

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

**CHEROKEE COUNTY
PUBLIC EMPLOYER**

AND

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL
UNION #234
EMPLOYEE ORGANIZATION**

INTEREST ARBITRATION AWARD

RONALD HOH, ARBITRATOR

APPEARANCES

For Cherokee County:

Douglas Phillips, Attorney

For IUOE, Local #234:

MacDonald Smith, Attorney

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 PUBLIC EMPLOYMENT
 RELATIONS BOARD

AUTHORITY

This proceeding arises pursuant to the provisions of the Iowa Public Employment Relations Act, Chapter 20, 2011 Code of Iowa (hereinafter Act). Cherokee County (hereinafter County) and International Union of Operating Engineers, Local #234 (hereinafter Union), have been unable to agree upon the terms of their collective bargaining agreement for the 2014 fiscal year (July 1, 2013 through June 30, 2014) through their negotiations and mediation. Pursuant to independently negotiated impasse procedures, they therefore jointly chose the undersigned interest arbitrator to "...select...the most reasonable offer...of the final offers on each item submitted by the parties" in accordance with Section 22.9 of the Act.

A hearing was held in Cherokee, Iowa on June 10, 2013, and was completed on the same day. All parties appeared at the hearing and had full opportunity to present evidence and argument in support of their respective positions. The hearing was mechanically recorded in accordance with

regulations of the Iowa Public Employment Relations Board (hereinafter PERB).

FINDINGS OF FACT

BACKGROUND

The County is located in northwest Iowa, two counties to the east of the Missouri River, and three counties to the south of the Iowa-Minnesota border, and has a 2012 Census Bureau Estimate population of 11,946 persons. The Union represents a bargaining unit of eighteen employees, the large majority of whom are jailers, deputies and dispatchers. The parties have engaged in a collective bargaining relationship for many years, and are currently operating under and governed by a three year collective bargaining agreement (hereinafter contract), which will expire by its terms on June 30, 2013.

The County and the Union also bargain collectively concerning non-supervisory employees in the County's Secondary Roads Department. That bargaining relationship also is involved in a separate interest arbitration hearing, which took place earlier on May 28, 2013.

The parties in these negotiations agree that they are at impasse here in four areas: 1) wages; 2) sick leave for family illness; 3) on-call/stand-by pay; and 4) shift differential; and their final offers reflected below address only those four impasse areas. They negotiated no other charges to their current contract.

The parties at the hearing waived any pertinent statutory deadlines for the arbitrator's decision, and agreed that the arbitrator shall issue his decision here no later than July 10, 2013.

STATUTORY CRITERIA

Iowa Code Section 20.22(7) sets forth the criteria which arbitrators are to examine in determining the "most reasonable" of the final offers before him/her. That Section provides as follows:

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 wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

In addition, Section 17.6 of the Act provides as follows:

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

The arbitrator's award set forth below is made upon due consideration of, and with due regard to, the above statutory criteria. In the event that the arbitrator determines that one or more of these criteria are inapplicable here, he will so indicate and set forth the reasons for that decision on that statutory element.

Initially in that area, the parties agreed at the hearing that the County was making no inability to pay argument, and that the County had the ability to fund both its final offer and that of the Union. Therefore, the statutory criteria of "the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services" and "the power of the public employer to levy taxes and appropriate funds for the conduct of its operations" are statutory factors which, by the agreement of the parties, are not pertinent to the outcome here. Nor was there any specific showing in the evidence, or even any argument, that "the interests and welfare of the public" will be impacted either way by the arbitrator's decision here. That statutory factor, in the arbitrator's judgment, is similarly not applicable here.

Finally in this area, “past collective bargaining contracts between the parties” are relevant here only to show what the parties agreed to in previous contract negotiations in areas that are now in dispute between them. Since the evidence does not address “...the bargaining that lead up to such contracts,” that statutory element is likewise not of pertinence here.

COMPARABILITY

In view of the above findings, it is apparent to the arbitrator that, among the above statutory factors which the arbitrator “shall consider,” the only directly applicable statutory factor here is external comparability, which is described in the statute as:

- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

In that area, the parties disagree as to the composition of the appropriate comparability group. The County argues that the appropriate comparability group should consist of sheriff department employees in the following Iowa counties, set forth below with their 2012 Census Bureau Estimated Populations:

COUNTY	POPULATION
Cass	13,817
Allamakee	14,675
Wright	13,229
Appanoose	12,844
Shelby	12,489
Chickasaw	12,412
Grundy	12,320
Union	12,093
Louisa	11,369
Hancock	11,287
Montgomery	10,640
Lyon	11,670
Winnebago	10,600
Sac	10,241
Average Population	12,108
Cherokee	12,094

In support of that proposed group, the County argues that it looked first in developing that group for comparable population counties, and that it has selected those counties statewide with populations between 11,000 and 13,000 persons. It contends that a county's single highest cost is in county jails, that jail size and number of jail beds among these comparable employers are highly similar in size to the County's jail, and that such similarly-sized jails and jail costs are highly appropriate for comparability purposes. It alleges that similarly-sized counties such as those in its proposed comparability group face similar issues involving jail and deputy patrol functions, as well as similar pressures in budgetary determinations and allocations. It asserts that the jail sizes in the Union-proposed comparable counties of Plymouth, Sioux and Woodbury are between 4.5 on 17 times larger than that of the County, that there are more employees working in the Woodbury County jail than the County has total employees, and that these counties are therefore not properly comparable to the County.

