, the program is vague and without operational details. What is required for an employee to receive the wellness dollar adjustment? Merely signing up for the program? Progress in some physical areas, like losing weight or giving up alcohol and tobacco? Where is the program administered? Clinton, Davenport or Des Moines, Iowa? Will employees have to travel to inconvenient locations to meet with Wellness counselors? More importantly, who administers it? Apparently, the State does not have a vendor in place as of the hearing date (R. 128). Finally, it is unclear whether the wellness program occurs on work time or off the clock (R. 205). This is significant!¹⁶

While overall I agree with the State’s rationale for a wellness program, and its importance as outlined by Mr. Carroll (R. 189-190), the lack of specifics on one component of the State’s final offer does not help the Employer’s case.¹⁷ Selection of the Employer’s final offer would entail mandating the parties adopt a program that lacks clarity in some key respects.

¹⁶ Q. [By Mr. Hedberg]: So with regard to your final offer, what is it going to be, on work time or not work time with regard to AFSCME?

A. [By Mr. Carroll]: I don’t know. Did we ever agree on that? Frankly, I don’t remember whether we ever had an agreement on that or not.

Q. So your final proposal isn’t really necessarily final with regard to some of the details?

A. I would be willing to discuss that if it’s not final. I can’t remember, to be honest with you. (R. 206).

¹⁷ Mr. Kreisberg articulated what is known about the program during cross examination:

Q. Are you familiar with the plan that was proposed here?

A. I am familiar with it.

Q. Is it an unusual plan?

A. In some respects, yes.

Q. How so?

Then there is this aspect of the evidence record that favors the Union. Amazingly, the employer has not “set the table” for purpose of establishing a first-time premium-sharing breakthrough for the union employees.

In *Village of Niles*, Case No. S-MA-02-257 (Hill, 2003), I rejected such a breakthrough without the non-represented village employers having been required to pay health insurance. Thus, in 2003 I rejected the employer’s attempt to impose a modest 10 percent contribution payment for its firefighters. I understand management strategy, especially when competing unions are scrambling for a fair piece of the pie, to get one union to set the table for the others. It is quite another thing when one union is asked to set the table, through arbitral fiat, while management awaits the outcome to consider whether it will join up by accepting an adverse benefit package. **What explains the Administration not imposing on itself (the non-unit management employees) the very insurance program it wants a neutral to impose on the parties?**¹⁸ Again, the Union advances the better case, not on the numbers *per se*, but on the language issues regarding the wellness program and the absence of viable internal consistency.¹⁹

A. In the respect that we really don’t know a lot about it. We know that there’s an incentive payment, we know that there’s biometric screening and HRAs as part of it, and that’s about all I know.

Q. The proposal here is \$90 a month. Is that unusually high? Low? How would you describe it?

A. It’s higher than most in the sense that some of our employees are moving toward percentage of premiums in this regard. It’s not, you know, totally outside the realm of what we’ve seen in other places. But I’d point out, in every other place where we’ve done this, it’s the product of a voluntarily negotiations. (R. 70-71).

Mr. Homan noted his concerns:

We have not been told across the table how that biometric screening will be delivered or how the health risk assessment will be delivered. They talked about several options, either coming to the state institution to do it, maybe sending you to your own personal doctor to do it, maybe contracting with a doctor in the area to do it. There’s been absolutely no conversation about the confidentiality. They said they would keep it confidential, but we have gotten – we have seen no written plan on how this will be done.

We’ve asked the question as to whether or not a program would be in pay status or not in pay status. I don’t know that that has ever been adequately answered. So we don’t know little or nothing about the wellness program, other than it’s going to – you get 90 bucks if you do these two things [participate in the assessments and answer the phone when the health nurse calls]. (R. 130).

¹⁸ The fact that the Administration can voluntarily elect a 20% co-payment on premiums makes the Union’s case even further. If the 20% allocation is really needed, what is preventing management from setting the table? It has asked its own non-unit personnel to *volunteer* to an allocation it is unwilling to impose on itself.

¹⁹ This aspect of this case is not *de minimus*. Arbitrator Peter Meyers, in *IL FOP & City of DeKalb, IL*, Case S-MA-10-336 (2012), pointed out that management had imposed the same insurance benefit reduction, in this case retiree health insurance benefits, on the non-bargaining-unit employees *before* asking the police unit to do the same. He pointed out that internal considerations favored adopting the City’s final offer of phasing out retiree health insurance:

The internal comparison with other City groups is of particular importance, as it was in connection with the other two insurance-related impasse issues. The City has emphasized that the IAFF worked with it to develop the very four-tier phase-out structure that the City proposes here, and the City further points out that AFSCME has agreed to a similar plan. **As for these employees who are not represented by any union, the City Council passed a resolution that eliminates the retiree insurance subsidy.** On this record, the internal comparison absolutely supports the City’s proposal here.

E. The Absence of a *Quid Pro Quo*

Arbitrator Thomas Yaeger, in *City of Cherokee, IA & IUOE, Local 234* (2006), addressed the matter of a *quid pro quo* and had this to say on the issue:

Another significant consideration is the matter of a *quid pro quo*. Much has been written by other arbitrators/fact finders about the need for a *quid pro quo* when a party is proposing a change in the status quo in health insurance as the City has in this case. There is no set answer as to when a *quid pro quo* is required. Generally, arbitrators/fact finders conclude one is required in all but unusual circumstances. But, the *quid pro quo* doesn't have to be of equivalent value to what is being given up. Arbitrators/fact finders have also addressed the issue of the sufficiency of the *quid pro quo* offered for proposed changes in the health insurance plan provided for in the parties' collective bargaining agreement. Not surprisingly, their conclusions are clearly based upon the unique facts of each case and thus no general rule regarding what constitutes a sufficient *quid pro quo* has emerged. In this case no such analysis regarding the sufficiency of the *quid pro quo* is necessary inasmuch as the City has not offered one. *Yaeger* at 23-24.

Finding that the City's insurance proposal would have a substantial financial impact on the bargaining unit, Mr. Yaeger, acting as a fact finder, declined to recommend a change in the current collective bargaining agreement, even though the City had made a case for employees to make some contribution to the premium for dependent/family coverage.

And in *City of Evansdale & IBT 238 (Police)*, PERB Case CEO#252, Sector 2 (2011), a recent case reported by Arbitrator Marla Madison, the neutral addressed the *quid pro quo* argument as follows:

The Union argues that there should have been a *quid pro quo* offered to the employees in exchange for the increased health insurance premium proposed by the City, while the City rebuts that the wage proposal they have offered, along with the HAS contributions, fills that requirement.

“*Quid pro quo*” or not, a change in a benefit of this magnitude should have been bargained between the parties. (*Madison* at 10).

Likewise, in *Johnson County Sheriff's Office & PPME Local 2003*, PERB Case 1083/2 (Graham, 2011), well-respected Ohio and National Academy Arbitrator Harry Graham (who once taught at the University of Iowa's Center for Labor and Management) considered the *quid pro quo* requirement and articulated the rule followed by most arbitrators as follows:

Significantly, not only has the State not imposed the plan before me on its non-represented employees, no other unit in this case, save SPOC, which really is not comparable, has a 20 percent mandate. Clear and simple, the State's proposal lacks almost universal internal comparability, an important criterion when health insurance is considered.

This issue [health insurance] is inextricably linked to the issue of wages, above. Members of this bargaining unit will receive a wage increase above the rate of inflation. That increase will be above that received by their colleagues elsewhere in the region. Set against that is the small payment towards single health insurance coverage sought by the Employer. It is emphasized that payment is small. Further, it is a flat dollar amount, not open ended as would be the case with a percentage of premium payment. Finally, it requires no lengthy recitation to point out that health insurance rates have increased substantially. Immunity from such increases by virtue of family status should not be expected.

It is the case that in negotiations there is the concept of the *quid pro quo*. As cited by the Union, distinguished neutrals have eloquently expounded upon it. In the course of events a trade-off is expected. In this case there is a trade off: a three percent (3.0%) wage increase. In these parlous times an increase of such magnitude is considerable. *Graham* at 8.

Numerous arbitrators have adopted this same focus when confronted with a proposal to change an existing benefit without some *quid pro quo* being offered by the other side. See, e.g., *City of Cherokee, IA & IUOE, Local 234* (Perry, 2006)(stating: “I am convinced that the best health insurance benefit is one that is negotiated by the parties themselves. This allows for the *quid pro quo* as articulated by the Fact Finder. One party gains something in exchange for conceding something else.” *Perry* at 5. Arbitrator also notes: “while many other comparable employers require some contribution by employees toward the cost of dependent health insurance, the City has not offered a *quid pro quo* in exchange for this important benefit change.” *Perry* at 4); *Dubuque County & IBT Local 421, PERB CEO #777 & 227* (Moeller, 2008)(Selecting Union’s final offer, reasoning: “The County is proposing what some arbitrators refer to as a “break through” change in its current insurance language. It has the burden to show that (1) there is a compelling need to change the insurance language, (2) its 2% cost-sharing proposal is a reasonable approach – based on internal and/or external comparisons – to the problem of increasing insurance costs, and (3) this proposal is supported by an appropriate *quid pro quo*.” (Moeller at 5).²⁰

I find no appropriate *quid pro quo* offered by the State to otherwise warrant awarding a *reduction* in the employees’ insurance benefit *of this magnitude*. Even if the Administration’s salary and benefits studies are credited (ranking Iowa as first, ignoring any problems in methodology),²¹ reduction of a long-standing benefit is generally accompanied by some meaningful *quid pro quo*, which I hold is absent in this case.

²⁰ For the record, in a recent arbitration I awarded the employer’s insurance proposal where management submitted evidence that (1) every other unit that bargained with the employer elected to change the insurance package (except the firefighters unit before me), and (2) management had imposed the same package on the non-unit employees. The firefighters had agreed to an above market wage increase, but wanted to hold onto the same insurance provision. See, *City of Mt. Vernon, IL & Firefighters Local 738, Case S-MA-12-291* (Hill, 2012).

²¹ As pointed out by the Union:

F. Past Collective Bargaining Agreements and Bargaining that Led up to the Current Impasse; The Historical Data Supports Maintaining the Status Quo

There is no disagreement regarding the parties' history regarding health insurance and wage increases. Thus, as asserted by the Union in UX A, the following depicts where the parties have been since the 1997-1999 collective bargaining agreement with respect to health insurance and across-the-board wage increases:

Term	Health Insurance	Across-the-Board Wage Increases
1997-1999	70% family with abatement of 50/50 split up to \$17/month. 50/50 split language maintained. Cost containment added to plans.	7/1/97 3.0% 7/1/98 3.0%
1999-2001	70% of Plan 3 + applied to any Plan effective 1/1/00. 50/50 Split abated 1/1/00, but language maintained in agreement. Iowa Select and additional cost containment added.	7/1/99 3.0% 7/1/00 2.6%

So in these 36 states that participate, I simply wanted to point out that of the 14 states that aren't – that didn't participate and don't participate and were not presented – all have collective bargaining with their state employees over wages.

Of the 36 states that are on the list, only 11 have collective bargaining with their employees, so we have an array of employers, less than one third of whom engage in collective bargaining when that array excludes 14 employers who do not participate in bargaining.

Now, we understand how that happened. As was said, the State just took what the compensation association had, but in our view, that's an improper array.

* * *

Again, we introduce this just from our perspective. It's not in accord with the practice of the parties and the bargaining history, and it's an inappropriate array in terms of comparability otherwise, because they don't collectively bargain. (Kreisberg: R. 411-412).

To this end, the Union's point was made on cross examination of Mr. Kreisberg:

Q. Are you saying the list of states AON used is inappropriate?

A. Yes.

Q. Are you also saying that the list of states in the NCASG [National Compensation Association] report are inappropriate?

A. It's the same list, so, yes.

Q. Well, AON – this one has 36 – that's your exhibit 7 – and AON had 13. I'm a little lost as to why they're the same?

A. So were we. That was my other point, Mr. Shearer, is that AON had one report based on apples [the benefit report], and then they did the other report [wages] based on oranges. (R. 416-417).

2001-2003	Plan 3 + and Iowa Select design Changes to reduce Rx and health benefits. Deductible carryover eliminated. PY 2002 incentive payment to singles and DS to switch to Select (50% of premium difference). 70% of Plan 3 + family applied to any plan. Effective 1/1/02, 80% of Iowa Select Applied to any plan.	7/1/01 3.0% 11/1/02 3.0% (Union agrees to four-month delay from original amount negotiated 7/1/02).	
2003-2005	PY 2004 introduction of \$15 office-visit co-pay. 1/1/04 82% of Iowa Select applied to any plan. 1/1/05, 85% of Iowa Select applied to any plan.	7/1/03 2.0% 7/1/05 2.0%	
2005-2007	<i>Status Quo</i> – 85% of Iowa Select applied to any plan.	7/1/05 0% 1/1/05 2.0%	
2007-2009	<i>Status Quo</i>	7/1/07 3.0% 7/1/08 3.0%	
2009-2011	<i>Status Quo</i> . 2009 rates are Extended to June 30, 2010.	7/1/09 0% 7/1/10 2.0% 1/1/11 1.0%	5 furlough days
2011-2013	<i>Status Quo</i>	7/1/11 2.0% 1/1/12 1.0% 7/1/12 2.0% 1/1/13 1.0%	
2013-2015	(arbitration)	7/1/13 0% 7/1/14 0%	(UX A at 9)

With respect to across-the-board wage increases shown back to 1999, it is of note that every single contract included an across-the-board increase (Anderson: R. 213), although not in every contract year (R. 289-291). Not shown, but with respect to steps back to 1999, every contract included step increases of four to four-and-a-half percent (R. 213). If an employee is eligible for a step increase, the difference in dollar amount for a one percent step increase versus a one percent across-the-board increase is the same (R. 213). Furthermore, as the wages for the unit trended upward from 1999 to the present, there was no decrease in health insurance offerings (R. 214). As noted by Lon Anderson, “it’s actually the reverse. We went from 70 percent of Plan 3 Plus in 1999 to 85 percent of Iowa Select in 2005, and it remains that today.” (R. 214). According to Anderson, notwithstanding the Union’s claim, it does not appear from this evidence record that compensation has been traded for the health insurance plan. (ER 30; R. 214).

Given the parties’ history, I find it significant that the Union agreed to no wage increase for the entire term of the 2013-2015 successor collective bargaining agreement. Step increases remain the same, although only applicable to 40 percent of the bargaining

unit. This, of course, supports its position that the zeros were agreed to in anticipation of retaining the *status quo* in health insurance. *See, Central Decatur Schools & Central Decatur Education Ass'n, PERB CEO #127/3 (Scoville, 2004)* (“As Arbitrator Anna DuVal Smith observed in the *Akron-Westfield* case, lower salaries are appropriately viewed as the ‘opportunity costs’ of the higher health benefits.” *Scoville* at 5).

The importance of where the parties placed themselves in past contracts is an important consideration in rendering an award in an interest proceeding. *See, e.g., Johnson County Sheriff's Office & PPME Local 2003, PERB Case 1083/2 (Graham, 2011)* (“Important in this situation is the history of negotiations and intra-employer comparisons.” *Graham* at 4). Research of arbitral case law indicates that the presumption is to leave any non *de minimis* changes in long-time benefits, especially insurance, to the parties themselves.

To this end, Arbitrator Paul Lansing (an Illinois resident acting as an Iowa fact finder), in *City of Mason City, IA & AFSCME Local 1367 (2003)*, considered changing the parties’ health insurance benefit. The City proposed changing the *status quo* to an employee contribution of \$25.00/month toward family coverage. **Significantly, and unlike the present case, the City had already mandated a change in contribution rate by the non-unit employees.** Concluding that the employer “has not demonstrated why the historic contract relationship between the parties should be changed at this time,” (*Lansing* at 10, emphasis in original), the Arbitrator had this to say on the importance of the parties coming up with their own solution to rising insurance costs:

While I think both parties recognize the necessity of formulating a new method of dealing with the rapidly increasing costs of health insurance, the better solution would be for the parties to negotiate the issue themselves rather than an outside neutral suggest or impose a solution upon them. For example, one objection of the Union was that a contribution to health insurance would effectively mean a reduction in the wage increase. Perhaps, the City would consider a one-time increase in wages above the comparables in exchange for the Union’s acceptance of a required contribution to their own health insurance coverage.

Particularly relevant to this dispute, the Arbitrator cautioned that the day will come when the Union will have to start contributing to family insurance:

[T]he Union should recognize that the present contract relationship regarding health insurance coverage cannot last much longer and it may be in their best interest to negotiate the matter with the Employer in exchange for another benefit they desire. To do otherwise might be short sighted by the Union. (*Lansing* at 10).

That same Arbitrator, in *City of Cedar Falls, IA & Firefighters Local 1366 (2002)*, again faced the issue of imposing a change to the *status quo* in health insurance. In rejecting the City’s argument for a straight subsidy to the unit (who, in turn, would purchase their own insurance), Arbitrator Lansing reasoned that since it was the employer who requested the change, the burden would lie with him to demonstrate the need for a change. Favoring the Union’s final offer was the complete absence of comparables that presently had a system in place which was similar to

management's final offer. Arbitrator Lansing also commented on the principle applied by labor arbitrators when one side is asking for a change in an existing collective bargaining agreement:

Beyond the comparability matter, both parties know that neutrals are reluctant to make major changes to the present contract. **Neutrals do not know the full bargaining history of the parties, what sacrifices were made to maintain which rights under the contract in past years.** Major structural changes to a contract are better made by the parties and not the neutral. Without evidence beyond the rising costs of medical insurance, I do not think the Employer has carried the burden in this matter. (*Lansing* at 11; emphasis in bold mine).

Accord: *City of Dubuque, IA & Firefighters Local 353* (Thompson, 2006)(*status quo* maintained where Arbitrator finds that nothing has changed since last contract when prior arbitrator mandated a 90-10 split); *Woodward Granger Community Schools & Woodward Granger Education Association*, Iowa PERB Case CEO #665, Sector 1 (Jacobs, 2010)(“The past history of bargaining showed that this provision was quite recently negotiated into the parties’ agreement. To change it now would be, as Arbitrator Johnson noted, quite determined to the notion of good faith bargaining, especially in a situation where there was no compelling evidence to support a radical change in the language.”); *Iowa City Community School District & Iowa City Education Association*, PERB Case #334/2 (Johnson, 2010)(“It has also been stated that neutrals should be reluctant to effectuate changes in contract language which has been voluntarily accepted by both sides in the absence of evidence showing unique circumstances or a compelling need for the requested change); *Keokuk County and PPME Local 2003, IUPAT* (Loeschen, 2004)(Put another way, ‘what was gained at bargaining should not be lost the following year by arbitral fiat. Nothing can be more detrimental to good faith negotiations.’” *Johnson* at 9-10, quoting *Bettendorf Education Association* (Hill, 1991)); *City of Clinton, IA & Clinton, Iowa Police Bargaining Unit Association*, PERB Case #162/Sector 2 (Schiavoni, 2007)(entering fact finding recommendation that *status quo* be respected, reasoning that because the benefit at issue is significant and the proposed modifications are substantial “take aways,” “it is not recommended that the City be granted its proposed language through the fact-finding/interest arbitration process without showing evidence that it has provided a quid pro quo for the modifications, citing the undersigned Arbitrator, “a neutral should keep in mind that, at one time a party may have paid dearly for a particular item and, this should proceed with caution before drafting an award that would upset the ‘quid pro quo.’” *Schiavoni* at 14, citing *City of Clinton, IA & Clinton Police Department* (Hill, 2006)); *Le Mars CSD & Le Mars Education Association, PERB CEO #368/1* (Gallagher, 2009)(awarding the employer’s insurance proposal, reasoning that the union’s proposal does not retain the *status quo* “and is therefore contrary to the parties’ collective bargaining agreement history and past contracts.” *Gallagher* at 17).

In an exchange with Mr. Kreisberg, Mr. Shearer correctly summarized the parties’ bargaining history as follows:

- Q. It looks like actually in the last three contracts there hasn’t been much bargaining on plan design at all. It looks like *status quo, status quo, status quo*?
- A. Right. (R. 71-72).

* * * *

Clearly, the parties' bargaining history since 2003 supports the Union's *status quo* position. To this same end, I credit the Union's argument regarding the history of employee "migration" of Plan 2 families into lower benefit plans. See, *Movement in Enrollment 2002-2012, UX A at 15* (showing that in 2002, some 70% of employees were enrolled in Wellmark Plans, which in 2012 the figure declined to approximately 30%). The same trends are observed in *Movement in Family Plan Enrollments, PPO vs. Managed Care (UX A at 16)*. Also, AFSCME made it clear that it valued insurance benefits over increases in wages. AFSCME's Director of Collective Bargaining and Health Care Policy, Steven Kreisberg, adequately summarized the parties' bargaining history making the point that the employees have valued health insurance over wage increases:

So in a nutshell, if you go through 2007 through 2013, that's where we were. We haven't made significant changes in the health benefits system since those agreements in the 2003 to 2005 contract.

Now, although we haven't made significant changes, it doesn't mean we didn't talk about them at the bargaining table. We talked about them a lot. The employer had the continuing interest in cost containment and its cost in health care. As you probably know over the decade, from probably late '90s to 2008, 2009, the cost of employer-sponsored insurance more than doubled, and the State of Iowa is not immune to that by any stretch. Every employer suffered that, and people in the individual market suffered from those increases.

So it would be an issue that was consistently raised at the bargaining table, and I think if you look at our across-the-board increases, although we've maintained *status quo* in health insurance, we did not see great growth on the across-the-board increases. There were other adjustments in steps and pay plans, but we did not see great adjustment in the across-the-board simply because we had always, as a union in this particular state, valued our health benefits and wanted more of our compensation package in health care. (R. 23-24).

* * *

This group had always valued health care. So from the inception of my involvement in '97, we always had 100 percent paid single coverage, we still do; we always had 100 percent payment for what we call a double spouse in the State, and that's simply a case where two spouses work for the State, and then the State, in that case, would pay 100 percent of the family coverage.

And then we moved up, as I just described at some length, the contribution from the State towards family coverage based on this benchmark approach which was designed to move people to more cost-effective plans while having the State of Iowa pay a greater

proportion of their premiums. Not to be trite about it, but we considered that win-win. We had always considered that win-win, and during the, I would say, previous 12 years to this negotiation, I think we worked pretty constructively to resolve that. Now there's efforts [on the part of the State], as you know, that's why we're here, to go to something different. (R. 24-25).