The Union proposes the following group of unionized Iowa counties as properly comparable under Section 22.7(b) of the Act. The Union's chart in this area includes the 2012 Census Bureau Population Estimate and the 2012-13 Property Tax Valuation of each such county:

County	2012 Census Bureau Estimate	Property Tax Valuation 2012-2013
Cherokee	11,946	\$730,921,357
1. Plymouth	24,907	\$1,505,485,567
2. Sioux	34,268	\$1,551,842,619
3. Woodbury	102,323	\$3,841,410,356
4. Allamakee	14,237	\$709,108,603
5. Cass	13,723	\$721,020,682
6. Chickasaw	12,276	\$692,133,974
7. Harrison	14,548	\$770,849,250
8. Humboldt	9,729	\$600,727,808
9. Louisa	11,278	\$612,695,188
10. Madison	15,654	\$734,331,749
11. Shelby	12,069	\$737,405,237
12. Union	12,594	\$464,250,331
13. Wright	12,991	\$724,701,982

In support of that proposed comparability group, the Union asserts that its group is properly comparable under the statutory criterion because: 1) it utilizes organized sheriffs department employees in counties directly abutting the County, and those which include at least two of the three classifications of deputies, jailers and dispatchers which are included in this County unit (Plymouth, Sioux and Woodbury counties); and then includes statewide organized sheriffs departments where two of the three above classifications are included, where the population of such counties is within 2500 of that of the County, and where such counties had a property tax base in 2012-13 within \$100 million of the County's tax base. It further contends that the County, in its May 28, 2013 secondary roads arbitration with the Union, included Allamakee, Cass, Chickasaw, Louisa, Shelby, Union and Wright counties within the County's comparable group, and the Union therefore argues that since such counties were viewed by the County as comparable there, they should also be comparable here. It asserts that the immediate proximity, comparable size and comparable assessed valuations, in addition to its argument for County consistency in comparables across both County units participating in interest arbitrations, makes its proposed group substantially more appropriate for comparison purposes than the County's proposed comparability group.

DISCUSSION

This arbitrator, in his nearly 100 interest arbitration case decisions across seven states over the past 27 years, has consistently ascribed to the view that, to the degree possible, the statutory comparability criterion is most appropriately "market driven" – that is, based upon those employers with which the involved employer directly competes for the best possible employees. This arbitrator has also consistently held that a secondary and less pertinent but valuable comparability group consists of similarly sized employers of the same type in the same state, who employ the same types and classifications of employees as those of the involved employer, even though such

counties may not directly compete for quality employees. Finally in this area, the parties' agreement or past practice in the comparability area should be examined to determine which employers have been viewed by both parties in the past as properly comparable.

In this situation, the County directly competes for deputy sheriff and jail employees with organized deputy sheriff department employees in the adjacent counties of Plymouth and Sioux, and with deputy sheriff employees in adjacent Sac County.¹ Since those counties directly compete with adjacent Cherokee County for such employees, they are properly comparable under Section 22.7(b) of the Act. Additionally, since both parties agree that deputy sheriff employees in Allamakee, Wright, Cass and Union counties are proper for comparison purposes, those counties are likewise comparable under that statutory criterion.

The arbitrator does not, however, believe that comparisons are appropriate under Section 22.7(b) between the County and partially-adjacent Woodbury County. That county has about eight and one-half times more residents, and about five and one-half times more dollars of assessed property tax valuations than does the County, and Woodbury addresses significantly more urban and larger city problems with the inclusion in that county of Sioux City – as one of Iowa's seven largest cities – than will ever occur in the County. In addition, as the County here points out, Woodbury employs in its county jail more people than are employed in total by the County.

There remains then in this external comparability area the issue of whether the counties of Chickasaw, Louisa and Shelby – used by the County in its recent secondary roads interest arbitration case and agreed here as comparable by the Union – should be included in the appropriate comparability groups. Generally, it is this arbitrator's belief that if a particular employer is used in the same year as a comparable employer in one interest arbitration case involving the

¹ It is unclear whether such Sac County employees are represented and bargain collectively, and virtually no data was presented by the parties concerning this county.

subject employer, that claimed comparable employer should likewise be viewed as comparable in a second such case during the same time period, and particularly so where the other party agrees that such employer(s) are properly comparable. Because the County described those counties as comparable in the secondary roads interest arbitration less than two weeks prior to the hearing here, and the Union does not dispute their comparable nature here, those counties are appropriately comparable in this situation.