Union President Danny Homan articulated the same view regarding how the parties got to where they are in 2012. Discussing the history of the state's health insurance back to 1977, Mr. Homan had this to say:

I believe Steve adequately portrayed his involvement in the state contract, but I believe the total picture of the state's health insurance has to go back to 1977. * * * Because we're forgetting about 20 years here. We did not just arrive at where we arrived at with Steve's help in 2003. We'd already been bargaining health insurance for almost three decades at that point in time, and it has been a progression through the years, and a give and take through the years that has gotten us to where we're at today.

You can't take a picture in time and say, "Oh, everything that happened prior to today doesn't count, and we're only to talk about what we want to do from this point forward." This union has made many, many sacrifices, and has bargained away many benefits to go to where we're at today. And to try to make this a picture of February 11, 2013, and say, "This is where we're going to start from," I believe is unfair and doesn't take into account the bargaining history. And I will say the "bargaining history" because the parties mutually bargained most of those agreements, because that's how we got here. (R. 115-116).

Bottom line: I find nothing in the parties' history of wages and health insurance to warrant upsetting the *status quo* – a position the parties placed themselves *via* the give-and-take of bargaining for some time. The bargaining-history criterion, as well as the absence of internal comparability (particularly management not setting the table for itself), and the Union's settlement of zero wage increases for 2013-2015,²² clearly favors the

²² Q. [By Mr. Shearer]: Mr. Homan – During your testimony you clearly stated you felt that the zero raises for the next two years was based on a desire to maintain health insurance in the same fashion. Did I hear that correctly?

A. That was our intent. Yes, sir. (R. 140).

Mr. Homan denied that issues that PERB ruled were permissive on that were put back in the parties' collective bargaining agreement was a *quid pro quo* for the zeros (R. 143). An exchange with Mr. Shearer is instructive:

Q. It certainly happened, though, that many of these came back into the contract even though they're permissive?

A. Absolutely did happen, absolutely did. I'm not disputing that at all.

Q. My point is merely that zero for health insurance isn't totally the picture.

A. And we were trying to get items off the table. (R. 1440145).

During rebuttal, on the third day of the hearing, Mr. Homan elaborated:

I stated under my direct testimony that the reason we agreed to the zero and zero and, quite frankly, the reason we proposed a zero and zero at one point in time was because we wanted to maintain the health insurance. (R. 436).

Union's *status quo* proposal. When the budget surplus factor is added to the matrix, the Union clearly advances the better argument for retention of the *status quo*.

G. The Administration's Argument regarding the Effect of the Affordable Health Care Act (aka "Obama Care") is at Best Problematic

In its *Brief* at 16-17 the Administration maintains that the "the current health insurance benefits offered by the Public Employer will be dramatically affected by PPACA." To this end management goes on to assert:

The Public Employer's health plan is so rich it will be taxed as a "Cadillac plan" in 2018 if no changes are made. The proposed tax liability for 2018 is \$2,060,000. Without change, the tax liability will continue to rise every year after 2018. Simply stated, changes to the plan are necessary as a result of the changes in federal law. The same was testified to by Brad Klinck.

* * * *

The State, through Mr. Klinck, discussed the potential impact of the Affordable Health Care Act:

The Affordable Health Care Act, sometimes called "Obamacare," technically the PPACA, requires that an excise tax be generated when a plan is what's considered to be, under the legislation, richer than it should be. It's typically or often referred to as a Cadillac tax.

In effect, what it says is that if a health plan is richer than the plan which the Government has deemed to be appropriate at a certain level, that a tax of 40 percent of the value that the plan exceeds that threshold has to be applied.

One of the concerns that we've got is looking at the current plan that exists in Iowa, in 2018, our estimates are that Iowa is going to be subject to the Cadillac tax, and in actuality, that tax is going to exceed \$2 million in costs in 2018, and that that \$2 million payment, due to the tax, if there's no changes made in either the plan or the legislation, will go up over time. (R. 345-346).

* * *

Arbitrator Hill: I've got your contract. That is the settlement, zero and zero.

By Mr. Homan: That is the settlement, yes, sir. But the reason we did that and we agreed to that was over the health insurance, because we wanted to maintain our health insurance. (R. 436-437).

The record indicates that the steps were retained (R. 437).

Significantly, there is insufficient evidence in this record, like bargaining notes or direct testimony to that effect, that the permissive language items at issue (ER 20) were offered as a *quid pro quo* for two zeros in the successor collective bargaining agreement. To the contrary, my experience as an interest neutral and researcher is that during bargaining a party will announce that something is being offered as a *quid pro quo* for a desired provision. Nothing like this is present in this case.

The Affordable Health Care Act is not a “Cadillac tax” on high-end health insurance programs, it is an excise tax. As explained by Mr. Kreisberg during cross examination by Mr. Shearer:

The Affordable Care Act has established a threshold of cost. Plans that cost more than that threshold, \$10,200 for single, \$27,500 for family, if your premium exceeds that threshold of cost in 2018, every dollar above that threshold is going to be additionally taxed at 40 cents. So it’s a 40 percent marginal tax rate. But it only applies to the cost above the threshold. The threshold itself is adjusted by the consumer price index. It’s also adjusted by the demographics of the group. * * *

So with that said, we know we have those higher thresholds. We also know the two plans that we’re talking about here in the State of Iowa, Blue Advantage and Blue Access, are nowhere near these thresholds, and won’t be. (R. 62-63)

Q. Do you know whether Iowa’s current health care plans are trending towards being Cadillac plans?

A. I would say they’re not.

Q. If I had an expert that says they are, I guess we would have a question about that, wouldn’t we?

A. Is that rhetorical, or do you want me to answer that?

Q. I’m kind of picking up on your criticism.

A. I guess Mr. Shearer, what I would point out is what I said on my direct. So we have insurance rates for 2012, and I go to a four-year period, and I’ve got .01 percent increase over four years for State costs. That’s less than the rise in the Consumer Price Index over four years. So are you saying we’re trending toward hitting that cap? I would say based on the last four years, including projections, no.

* * *

So you can get somebody to say something, but the evidence indicates something completely different. The facts speak. (R. 63-64).

While the 40% marginal tax is designed not to be paid, apparently shifting premiums will not affect it. “The tax is not based on state expense. The tax is based on the total aggregate premium regardless of who pays which share.” (R. 66). “The tax is a premium – again, I want to be clear – whether you pay it as the State, or our members pay it, it’s the aggregate premium, if that hits the threshold, you’re taxed, even if the employees pay 90% of the cost. So the only way to get under that tax is to make your plan less generous. And when we move people from plans like the PPOs to the managed care plans, that’s exactly what we’re doing, and we’re more likely to keep them under the tax threshold if we keep the current system in place, because you’re moving them and keeping them in a more cost-contained plan.” (R. 66-67).

Still, depending on the state, it is indeed prudent to be concerned about the effect of the Act. At this writing, however, I see no potential adverse effects on the State with respect to the

Union's final offer, given the current trends of moving from PPO-type plans to managed care programs. The solution here is to focus on the plan design, not on who pays the premiums. As observed by Mr. Klinck: "You have to change your plan design, ultimately." (R. 346).²³

H. Interests and Welfare of the Public and the Ability of the State to Finance Economic Adjustments – The Administration's Budget Surplus Argument

What of the Administration's argument that the budget surplus may in fact head south, and that this consideration should be recognized by the interest neutral? Lon Anderson, defending the State's position, made the argument:

The main conclusion from this affidavit [executed by Anderson and included in the State's pre-hearing *Brief*] is based on my experience, which I have seen is budget surpluses are always temporary and should never be used, or at least there should be great caution when using one-time funds to fund ongoing programs, because eventually your revenues will not meet estimates, and your surplus will be depleted, and then you'll be back to doing an across-the-board cut. (R. 219).

This consideration is indeed valid for the State. A decrease in federal funding, for example, would have ripple effects in Iowa's budget (R. 225). However, under the Act it is not dispositive of what is before me, nor can it trump the many factors that favor the Union, including management's failure to impose the requested change on non-unit employees and the absence of any kind of *quid pro quo*. Also as noted, the Union's agreement to forgo any wage increase over the two-year contract period also favors its *status quo* proposal. As correctly pointed out by one Arbitrator:

The remaining statutory factors, dealing mainly with the ability to pay for or finance any proposed changes do not really apply but a consideration of the "other relevant factors" and the arbitral authority cited above made it clear that such a change in the language should not be imposed by arbitral fiat merely because the District thinks something bad may happen in the future without any evidence that it will occur. Such a change must come from the parties themselves through negotiation. This was a strong factor in favor of the Association on this issue.

Woodward Granger Community Schools & Woodward Granger Education Association, Iowa PERB Case CEO #665, Sector 1 (Jacobs, 2010) at 17.

Also, if by chance the budget surplus declines, nothing in this award prevents the Administration from seeking a revision from the Union.

²³

Q. Unless the law changes or we change the plan, that's where we're headed, isn't it?
A. [By Mr. Klinck]: That's right. (R. 346).

At the same time, I recognize that it is in the public interest and welfare to require employees to share in the cost of their health insurance. One Arbitrator, faced with this issue, commented:

The arbitrator also finds that it is in the public interest and welfare to require employees to share more in the cost of health insurance with the employer and to also receive adequate insurance consistent with comparable employers. The arbitrator has stated elsewhere that he believes that if employees are required to participate in the cost of insurance, they will have greater incentive to control costs, and also arguably have more incentive to be more mindful of costs than when insurance pays all or most of costs. Employees also become better informed consumers of healthcare. Cost sharing is also good for labor-management relations as it ensures that both parties will seriously bargain health insurance issues, and work jointly to cut costs and explore other options.

The Arbitrator went on to observe that both parties have to assume risk sharing with respect to health insurance premiums and costs:

[T]he arbitrator believes that since both parties benefit from health insurance, that both parties must be prepared to assume a portion of the risk and to share in any increased costs. Instead of a glass “half empty” conclusion, the arbitrator believes that the parties here – who are represented by skilled and experienced negotiators – should look at continued negotiations on health insurance with a “glass half full” attitude. * * * The arbitrator believes the tax-paying public benefits from the increased communication between the City and Union as they explore ways to control insurance costs for everyone.

City of Dubuque, IA & IBT Local 421 (Stone, 2005) at 16-17.

Based on the collective bargaining history of the parties, a comparison to other public employees doing comparable work, the interest and welfare of the public, and the ability of the City of Dubuque to fund such an insurance policy, the Arbitrator awarded the City’s 10% cost-sharing-premium proposal.

I. Power of the Public Employer to Tax and to Appropriate Funds to Conduct its Operations

In its *Brief* at 16, the State argues that if the Union’s final offer were awarded, the State will “experience a dramatic swing in the budget surplus as seen in FY 1999-FY 2001 and FY 2006-FY 2010.” The Administration goes on to assert:

[T]he State could be forced to increase taxes in order to maintain a sufficient balance in

the General Fund. However, Lon Anderson's testimony indicated that increasing taxes is contrary to the goal of both Governor Branstad and the Iowa Legislature. Governor Branstad has proposed education and property tax reforms which would subtract almost \$600 million from the General Fund. House and Senate Republicans have sponsored bills to rebate \$874.2 million of the FY 2014 surplus (the entire projected surplus!) to taxpayers. On the other hand, Senate Democrats have proposed decreasing revenue by increasing the Earned Income Tax Credit and increasing the size of the State's cash reserve.

* * * *

The concessions requested by the State are not driven by any financial distress of the State. Nothing presented by either party to this proceeding indicated that awarding of the *status quo* on health insurance would affect the Employer's power to tax, or its ability to appropriate funds to conduct its operations. See, e.g., City of Cedar Falls, IA & IBT Local 238 (Police)(Weatherly, 2011)(awarding the IBT a 2.0% across the board wage increase; reflecting the better view, Arbitrator declares that "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.").

To this end, the 2012 baseline is \$230,318,000, the amount the State actually spent in 2012 (R. 38). The Union estimated that the State predicts an increase of six percent in premiums: "But that's the best information we have now, is a 6 percent for 2014, and another 6 percent for 2015. Those are the State's projections." (R. 37-38). As outlined by Mr. Kreisberg, "And if we do another 6 percent, you'll see below that, "plus 6 percent," we add almost \$14 million, 13,890,000. So in 2015 the estimate would be for a \$245 million spend from the State of Iowa for the AFSCME bargaining unit's health care benefits. So that's kind of where we are over a four-year period of time." (R. 38). Mr. Kreisberg concluded that the increase in health benefit costs over a four-year period is 1/1000, or .01 percent (R. 39). And if projections deviate wildly from reality, "there will be an opportunity for the parties to address that at the collective bargaining table." (R. 39-40). Consistent with this evidence record, I conclude that the State of Iowa is in excellent fiscal health and will have no difficulty absorbing the costs of employee compensation.²⁴ The revenue estimates for FY 2014 and 2015 bode well for the State (R. 81-82).

²⁴ To this end AFSCME Budgetary expert Mark Murphy concluded that if the State's proposal were adopted, it would cost the unit between \$23 and \$43 million/year:

[M]y conclusion of the State of Iowa's budget is that the State is in excellent fiscal health. The State has no difficulty absorbing, you know, the costs of employee compensation. There is no budgetary reason for the State to require a concession on the part of employees with regard to health insurance, which we estimate would be between \$23 million and \$43 million per year based on the figures that have been entered into – entered in the testimony this morning.

* * *

And the reason for the range is because the State would be avoiding \$23 million per year if 100 percent of employees picked up the wellness option and received that incentive. The cost would be closer to \$43 million if state employees were paying a full 20 percent of the premium. (R. 80-81).

Applying these two factors, I find the Union's proposal to be more reasonable than the Administration's final offer on health insurance.

J. Conclusion

Minnesota Arbitrator Christine D. Ver Ploeg, in *Burlington IA Municipal Waterworks & IBT Local 238*, PERB CEO #99/Sector 3 (2003), refused to order a change in the *status quo* health insurance language (where employees paid nothing for single and family insurance), and reasoned that this is an issue traditionally left to bargaining by the parties. In so holding, she concluded as follows:

I have reviewed the Employer's proposed change and find that it may well represent a better plan for many employees than they are currently provided. Nevertheless, the issue of medical coverage is such an overriding concern to most employees – and it certainly is to these employees – that many arbitrators (including myself) entertain a strong presumption that parties should be left to negotiate for themselves significant changes to an existing package. Although that presumption can be overcome with compelling evidence of financial exigency and strong comparability data, the evidence presented at the hearing that supports unilaterally imposing this change upon these employees does not rise to that level. It may be possible that given time and other employees' experience with the new plan, these employees will themselves prefer to come within its provisions. However, now is not the time to force them to do so. (*Ver Ploeg* at 7-8)

Significantly, Arbitrator Ver Ploeg was writing in 2003, long before the “great recession” and an explosion in health care costs.²⁵

Likewise, Arbitrator Kim Hoogeveen, in *Cedar Rapids Professional Firefighters, Local 11 & City of Cedar Rapids, IA* (2005), acting as a fact finder, stressed the partnership angle with

²⁵ See, e.g., Michael Lewis, *The Big Short* (2011), dealing with the impending financial crisis of 2008 and who knew before the financial crisis that a silent crash in the bond market and the real estate derivatives market was about to implode, resulting in a world-wide economic “crash.” Lewis discusses what led up to the darkest days of the crisis, helping the average, non-financial expert to see how the great financial storm developed. The so-called “great recession” had a profound effect of local and state governments, who by law are required to balance their budgets, unlike the federal government, who continues to accumulate record deficits and can simply print money to operate. The fallout from 2008 and the imploding derivative markets, resulting in numerous bank failures starting in 2009, is still being felt by governments, not just in the states, but world wide.

My point is this: Although the State has recovered from the 2008 “recession hole” (Iowa is now at 107 percent of the level of revenues relative to 2008, about 5% ahead of the nation as a whole)(R. 83-84), the State is not out of line in urging caution with respect to expected health care costs, and its goal of making employees participate *via* making a percentage contribution toward premiums. Simply because the State is healthy does not mean it cannot deal with the subject of health care. Consistent with the above-cited arbitrators (Graham, Ver Ploeg, Dorby, and Perry), my view is the day is just around the corner when the State will achieve some sharing of premiums. However, when AFSCME agrees to no wage increases for the duration of the successor collective bargaining agreement, long after the start of the 2008 Recession, when the State has a significant budget surplus (“growing surpluses and a growing budget reserve which you can only characterize as massive at this point”)(R. 86), some meaningful *quid pro quo* will have to be forthcoming, as well as including non-bargaining-unit employees in the program the State has proposed for the Union.

respect to health insurance and the obligation of employees to eventually assume some of the costs:

With respect to health insurance, a partnership between the Union and the City should exist, as each has an interest in securing the greatest possible bang for every dollar expended. Yet to state the obvious, it is the employees, and not the City, who benefit from health insurance, and as such employees must be prepared to assume a portion of the risk and to share in at least a fraction of the increased cost. As health insurance costs continue to rise, employees have no reason to expect that their partner will bear 100% of cost increases while they retain all the benefits. The collective bargaining agreement should not be used to shield employees from an obligation to fund an equitable portion of the benefits they enjoy. (*Hoogveen* at 13).

There is no question the day is near when these employees will contribute some percentage of premiums or costs toward their health insurance.²⁶ Add to this any possible mandates looming that have been brought about by the Affordable Health Care Act, pressure for premium sharing and overall total reduction will continue. Indeed, plan re-design and plan reductions (from four to two) may be viable options. A wellness program²⁷

²⁶ Bradford Klinck estimated that the results of the HHVI, the AON Hewitt Health Value Initiative, showed that the employer subsidy for the State of Iowa averages 96.4% for the cost of its health plan. "What that means is that for every dollar that's being spent on the health plan, the State is providing over 96 cents, and the employees are paying four cents of that." According to Klinck, "whereas it is 79.5% percent for employers in the HHVI database." (R. 336). For union employers, the number is 87%, still significantly less than 96.4% (R. 337). Bottom figure, Iowa's costs are more than \$2,000 greater than the costs of the benchmark within the HHVI universe (R. 337). With respect to benefits, the State, through Klinck, asserted that Iowa's benefits are 25% richer compared to the State's peer group, and 15% richer compared to union plans (R. 341). According to Klinck:

The ultimate conclusion that you reach when you look at this, whether you look at that summary page or you look at the details, is that on a comparative basis, the plans that are provided by the State of Iowa from an employer perspective, when reflecting the contributions that are required as opposed to in other states, in other large employers in the state, whether they be a salaried or a union population, that they're considerably richer. (R. 341).

Mr. Klinck went on to conclude that "whether you're looking at them individually or you're looking at them in concert, the answer is that the state employees are not under-compensated." (R. 342). "Once again, the conclusion that's in here is that the employer-paid benefits with regard to pre-retirement welfare – so we're not picking up more than just medical – are significantly greater. As you can see here, 125.7, more than 25 percent more valuable. That's shown in the speed-meter." (R. 343).

Given the comparables, as well the direction the country is going regarding premium and cost-sharing initiatives, notwithstanding any problems in AON's database, (my guess) this trend will be addressed by the parties in successor contracts.

²⁷ "We recommended that a wellness program be implemented, in effect to try and address some of the issues that Ed [Holland] had mentioned earlier and some of the issues that are endemic in America, that the health-care costs associated with the population are based, in part, about accidents, like cars, things like that, but there're significantly impacted by and based upon certain conditions, chronic conditions especially, and those chronic conditions can be caused by or exacerbated by things that happen within a wellness universe. So we believe that the best thing not just for the State, not just from a financial perspective, but for the employees of the plan is to provide a wellness program, an initiative, and ultimately an incentive to get them to become healthier." (Klinck: R. 349-350).

Klinck went on to assert that "the idea of providing more than a thousand dollars [as an incentive] is incredibly rich and, from our perspective, really points out the fact that this is important to the State of Iowa. Ultimately, it's an awful lot of money. As I said, it's one of the richest programs. It's the second richest program I've even seen, quite frankly, and the benefits that will inure both to the participants and also to the state, not just in the short term." (R. 350-351).

is, in theory, justified by the State's analysis. See, e.g., *Guthrie County, IA & IBT Local 238, PERB 936/1* (Nathan, 2006)(concluding: "Employee contributions are here to stay. The cost of insurance must be borne by both sides if there is to be a prudent utilization of resources. Employees must have a stake in the risks because the Employer can no more control utilization than can individual employees vis-à-vis the group as a whole." *Nathan* at 10); *City of Independence, IA & IBT Local 238*, PERB Case CEO #860, Sector 2 (Graham, 2004)("Only a person with their head in the sand could be oblivious to the very different situation caused by the substantial increase in health insurance premiums. The problem being confronted by employers and employees, public and private sector alike, has proved intractable and not susceptible of resolution." *Graham* at 6.). One Arbitrator (from Warren, Michigan) described the health insurance system in the United States as "broken." See, *City of Davenport, IA & Union of Professional Police*, PERB Case CEO 196/3 (Dorby, 2000)("For those of you who have not yet figured out that the health care system is broken, here is a wake up call. The problem here is that health care costs are out of control." *Dorby* at 9). Accord: *City of Davenport, IA & Association of Professional Firefighters, IAFF Local 17*, PERB 190/3 (Dworkin, 2003)("Next to wages, this [health insurance] is a most fundamental and diverse issue. There are no pretty solutions." *Dworkin* at 11, quoting Arbitrator Dorby in a 2001 fact finding). Mr. Dorby may not be wrong (as Congress has yet to realize with respect to Medicare and Medicaid).

Adopting the *dicta* offered by Arbitrator Perry in *City of Cherokee, IA, supra*, during the next round of negotiations, if the State advances a reasonable proposal, perhaps with less of a jump than is now on the table (20%), to require these employees to bear part of the cost of this important but increasingly costly benefit, with some reasonable *quid pro quo*, and the Union stonewalls such, it would appear to so at its own peril. See, *Perry* at 5. "However, for the contract under consideration the insurance provision should not change." *Id.*

* * * *

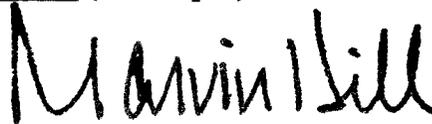
For the above reasons, the following award is entered:

V. AWARD

Article IX (Wage and Fringe Benefits), Section 4 (Health Benefits):

Union's Final Offer (status quo).