Based upon the above, in accordance with the requirements of Section 22.7(b) of the Act, I find that the most externally comparable county group for comparisons purposes consists of the adjacent counties of Plymouth, Sioux and Sac, and that the secondary external comparability group should also include the counties of Allamakee, Wright, Cass, Union, Chickasaw, Louisa and Shelby counties.

In addition in this area, Section 22.7 requires the arbitrator to consider in making his determinations the four statutory criteria listed therein, but also allows the arbitrator to consider “any other relevant factors.” In my judgment, and consistent with my prior interest arbitration decisions and those of the vast majority of my arbitral colleagues, the wages and benefits of other organized and non-organized employees of the same employer are properly considered an “other relevant factor” under that statutory provision. I therefore find that the County’s secondary roads and non-organized employees are properly compared here as “other relevant factors” under Section 22.7 of the Act.

ISSUE #1 – FAMILY ILLNESS SICK LEAVE USE

Article 9 of the parties’ current contract, inter alia, allows sick leave to “...be used only for the bona fide sickness or non-work related accidental injury of the employee.”

The Union’s final offer in this area allows for a maximum of twenty-four (24) hours of sick leave to be used for family illness. In support of that final offer, the Union points out that the

contract for the County's secondary roads employees already provides for use by those employees of up to twenty-four hours per contract year of accrued sick leave when a member of the employee's family is ill or injured. It further argues that at a County Board of Supervisors meeting of October 2, 2012 that benefit was extended to all County employees covered by the County's Personnel Policy, thereby having such benefit cover all County employees except those in this bargaining unit. Finally, it asserts that eight of the ten counties in the arbitrator's determined comparability group have this benefit in their contracts.

The County resists the Union's final offer in this area, and its final offer is the current contract language in Article 9. In support of that final offer, it argues that County secondary roads employees, in contrast to bargaining unit employees here, are not essential nor required to get work done immediately. It contends that employees in this bargaining unit should not be granted this new benefit which will result in more time not at work, where in this unit employees must be available at virtually all times to perform duties critical to the County.

DISCUSSION

The evidence in this area shows not only that all other County employees receive this rather minor and low cost benefit, but also that at least eight of the ten comparable employers in the group found appropriate above by the arbitrator provide this benefit to their sheriff department employees. Those similarly-situated counties, like the County, generally have small deputy sheriff staffs that must accomplish necessary work today rather than performing non-essential work at some future point, and yet those counties generally provide this benefit to sheriff department employees. There was no showing of any severe inability of those comparable employers to accomplish necessary work because their employees enjoy the benefit of a modicum of family illness sick leave use. Such clear comparability evidence requires the award of such a family illness sick leave use benefit.

AWARD

The Union's family illness sick leave use benefit final offer is hereby awarded.

ISSUE #2 – SHIFT DIFFERENTIAL

The parties current contract provides for a shift differential of twenty-five (\$.25) cents per hour for shifts other than the day shift.

The Union's final offer in this area calls for an increase in the shift differential to fifty (\$.50) cents per hour. It argues that the impetus for this final offer is that determination of the employees' work schedule is left under the contract primarily to the Sheriff in assigning and changing work hours in the patrol and jail areas. It contends that Article 6 of the contract gives the Sheriff wide discretion in scheduling and rescheduling both work hours under that provision and vacation time under Article 8, and that the Sheriff has regularly exercised that discretion to the detriment of bargaining unit employees, especially in the dispatch area. It argues that in its comparability group, five of its thirteen comparable employers receive shift differentials in amounts higher than that received in the Department.

The County resists the Union's proposal in this area; its final offer is retention of the current contract language and policy in this area. In support of that final offer, it argues that, in its comparability group, only one other county pays any shift differential. It asserts that even in the determined proper comparability group, the County's current payment of 25¢ per hour compares favorably, particularly since that data shows that the majority of such employees receive no shift differential.

DISCUSSION

The comparability group evidence in this area shows that, among comparable departments as determined by the arbitrator, only three of ten pay any shift differential, and only one such employer pays as much as the Union has requested in its final offer. There is thus virtually no

support for that Union final offer, and it is therefore not awarded here.

AWARD

The Union's final offer in this area is not awarded, and the arbitrator instead awards the County's final offer of the current contract language and policy in this area.

ISSUE #3 – ON-CALL/STAND-BY PAY

The parties' current contract does not provide for any type or level of on-call or stand-by pay.