Dated this 5th day of March, 2013
at DeKalb, Illinois, 60115



Marvin Hill
Arbitrator

CERTIFICATE OF SERVICE

I certify that on the 5th of March, 2013, I served the foregoing Award and Opinion of the Arbitrator upon each of the parties by mailing a copy to them *via* Next Day U.S. Mail at their respective addresses as shown below:

Leon R. Shearer, Esq.
Shearer Law Firm, PC
31364 Silverado Lane
Waukee, IA 50263-7081
(515) 480-3334
Fax: (515) 987-0442
Le5743@aol.com

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Danny Homan
President, AFSCME 61
4320 N.W. 2d Avenue
Des Moines, IA 50313
(515) 246-6467
Fax: (515) 244-6467
dhoman@afscmeiowa.org

In addition, I also certify that unsigned copies were electronically transmitted to the above representatives at the noted e-mail addresses on or before March 6, 2013.

I further certify that on the 5th of March, 2013, I submitted this Award for filing by mailing it to Ms. Sue Bolte, Iowa Public Employment Relations Board (PERB), 510 East 12th Street, Ste 1B, Des Moines, IA, 50317.



Marvin Hill, Arbitrator
330 North 2d Street
DeKalb, IL 60115

Dated this 5th day of March, 2013
at DeKalb, Illinois, 60115.

“APPENDIX A”

SUCCESSOR COLLECTIVE BARGAINING AGREEMENT

BETWEEN

THE STATE OF IOWA (EMPLOYER)

AND

**THE AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
COUNCIL 61, AFL-CIO (UNION)**

**MASTER SUCCESSOR CONTRACT FOR THE
FOLLOWING BARGAINING UNITS:**

**BLUE COLLAR
CLERICAL
COMMUNITY CORRECTIONS
FISCAL & STAFF
PATIENT CARE
SECURITY
TECHNICAL**

EFFECTIVE: JULY 1, 2013 THROUGH JUNE 30, 2015

(ADOPTED AS PART OF A STIPULATED AWARD)

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

2013~~{2011}~~ - 2015~~{2013}~~

COLLECTIVE
BARGAINING
AGREEMENT

BETWEEN

THE STATE OF IOWA

AND

THE AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 61 AFL-CIO

MASTER CONTRACT
for the following bargaining units

BLUE COLLAR
CLERICAL
COMMUNITY CORRECTIONS
FISCAL & STAFF
PATIENT CARE
SECURITY
TECHNICAL

Effective: July 1, 2013~~{2011}~~ through June 30, 2015~~{2013}~~

**ARTICLE I
AGREEMENT**

This Agreement made and entered into this 1st day of July 2013 ~~{2011}~~, at Des Moines, Iowa, pursuant to the provisions of Chapter 20 of the Code of Iowa, by and between the State of Iowa (hereinafter referred to as the Employer) and the American Federation of State, County, and Municipal Employees, Iowa Public Employees Council 61, AFL-CIO (hereinafter referred to as the Union), and its appropriate affiliated locals, as representatives of employees employed by the State of Iowa, as set forth specifically in Appendix A.

**ARTICLE II
RECOGNITION AND UNION SECURITY**

Section 1 Bargaining Units

A. Current Contract Language

B. Employees excluded from the bargaining unit are all employees of the State of Iowa who are managerial, supervisory or confidential, temporary ~~{part-time}~~ employees who are employed for four (4) months or less per year ~~{scheduled for less than seven hundred eighty (780) hours per fiscal year and who are scheduled for less than an average of fifteen (15) hours per week}~~, and all other employees specifically excluded by the provisions of Chapter 20 of the Code of Iowa.

C. Current Contract Language

D. Current Contract Language

Section 2 Dues Deduction

Current Contract Language

Section 3 Bulletin Boards

Current Contract Language

Section 4 Union Leave

Current Contract Language

Section 5 Union Conventions and Conferences

Current Contract Language

Section 6 Union Activity

Current Contract Language

Section 7 Discrimination

Current Contract Language

Section 8 Union Activity Protection

Current Contract Language

Section 9 Union Visitation

Current Contract Language

Section 10 No Reprisal

Current Contract Language

Section 11 Electronic Communication

Current Contract Language

Section 12 New Employee Orientation

Current Contract Language

**ARTICLE III
MANAGEMENT RIGHTS**

Current Contract Language

**ARTICLE IV
GRIEVANCE PROCEDURE**

Section 1 Definition

Current Contract Language

Section 2 Grievance Steps

(Board of Regents, see Appendix M; Community Based Corrections, see Appendix S)

A. Step 1

Current Contract Language

B. Step 2

Current Contract Language

- C. Step 3 - Grievance Resolution Improvement Process (GRIP):
Disciplinary grievances which have not been settled under the foregoing procedures are eligible to be heard by the Grievance Resolution Panel. To be considered further, the grievance must be placed on the Grievance Resolution Panel docket within thirty (30) calendar days from receipt of the answer in Step 2 by the keeper of the docket. The issue as stated in Step 2 shall constitute the sole and entire subject matter to be heard by the Grievance Resolution Panel, unless the parties mutually agree to modify the scope of the grievance. The procedures to be used by the Grievance Resolution Panel will be governed by the "Rules of Procedure for the Grievance Resolution Improvement Process." The Rules of Procedure are set forth in Section 14 of Article IV of the Agreement. The parties may, however, agree to a more detailed set of rules of procedure outside of this Agreement. Before rules of procedure not contained within this Agreement take effect and become enforceable they must be signed by both the President of AFSCME and the Director of DAS. Any rule of procedure that is in conflict with this Agreement or the law is unenforceable.

- D. Step 4 - Arbitration
Current Contract Language

Section 3 Time Limits

Current Contract Language

Section 4 Retroactivity

Current Contract Language

Section 5 Exclusive Procedure

Current Contract Language

Section 6 Names of Stewards and Management Representatives

Current Contract Language

Section 7 Representation

Current Contract Language

Section 8 Processing Grievances

Current Contract Language

Section 9 Discipline and Discharge

Current Contract Language

Section 10 Exclusion of Probationary Employees

Current Contract Language

Section 11 Exclusion of Grievant

Current Contract Language

Section 12 Exchange of Information for Processing Grievances

Current Contract Language

Section 13 Resolution of Timeliness Arbitrability Issues

Current Contract Language

Section 14 Grievance Resolution Improvement Process (GRIP)

The Department of Administrative Services - Human Resources Enterprise Chief Operating Officer or General Counsel and the President of AFSCME Iowa Council 61 will establish a regular meeting schedule to discuss how the Grievance Resolution Improvement Process (GRIP) is working, determine if there are problems that need to be resolved, and develop a plan for resolution of the issues.

- A. The parties agree to utilize GRIP for all departments. GRIP will be limited to twenty (20) disciplinary cases per month.
- B. Operation of ~~{Committee and Committee}~~ Panel

1. Rules of Procedure

The Panel shall consist of four (4) representatives: two (2) representatives from AFSCME Iowa Council 61 and two (2) representatives from the State. The operation of the Panel ~~{Committee}~~ shall be in accordance with these Rules of Procedure and such other rules as may from time to time be adopted by mutual agreement between the parties and signed by both the President of AFSCME and the Director of DAS. ~~{Such other rules shall be established by majority vote of the Committee provided; however, both the Union and the Employer members of the Committee have equal voting power. Whenever an addition or amendment to these Rules of Procedure, or other rules duly adopted, is proposed, it shall be presented in writing to the Committee at a regularly scheduled meeting of the Committee and voted upon at the following meeting.}~~

2. Order of Cases

Every attempt will be made to hear docketed discharge cases during the time period scheduled for the case. **Cases may be deadlocked in advance of the hearing.**

3. Hearings

The Panel will hear presentation from each party to the grievance. Each party will be permitted a maximum of twenty (20) minutes [thirty (30) minutes for disciplinary terminations] for its presentation. Witness statements and supporting documentation may be provided. Any information not presented at Step 2 of the grievance procedure that is to be used by either presenter will be exchanged between the parties at least seven (7) days prior to the meeting of the Panel. Exception will be allowed for evidence or witness statements submitted up to forty-eight (48) hours in advance of the meeting, if the information is mutually agreed upon. Information allowed under this exclusion must be of such significant nature as to potentially alter a reasonable decision on the grievance. If the party not submitting the documentation can make a justified argument that the party submitting the information had knowledge of the evidence or statements prior to the seven (7) day rule, such late evidence or statements will not be allowed.

During the presentation, only ~~{Committee}~~ Panel members, the parties presenting the case and those directly involved in the specific case being heard shall be allowed to sit in the immediate area where the case is being conducted. Other members of the **Panel** ~~{Committee}~~ observing the case shall not participate in the presentation, the discussion or the questioning. The Employer will present first. Each party shall have twenty (20) minutes [thirty (30) minutes for disciplinary terminations] to present its case in chief. Each party shall declare, prior to the presentation of its case whether there will be a co-presenter on any respective case. The number of presenters shall be limited to two (2) individuals. Any co-presenter shall only supplement the presentation of the case in chief. Both sides will have an opportunity to summarize and rebut; however no co-presenter may respond during the summation and rebuttal portion of the hearing. Summation and rebuttal shall not

extend beyond five (5) minutes [ten (10) minutes for disciplinary terminations].

The AFSCME Iowa Council 61 Representative or the designated AFSCME steward will normally handle the Union presentation. The Department Director or his/her representative will normally handle the presentation for the Employer.

After each party has submitted its case and rebuttal, the panel members will be free to ask questions of the parties. After such questioning, the Panel will retire to executive session and will vote, and thereby render its decision. Voting by a show of hands will be sufficient. When the Panel goes into executive session, all others must retire from the room. After a decision has been reached by a majority vote of the Panel, the decision shall be reduced to writing and provided to the parties in a manner agreed upon by the Panel. The Panel has the authority to support, reject or modify any action taken. Decisions of the **Panel** ~~{Committee}~~ are final and binding and may or may not be precedent setting as the Panel determines. Failure to reach a majority vote will create a deadlock or tied vote and such shall be recorded as the outcome. In the event of a deadlock, the grievance may proceed to arbitration as outlined in Step 4 of Section 2(D).

~~(For complete "Rules of Procedure for the Grievance Resolution Improvement Process" contact either the appropriate Union representative or DAS HRE representative.)~~ **The Rules of Procedure, and any additional agreed upon rules, shall be posted on the DAS's website.**)

ARTICLE V SENIORITY

Current Contract Language

**ARTICLE VI
LAYOFF PROCEDURE**

Section 1 Application of Layoff

Current Contract Language

Section 2 General Layoff Procedures

When a layoff or hours reduction occurs, the following general rules shall apply:

A. Current Contract Language

B. Current Contract Language

~~C. {An agency may not layoff permanent employees until they have eliminated all non permanent employees within the layoff unit in the same classification in the following order: emergency, temporary, provisional, intermittent, trainee, and probationary. Employees in the layoff unit may volunteer for layoff with the most senior volunteer(s) being accepted.}~~ Employees may volunteer only with the agreement of the President of AFSCME Iowa Council 61.

D. Current Contract Language

E. Current Contract Language

F. Current Contract Language

G. Current Contract Language

H. Current Contract Language

I. Current Contract Language

J. Current Contract Language

K. Current Contract Language

Section 3 Temporary Layoff Procedures

A. Current Contract Language

~~{B. Prior to implementing a temporary layoff, the Employer will first terminate all non permanent employees who perform similar duties including temporary service (i.e. Manpower, Olsten, etc.) employees.}~~

B~~{C}~~. Employees will be temporarily laid off by seniority within the entire classification series and temporary layoff unit as follows:

DOC: Institutions, Central Offices, and IPI (Plants)

CBC: Districts

DOT: Ames/Des Moines Complex and Districts (but not more than fifty percent (50%) of any work unit).

DHS: Institutions, Central Office, Service Areas

IVH

IWD: (see Appendix T)

DAS: Statewide

All other State Agencies: Divisions, Districts or Regions
and Institutions.

No more senior employee may be subject to the temporary layoff until the preceding less senior employee (within the classification series and temporary layoff unit) is scheduled for the maximum number of temporary layoff days. Employees shall receive a minimum of fourteen (14) calendar days notice of temporary layoff.

C+D. No more than thirty percent (30%) of the employees in the temporary layoff unit may be temporarily laid off in any fiscal year.

D+E. Employees in the temporary layoff unit may volunteer for any part of the temporary layoff with the most senior volunteer(s) being accepted unless the absence of the employee would cause a hardship on operating efficiency. Voluntary temporary layoffs shall be for a minimum of one (1) calendar week, unless the parties agree to a shorter length of time. No more senior employee (except volunteers) may be subject to the temporary layoff until the preceding less senior employee (within the classification series and temporary layoff unit) is scheduled for ninety (90) consecutive days.

E+F. During the temporary layoff, employees shall continue to accrue sick leave and annual (vacation) leave and the Employer will continue to pay the Employer's share of all insurance.

F+G. This section does not apply to Regents. For Regents, see Appendix M.

ARTICLE VII TRANSFERS

Current Contract Language

ARTICLE VIII HOURS OF WORK

Current Contract Language

**ARTICLE IX
WAGES AND FRINGE BENEFITS**

Section 1 Wages

- A. On the first day of the pay period that includes July 1, 2013 ~~{2011}~~, employees in the bargaining units covered by this Agreement shall receive no ~~{an}~~ across-the-board pay increase ~~{of two percent (2%) added to the base salary}~~.

~~{Effective in the pay period including January 1, 2012, employees in the bargaining units covered by this Agreement shall receive an across the board pay increase of one percent (1%) added to the base salary.}~~

All employees eligible for negotiated within-range step increases shall receive automatic step increases in accordance with their eligibility date and the new rate of pay shall start on the first day of the pay period in which the employee's eligibility date occurs. The current procedure used in Regents will continue as it currently exists. The step increases shall be automatic four and one-half percent (4.5%) within-grade increases in accordance with their eligibility date.

- B. On the first day of the pay period that includes July 1, 2014 ~~{2012}~~, employees in the bargaining units covered by this Agreement shall receive no ~~{an}~~ across-the-board pay increase ~~{of two percent (2%) added to the base salary}~~.

~~{Effective in the pay period including January 1, 2013, employees in the bargaining units covered by this Agreement shall receive an across the board pay increase of one percent (1%) added to the base salary.}~~

All employees eligible for negotiated within-range step increases shall receive automatic step increases in accordance with their eligibility date and the new rate of pay shall start on the first day of the pay period in which the employee's eligibility date occurs. The current procedure used in Regents will continue as it currently exists. The step increases shall be automatic four and one-half percent (4.5%) within-grade increases in accordance with their eligibility date.

- C. Current Contract Language

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

- D. Current Contract Language
- E. Current Contract Language
- F. Current Contract Language

Section 2 Deferred Compensation

Current Contract Language

Section 3 Selected IRS Pre-Tax Benefits

Current Contract Language

Section 4 Health Benefits

ARBITRATION HEARING

Section 5 Dental Benefits

Current Contract Language

Section 6 Workers' Compensation Benefits

Current Contract Language

Section 7 Life Insurance

Current Contract Language

Section 8 Disability Insurance

Current Contract Language

Section 9 School Year Employees

Current Contract Language

Section 10 Sick Leave

Current Contract Language

Section 11 Paid Annual Leave of Absence (Vacation)

Current Contract Language

Section 12 Holidays

Current Contract Language

Section 13 Travel and Lodging

Current Contract Language

Section 14 Payday

Current Contract Language

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

**ARTICLE X
LEAVES OF ABSENCE**

Current Contract Language

**ARTICLE XI
MISCELLANEOUS**

Current Contract Language

**ARTICLE XII
HEALTH AND SAFETY**

Current Contract Language

**ARTICLE XIII
(THIS ARTICLE RESERVED FOR FUTURE USE)**

**ARTICLE XIV
GENERAL**

Current Contract Language

TERMINATION OF AGREEMENT

The terms and conditions of this Agreement shall continue in full force and effect commencing on July 1, 2013 ~~{2011}~~, and terminating on June 30, 2015 ~~{2013}~~, unless the parties mutually agree in writing to extend any or all of the terms of this Agreement. Upon termination of the Agreement, all obligations under the Agreement are automatically canceled.

Negotiations for a new Agreement shall commence on or before November 30, 2014 ~~{2012}~~. In the event the parties fail to reach an agreement by January 1, 2015 ~~{2013}~~, mediation shall be requested. In the event the parties are still at impasse on February 1, 2015 ~~{2013}~~, the dispute shall be submitted to final and binding arbitration. In the event the dispute is submitted to arbitration, the arbitrator's decision shall be rendered by no

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

later than March 15~~{1}~~, 2015 ~~{2013}~~. The parties may mutually agree to eliminate or modify any of the above impasse procedures.

**APPENDIX A PAYGRADES AND CLASSIFICATION
PAYGRADES AND CLASSIFICATIONS**

Current Contract Language The parties will mutually review all classifications and add in all new classifications or delete all classifications that no longer exist.

**APPENDIX B
ORGANIZATIONAL AND EMPLOYING UNITS**

Current Contract Language

**APPENDIX B2
COMMUNITY BASED CORRECTIONS**

Current Contract Language

**APPENDIX C
ENROLLMENT PERIODS, OTHER ENROLLMENT CHANGES, AND MOVEMENT AMONG
PLANS**

Current Contract Language

**APPENDIX C-1
HEALTH BENEFITS
REVIEW COMMITTEE**

Current Contract Language

**APPENDIX D
DENTAL BENEFIT COVERAGE**

Current Contract Language

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

**APPENDIX E
RELOCATION REIMBURSEMENT**

Current Contract Language

**APPENDIX F
AIRPORT FIREFIGHTERS**

Current Contract Language

**APPENDIX G
DEPARTMENT OF PUBLIC DEFENSE**

Current Contract Language

**APPENDIX H
DEPARTMENT OF CORRECTIONS**

1. Current Contract Language
2. Current Contract Language
3. Current Contract Language
4. Current Contract Language
5. Current Contract Language
6. Current Contract Language
7. Current Contract Language
8. Current Contract Language
9. Current Contract Language
10. The parties agree that a pilot of shifts with no unpaid break for a meal period shall be implemented for all Registered Nurses, Licensed Practical Nurses and Nursing Unit Coordinators at the Mt. Pleasant Correctional Facility and Iowa State Penitentiary. (The Anamosa pilot will continue as described in the Patient Care Appendix.) This pilot will begin on the first day of the first pay period for fiscal year 2010 and end on the last day of the last pay period of fiscal year 2015~~2010~~. This pilot may be extended beyond the term of this current Agreement only through agreement by both parties. The State may make administrative adjustments to their start and finish times to implement staggered shifts as needed.

11. Current Contract Language

APPENDIX I
DEPARTMENT OF TRANSPORTATION

1. Current Contract Language
2. Current Contract Language
3. Current Contract Language
4. Current Contract Language
5. Current Contract Language
6. Current Contract Language
7. Current Contract Language
8. Current Contract Language
9. Current Contract Language
10. The parties agree to a pilot project for the life of the agreement to allow employees at their discretion to accumulate up to two hundred (200) hours of compensatory time. Any hours over two hundred (200) will be paid in cash. Employees at their discretion will be allowed to carry over forty (40) hours to the next year. The pilot will sunset on June 30, 2015~~2013~~ and is non-precedent setting and cannot be used in any impasse procedures between the parties regarding earning, using, or payment for compensatory time. If the pilot is not continued in the next contract, the limits will revert to one hundred sixty (160) hours maximum accumulation with a forty (40) hour carry over.

The year for purposes of utilization of compensatory time shall end on either March 31 or September 30, whichever the employee elects for the duration of this agreement.

11. Current Contract Language
12. Current Contract Language
13. Current Contract Language
14. Current Contract Language
15. Current Contract Language

APPENDIX J
DEPARTMENT OF HUMAN SERVICES

Current Contract Language

**APPENDIX K
ATTENDANCE POLICY**

This document constitutes a letter of understanding between AFSCME Iowa Council 61 and the Employer regarding attendance policies. The parties agree that attendance policies that are currently in place will remain intact unless within ninety (90) days of July 1, 2013, DAS notifies the President of AFSCME Iowa Council 61 of a change in an attendance policy at an agency. AFSCME Iowa Council 61 recognizes management's right to change attendance policies, and even to institute a no-fault policy, but all attendance policies must be reasonable and the Union has the right to grieve the reasonableness of an attendance policy [~~mutually agreed upon otherwise~~]. If the Union grieves any modifications to an existing attendance policy or a newly created attendance policy, this grievance will be appealed directly to Step 2 of the grievance procedure. Upon receipt of the Step 2 answer, if the Union appeals the grievance to arbitration, the Arbitration hearing will be held within thirty (30) days. The Arbitrator shall provide the parties an answer within fifteen (15) days of the close of the Arbitration Hearing. The modified attendance policy or a newly created attendance policy will not be implemented until after receipt of the Arbitrator's answer to the Union's grievance. Policies which may be developed during the term of this Agreement will be done with Union input.

**APPENDIX L
DEPARTMENT OF ADMINISTRATIVE SERVICES -
GENERAL SERVICES ENTERPRISE (DAS-GSE)**

Current Contract Language

**APPENDIX M
BOARD OF REGENTS (BOR)**

Current Contract Language

**APPENDIX N
RESERVED**

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

**APPENDIX O
SECURITY BARGAINING UNIT**

Current Contract Language

**APPENDIX P
DEPARTMENT OF NATURAL RESOURCES**

Current Contract Language

**APPENDIX Q
PROFESSIONAL FISCAL & STAFF BARGAINING UNIT**

Current Contract Language

**APPENDIX R
CLERICAL BARGAINING UNIT**

Current Contract Language

**APPENDIX S
COMMUNITY BASED CORRECTIONS BARGAINING UNIT**

Current Contract Language

**APPENDIX T
IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

Current Contract Language

**APPENDIX U
MEMORANDUM OF UNDERSTANDING #1
Upward Mobility**

Current Contract Language

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

**MEMORANDUM OF UNDERSTANDING #2
Recruitment for Health Care Professionals**

Current Contract Language

**MEMORANDUM OF UNDERSTANDING #3
Reducing Patient on Staff Violence**

Current Contract Language

**MEMORANDUM OF UNDERSTANDING #4
Minimizing Mandatory Overtime**

Current Contract Language

**MEMORANDUM OF UNDERSTANDING #5
Second Shift Differential ASP and ISP**

Current Contract Language

**MEMORANDUM OF UNDERSTANDING #6
Job Evaluation**

Current Contract Language

MEMORANDUM OF UNDERSTANDING #7
~~{Union Security Provisions}~~

~~If "fair share" type legislation is passed and signed by the Governor for State of Iowa employees, the Employer agrees to implement the legislation as mandated.~~

~~The Union understands and agrees that the Governor has a constitutional obligation to consider and determine whether or not to sign any legislation presented to him, that no fair share legislation has been passed by the Legislature at this time, and that this proposal (and any contract into which this proposal may be incorporated) does not limit or impair in any way the exercise of the Governor's constitutional obligation regarding the enactment of legislation.~~

MEMORANDUM OF UNDERSTANDING #8}
DAS-GSE Clothing and Uniforms

Current Contract Language

APPENDIX V
IOWA VETERANS HOME

Current Contract Language

APPENDIX W
PATIENT CARE BARGAINING UNIT

1. Current Contract Language
- 2a. Current Contract Language
- 2b. Current Contract Language
- 2c. Current Contract Language
3. The Anamosa State Penitentiary will continue the pilot program in which registered nurses are scheduled to work a straight eight (8) hour shift with no unpaid break for a meal period ending June 30, 2015~~{2013}~~.
4. Current Contract Language
5. Current Contract Language
6. Current Contract Language
7. Current Contract Language

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

2013~~{2011}~~ - 2015~~{2013}~~

COLLECTIVE
BARGAINING
AGREEMENT

BETWEEN

THE STATE OF IOWA

AND

THE AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 61 AFL-CIO

MASTER CONTRACT
for the following bargaining units

BLUE COLLAR
CLERICAL
COMMUNITY CORRECTIONS
FISCAL & STAFF
PATIENT CARE
SECURITY
TECHNICAL

Effective: July 1, 2013~~{2011}~~ through June 30, 2015~~{2013}~~

**ARTICLE I
AGREEMENT**

This Agreement made and entered into this 1st day of July 2013 ~~{2011}~~, at Des Moines, Iowa, pursuant to the provisions of Chapter 20 of the Code of Iowa, by and between the State of Iowa (hereinafter referred to as the Employer) and the American Federation of State, County, and Municipal Employees, Iowa Public Employees Council 61, AFL-CIO (hereinafter referred to as the Union), and its appropriate affiliated locals, as representatives of employees employed by the State of Iowa, as set forth specifically in Appendix A.

**ARTICLE II
RECOGNITION AND UNION SECURITY**

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C. Current Contract Language

D. Current Contract Language

Section 2 Dues Deduction

Current Contract Language

Section 3 Bulletin Boards

Current Contract Language

Section 4 Union Leave

Current Contract Language

Section 5 Union Conventions and Conferences

Current Contract Language

Section 6 Union Activity

Current Contract Language

Section 7 Discrimination

Current Contract Language

Section 8 Union Activity Protection

Current Contract Language

Section 9 Union Visitation

Current Contract Language

Section 10 No Reprisal

Current Contract Language

Section 11 Electronic Communication

Current Contract Language

Section 12 New Employee Orientation

Current Contract Language

**ARTICLE III
MANAGEMENT RIGHTS**

Current Contract Language

**ARTICLE IV
GRIEVANCE PROCEDURE**

Section 1 Definition

Current Contract Language

Section 2 Grievance Steps

(Board of Regents, see Appendix M; Community Based Corrections, see Appendix S)

A. Step 1

Current Contract Language

B. Step 2

Current Contract Language

- C. Step 3 - Grievance Resolution Improvement Process (GRIP):
Disciplinary grievances which have not been settled under the foregoing procedures are eligible to be heard by the Grievance Resolution Panel. To be considered further, the grievance must be placed on the Grievance Resolution Panel docket within thirty (30) calendar days from receipt of the answer in Step 2 by the keeper of the docket. The issue as stated in Step 2 shall constitute the sole and entire subject matter to be heard by the Grievance Resolution Panel, unless the parties mutually agree to modify the scope of the grievance. The procedures to be used by the Grievance Resolution Panel will be governed by the "Rules of Procedure for the Grievance Resolution Improvement Process." The Rules of Procedure are set forth in Section 14 of Article IV of the Agreement. The parties may, however, agree to a more detailed set of rules of procedure outside of this Agreement. Before rules of procedure not contained within this Agreement take effect and become enforceable they must be signed by both the President of AFSCME and the Director of DAS. Any rule of procedure that is in conflict with this Agreement or the law is unenforceable.

- D. Step 4 - Arbitration
Current Contract Language

Section 3 Time Limits

Current Contract Language

Section 4 Retroactivity

Current Contract Language

Section 5 Exclusive Procedure

Current Contract Language

Section 6 Names of Stewards and Management Representatives

Current Contract Language

Section 7 Representation

Current Contract Language

Section 8 Processing Grievances

Current Contract Language

Section 9 Discipline and Discharge

Current Contract Language

Section 10 Exclusion of Probationary Employees

Current Contract Language

Section 11 Exclusion of Grievant

Current Contract Language

Section 12 Exchange of Information for Processing Grievances

Current Contract Language

Section 13 Resolution of Timeliness Arbitrability Issues

Current Contract Language

Section 14 Grievance Resolution Improvement Process (GRIP)

The Department of Administrative Services - Human Resources Enterprise Chief Operating Officer or General Counsel and the President of AFSCME Iowa Council 61 will establish a regular meeting schedule to discuss how the Grievance Resolution Improvement Process (GRIP) is working, determine if there are problems that need to be resolved, and develop a plan for resolution of the issues.

- A. The parties agree to utilize GRIP for all departments. GRIP will be limited to twenty (20) disciplinary cases per month.
- B. Operation of ~~{Committee and Committee}~~ Panel

1. Rules of Procedure

The Panel shall consist of four (4) representatives: two (2) representatives from AFSCME Iowa Council 61 and two (2) representatives from the State. The operation of the Panel ~~{Committee}~~ shall be in accordance with these Rules of Procedure and such other rules as may from time to time be adopted by mutual agreement between the parties and signed by both the President of AFSCME and the Director of DAS. ~~{Such other rules shall be established by majority vote of the Committee provided; however, both the Union and the Employer members of the Committee have equal voting power. Whenever an addition or amendment to these Rules of Procedure, or other rules duly adopted, is proposed, it shall be presented in writing to the Committee at a regularly scheduled meeting of the Committee and voted upon at the following meeting.}~~

2. Order of Cases

Every attempt will be made to hear docketed discharge cases during the time period scheduled for the case.

Cases may be deadlocked in advance of the hearing.

3. Hearings

The Panel will hear presentation from each party to the grievance. Each party will be permitted a maximum of twenty (20) minutes [thirty (30) minutes for disciplinary terminations] for its presentation. Witness statements and supporting documentation may be provided. Any information not presented at Step 2 of the grievance procedure that is to be used by either presenter will be exchanged between the parties at least seven (7) days prior to the meeting of the Panel. Exception will be allowed for evidence or witness statements submitted up to forty-eight (48) hours in advance of the meeting, if the information is mutually agreed upon. Information allowed under this exclusion must be of such significant nature as to potentially alter a reasonable decision on the grievance. If the party not submitting the documentation can make a justified argument that the party submitting the information had knowledge of the evidence or statements prior to the seven (7) day rule, such late evidence or statements will not be allowed.

During the presentation, only ~~Committee~~ Panel members, the parties presenting the case and those directly involved in the specific case being heard shall be allowed to sit in the immediate area where the case is being conducted. Other members of the **Panel** ~~Committee~~ observing the case shall not participate in the presentation, the discussion or the questioning. The Employer will present first. Each party shall have twenty (20) minutes [thirty (30) minutes for disciplinary terminations] to present its case in chief. Each party shall declare, prior to the presentation of its case whether there will be a co-presenter on any respective case. The number of presenters shall be limited to two (2) individuals. Any co-presenter shall only supplement the presentation of the case in chief. Both sides will have an opportunity to summarize and rebut; however no co-presenter may respond during the summation and rebuttal portion of the hearing. Summation and rebuttal shall not

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

extend beyond five (5) minutes [ten (10) minutes for disciplinary terminations].

The AFSCME Iowa Council 61 Representative or the designated AFSCME steward will normally handle the Union presentation. The Department Director or his/her representative will normally handle the presentation for the Employer.

After each party has submitted its case and rebuttal, the panel members will be free to ask questions of the parties. After such questioning, the Panel will retire to executive session and will vote, and thereby render its decision. Voting by a show of hands will be sufficient. When the Panel goes into executive session, all others must retire from the room. After a decision has been reached by a majority vote of the Panel, the decision shall be reduced to writing and provided to the parties in a manner agreed upon by the Panel. The Panel has the authority to support, reject or modify any action taken. Decisions of the Panel ~~{Committee}~~ are final and binding and may or may not be precedent setting as the Panel determines. Failure to reach a majority vote will create a deadlock or tied vote and such shall be recorded as the outcome. In the event of a deadlock, the grievance may proceed to arbitration as outlined in Step 4 of Section 2(D).

~~(For complete "Rules of Procedure for the Grievance Resolution Improvement Process" contact either the appropriate Union representative or DAS HRE representative.)~~ **The Rules of Procedure, and any additional agreed upon rules, shall be posted on the DAS's website.**

ARTICLE V SENIORITY

Current Contract Language

**ARTICLE VI
LAYOFF PROCEDURE**

Section 1 Application of Layoff

Current Contract Language

Section 2 General Layoff Procedures

When a layoff or hours reduction occurs, the following general rules shall apply:

- A. Current Contract Language
- B. Current Contract Language
- C. ~~{An agency may not layoff permanent employees until they have eliminated all non permanent employees within the layoff unit in the same classification in the following order: emergency, temporary, provisional, intermittent, trainee, and probationary. Employees in the layoff unit may volunteer for layoff with the most senior volunteer(s) being accepted.}~~ Employees may volunteer only with the agreement of the President of AFSCME Iowa Council 61.
- D. Current Contract Language
- E. Current Contract Language
- F. Current Contract Language
- G. Current Contract Language
- H. Current Contract Language
- I. Current Contract Language
- J. Current Contract Language
- K. Current Contract Language

Section 3 Temporary Layoff Procedures

- A. Current Contract Language
- ~~{B. Prior to implementing a temporary layoff, the Employer will first terminate all non permanent employees who perform similar duties including temporary service (i.e. Manpower, Olsten, etc.) employees.}~~
- B~~{C}~~. Employees will be temporarily laid off by seniority within the entire classification series and temporary layoff unit as follows:
 - DOC: Institutions, Central Offices, and IPI (Plants)
 - CBC: Districts
 - DOT: Ames/Des Moines Complex and Districts (but not more than fifty percent (50%) of any work unit).
 - DHS: Institutions, Central Office, Service Areas
 - IVH
 - IWD: (see Appendix T)

DAS: Statewide

All other State Agencies: Divisions, Districts or Regions
and Institutions.

No more senior employee may be subject to the temporary layoff until the preceding less senior employee (within the classification series and temporary layoff unit) is scheduled for the maximum number of temporary layoff days. Employees shall receive a minimum of fourteen (14) calendar days notice of temporary layoff.

C+D. No more than thirty percent (30%) of the employees in the temporary layoff unit may be temporarily laid off in any fiscal year.

D+E. Employees in the temporary layoff unit may volunteer for any part of the temporary layoff with the most senior volunteer(s) being accepted unless the absence of the employee would cause a hardship on operating efficiency. Voluntary temporary layoffs shall be for a minimum of one (1) calendar week, unless the parties agree to a shorter length of time. No more senior employee (except volunteers) may be subject to the temporary layoff until the preceding less senior employee (within the classification series and temporary layoff unit) is scheduled for ninety (90) consecutive days.

E+F. During the temporary layoff, employees shall continue to accrue sick leave and annual (vacation) leave and the Employer will continue to pay the Employer's share of all insurance.

F+G. This section does not apply to Regents. For Regents, see Appendix M.

ARTICLE VII TRANSFERS

Current Contract Language

ARTICLE VIII HOURS OF WORK

Current Contract Language

**ARTICLE IX
WAGES AND FRINGE BENEFITS**

Section 1 Wages

- A. On the first day of the pay period that includes July 1, 2013 ~~{2011}~~, employees in the bargaining units covered by this Agreement shall receive no ~~{an}~~ across-the-board pay increase ~~{of two percent (2%) added to the base salary}~~.

~~{Effective in the pay period including January 1, 2012, employees in the bargaining units covered by this Agreement shall receive an across the board pay increase of one percent (1%) added to the base salary.}~~

All employees eligible for negotiated within-range step increases shall receive automatic step increases in accordance with their eligibility date and the new rate of pay shall start on the first day of the pay period in which the employee's eligibility date occurs. The current procedure used in Regents will continue as it currently exists. The step increases shall be automatic four and one-half percent (4.5%) within-grade increases in accordance with their eligibility date.

- B. On the first day of the pay period that includes July 1, 2014 ~~{2012}~~, employees in the bargaining units covered by this Agreement shall receive no ~~{an}~~ across-the-board pay increase ~~{of two percent (2%) added to the base salary}~~.

~~{Effective in the pay period including January 1, 2013, employees in the bargaining units covered by this Agreement shall receive an across the board pay increase of one percent (1%) added to the base salary.}~~

All employees eligible for negotiated within-range step increases shall receive automatic step increases in accordance with their eligibility date and the new rate of pay shall start on the first day of the pay period in which the employee's eligibility date occurs. The current procedure used in Regents will continue as it currently exists. The step increases shall be automatic four and one-half percent (4.5%) within-grade increases in accordance with their eligibility date.

- C. Current Contract Language

- D. Current Contract Language
- E. Current Contract Language
- F. Current Contract Language

Section 2 Deferred Compensation

Current Contract Language

Section 3 Selected IRS Pre-Tax Benefits

Current Contract Language

Section 4 Health Benefits

ARBITRATION HEARING

Section 5 Dental Benefits

Current Contract Language

Section 6 Workers' Compensation Benefits

Current Contract Language

Section 7 Life Insurance

Current Contract Language

Section 8 Disability Insurance

Current Contract Language

Section 9 School Year Employees

Current Contract Language

Section 10 Sick Leave

Current Contract Language

Section 11 Paid Annual Leave of Absence (Vacation)

Current Contract Language

Section 12 Holidays

Current Contract Language

Section 13 Travel and Lodging

Current Contract Language

Section 14 Payday

Current Contract Language

**ARTICLE X
LEAVES OF ABSENCE**

Current Contract Language

**ARTICLE XI
MISCELLANEOUS**

Current Contract Language

**ARTICLE XII
HEALTH AND SAFETY**

Current Contract Language

**ARTICLE XIII
(THIS ARTICLE RESERVED FOR FUTURE USE)**

**ARTICLE XIV
GENERAL**

Current Contract Language

TERMINATION OF AGREEMENT

The terms and conditions of this Agreement shall continue in full force and effect commencing on July 1, 2013 ~~{2011}~~, and terminating on June 30, 2015 ~~{2013}~~, unless the parties mutually agree in writing to extend any or all of the terms of this Agreement. Upon termination of the Agreement, all obligations under the Agreement are automatically canceled.

Negotiations for a new Agreement shall commence on or before November 30, 2014 ~~{2012}~~. In the event the parties fail to reach an agreement by January 1, 2015 ~~{2013}~~, mediation shall be requested. In the event the parties are still at impasse on February 1, 2015 ~~{2013}~~, the dispute shall be submitted to final and binding arbitration. In the event the dispute is submitted to arbitration, the arbitrator's decision shall be rendered by no

later than March ~~15~~, 2015. The parties may mutually agree to eliminate or modify any of the above impasse procedures.

**APPENDIX A PAYGRADES AND CLASSIFICATION
PAYGRADES AND CLASSIFICATIONS**

Current Contract Language The parties will mutually review all classifications and add in all new classifications or delete all classifications that no longer exist.

**APPENDIX B
ORGANIZATIONAL AND EMPLOYING UNITS**

Current Contract Language

**APPENDIX B2
COMMUNITY BASED CORRECTIONS**

Current Contract Language

**APPENDIX C
ENROLLMENT PERIODS, OTHER ENROLLMENT CHANGES, AND MOVEMENT AMONG
PLANS**

Current Contract Language

**APPENDIX C-1
HEALTH BENEFITS
REVIEW COMMITTEE**

Current Contract Language

**APPENDIX D
DENTAL BENEFIT COVERAGE**

Current Contract Language

**APPENDIX E
RELOCATION REIMBURSEMENT**

Current Contract Language

**APPENDIX F
AIRPORT FIREFIGHTERS**

Current Contract Language

**APPENDIX G
DEPARTMENT OF PUBLIC DEFENSE**

Current Contract Language

**APPENDIX H
DEPARTMENT OF CORRECTIONS**

1. Current Contract Language
2. Current Contract Language
3. Current Contract Language
4. Current Contract Language
5. Current Contract Language
6. Current Contract Language
7. Current Contract Language
8. Current Contract Language
9. Current Contract Language
10. The parties agree that a pilot of shifts with no unpaid break for a meal period shall be implemented for all Registered Nurses, Licensed Practical Nurses and Nursing Unit Coordinators at the Mt. Pleasant Correctional Facility and Iowa State Penitentiary. (The Anamosa pilot will continue as described in the Patient Care Appendix.) This pilot will begin on the first day of the first pay period for fiscal year 2010 and end on the last day of the last pay period of fiscal year 2015~~2010~~. This pilot may be extended beyond the term of this current Agreement only through agreement by both parties. The State may make administrative adjustments to their start and finish times to implement staggered shifts as needed.

11. Current Contract Language

**APPENDIX I
DEPARTMENT OF TRANSPORTATION**

1. Current Contract Language
2. Current Contract Language
3. Current Contract Language
4. Current Contract Language
5. Current Contract Language
6. Current Contract Language
7. Current Contract Language
8. Current Contract Language
9. Current Contract Language
10. The parties agree to a pilot project for the life of the agreement to allow employees at their discretion to accumulate up to two hundred (200) hours of compensatory time. Any hours over two hundred (200) will be paid in cash. Employees at their discretion will be allowed to carry over forty (40) hours to the next year. The pilot will sunset on June 30, 2015~~{2013}~~ and is non-precedent setting and cannot be used in any impasse procedures between the parties regarding earning, using, or payment for compensatory time. If the pilot is not continued in the next contract, the limits will revert to one hundred sixty (160) hours maximum accumulation with a forty (40) hour carry over.

The year for purposes of utilization of compensatory time shall end on either March 31 or September 30, whichever the employee elects for the duration of this agreement.

11. Current Contract Language
12. Current Contract Language
13. Current Contract Language
14. Current Contract Language
15. Current Contract Language

**APPENDIX J
DEPARTMENT OF HUMAN SERVICES**

Current Contract Language

**APPENDIX K
ATTENDANCE POLICY**

This document constitutes a letter of understanding between AFSCME Iowa Council 61 and the Employer regarding attendance policies. The parties agree that attendance policies that are currently in place will remain intact unless within ninety (90) days of July 1, 2013, DAS notifies the President of AFSCME Iowa Council 61 of a change in an attendance policy at an agency. AFSCME Iowa Council 61 recognizes management's right to change attendance policies, and even to institute a no-fault policy, but all attendance policies must be reasonable and the Union has the right to grieve the reasonableness of an attendance policy ~~{mutually agreed upon otherwise}~~. If the Union grieves any modifications to an existing attendance policy or a newly created attendance policy, this grievance will be appealed directly to Step 2 of the grievance procedure. Upon receipt of the Step 2 answer, if the Union appeals the grievance to arbitration, the Arbitration hearing will be held within thirty (30) days. The Arbitrator shall provide the parties an answer within fifteen (15) days of the close of the Arbitration Hearing. The modified attendance policy or a newly created attendance policy will not be implemented until after receipt of the Arbitrator's answer to the Union's grievance. Policies which may be developed during the term of this Agreement will be done with Union input.

**APPENDIX L
DEPARTMENT OF ADMINISTRATIVE SERVICES -
GENERAL SERVICES ENTERPRISE (DAS-GSE)**

Current Contract Language

**APPENDIX M
BOARD OF REGENTS (BOR)**

Current Contract Language

**APPENDIX N
RESERVED**

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

**APPENDIX O
SECURITY BARGAINING UNIT**

Current Contract Language

**APPENDIX P
DEPARTMENT OF NATURAL RESOURCES**

Current Contract Language

**APPENDIX Q
PROFESSIONAL FISCAL & STAFF BARGAINING UNIT**

Current Contract Language

**APPENDIX R
CLERICAL BARGAINING UNIT**

Current Contract Language

**APPENDIX S
COMMUNITY BASED CORRECTIONS BARGAINING UNIT**

Current Contract Language

**APPENDIX T
IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

Current Contract Language

**APPENDIX U
MEMORANDUM OF UNDERSTANDING #1
Upward Mobility**

Current Contract Language

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

**MEMORANDUM OF UNDERSTANDING #2
Recruitment for Health Care Professionals**

Current Contract Language

**MEMORANDUM OF UNDERSTANDING #3
Reducing Patient on Staff Violence**

Current Contract Language

**MEMORANDUM OF UNDERSTANDING #4
Minimizing Mandatory Overtime**

Current Contract Language

**MEMORANDUM OF UNDERSTANDING #5
Second Shift Differential ASP and ISP**

Current Contract Language

**MEMORANDUM OF UNDERSTANDING #6
Job Evaluation**

Current Contract Language

AFSCME Iowa Council 61
Mediator Supposal
February 2, 2013

MEMORANDUM OF UNDERSTANDING #7
~~{Union Security Provisions}~~

~~If "fair share" type legislation is passed and signed by the Governor for State of Iowa employees, the Employer agrees to implement the legislation as mandated.
The Union understands and agrees that the Governor has a constitutional obligation to consider and determine whether or not to sign any legislation presented to him, that no fair share legislation has been passed by the Legislature at this time, and that this proposal (and any contract into which this proposal may be incorporated) does not limit or impair in any way the exercise of the Governor's constitutional obligation regarding the enactment of legislation.~~

~~MEMORANDUM OF UNDERSTANDING #8}~~
DAS-GSE Clothing and Uniforms

Current Contract Language

APPENDIX V
IOWA VETERANS HOME

Current Contract Language

APPENDIX W
PATIENT CARE BARGAINING UNIT

1. Current Contract Language
- 2a. Current Contract Language
- 2b. Current Contract Language
- 2c. Current Contract Language
3. The Anamosa State Penitentiary will continue the pilot program in which registered nurses are scheduled to work a straight eight (8) hour shift with no unpaid break for a meal period ending June 30, 2015~~{2013}~~.
4. Current Contract Language
5. Current Contract Language
6. Current Contract Language
7. Current Contract Language