The Union's final offer in this area calls for a new contractual Article providing for on-call pay of three dollars (\$3.00) per hour when unit employees are on-call. In support of that final offer, the Union points out that even when all four scheduled deputy work shifts are on-duty, the time period of 3:00 AM to 9:00 AM each day is not covered, and the net effect of the small size of the Department is that this six hour period each day must be covered by a deputy on-call or on stand-by. It argues that the deputy who works the 7:00 PM to 3:00 AM shift is required to be on-call, and currently receives no pay for such on-call or stand-by status. In the area of comparability, it contends that both Sioux and Woodbury counties have enough deputies to require little or no stand-by, and where among comparable counties there is a smaller department and thus more need for stand-by, it is more likely that those smaller counties will have some stand-by provision.

The County opposes the Union's final offer in the stand-by, on-call area, and its final offer is for no change in this area. In support of that final offer, it argues that the existing claimed uncovered time period of 6:00 AM to 9:00 AM is normally covered by the Department Sheriff or the Chief Deputy. It asserts that under the current work schedule, the period when that time is uncovered occurs in only two out of every seven weekends, with the principal exposure on those two weekends between the 3:00 AM and 6:00 AM. It points out that when deputies are actually called out during such an otherwise uncovered time period, they are paid at overtime rates. Finally

in this area, it argues that more comparability group employers do not pay stand-by pay than do provide such pay.

DISCUSSION

The evidence in this area appears to show that the problem here does not occur nearly as often as the Union contends, and that often when it does occur, half of the time involved is covered by the Department Sheriff or Chief Deputy – all of which minimizes at least to some degree bargaining unit deputy exposure to such time periods – and that when called out during such periods bargaining unit deputies are paid at the overtime rate. More pertinent here, even among the Union's comparability group, only five of thirteen claimed comparable employers provide some form of stand-by or on-call pay; and within the arbitrator-determined group only three of nine comparable employers provide such a benefit.

In view of the relatively uncommon nature of the necessity for call-in pay during otherwise uncovered work time periods, and particularly because this benefit is far from common among comparable employers, the arbitrator does not award the proposal of the Union in the stand-by, on-call area.

AWARD

The arbitrator awards the County's final offer in the stand-by, on-call area of no change to the current contract or practice in this area.

ISSUE #4 – WAGES

The parties' existing agreement in the wage area is set forth in Article 14 of the contract. Effective July 1, 2012, it contains six experience steps for jailers and dispatchers, with a starting wage level of \$14.06 per hour, up to \$17.01 per hour after five years of employment for both such classifications. The contract also sets forth the wage rate of \$17.01 effective July 1, 2012 for the Chief Jailer, the Chief Dispatcher, and secretaries. Additionally, it sets a pay rate for part-time and

full-time deputies with up to five years experience effective on that date at \$21.75 per hour, and a rate of \$21.92 per hour for full-time deputies with more than five years of experience.

POSITIONS OF THE PARTIES

The Union's final offer in the area of wages calls for an 85¢ per hour wage increase across-the-board for all bargaining unit employees, effective July 1, 2013. In support of that final offer, the Union argues that bargaining unit employees' wages since July 1, 2010 have increased between 98¢ per hour and \$1.31 per hour at the top step rate, in comparison to non-bargaining unit Department employee wage rate increases of either \$2.25 or \$2.30 per hour during that same time period. It contends that such a disparity in treatment warrants the significant wage increase contained in the Union's final offer. It asserts that in its comparability group, the County's 40¢ per hour final offer is the lowest such increase for deputies and the third highest for jailers in its comparability group, and that it is second highest for dispatchers among the six comparable employers with dispatchers in the bargaining unit. It claims that its final offer is more in line with increases effective July 1, 2013 in that group. It contends that the existing deputy wage rates in the two most nearby and comparable counties of Plymouth and Sioux are already more than \$4.00 per hour higher than in the County, and that deputies in both of those counties will be receiving wage increases in fiscal 2014 above that contained in the County's final offer. It argues that while the existing relative comparability group position of the County is better for jailers and dispatchers, bargaining unit employees fare no better than average in wage rates among those comparable employers. It asserts that its 85¢ per hour final offer will not result in a drastic relative position change among comparable employers for deputy pay rates, and will maintain such deputies near the lower spectrum in its comparability group. Finally, it points out that the total cost difference between the two final offers here is only \$16,848 – an amount easily affordable by the County in this situation.

The County's final offer in the area of wages is 40¢ per hour across the board, effective July 1, 2013. In support of that final offer, the County argues that the parties in their 2007 through 2009 negotiations agreed for the first time to a series of steps of employee percentage contributions for rising health insurance costs; that the County paid dearly at the rate of about 3.5% wage increases each of those years to get such employee health care cost percentage contributions; and that the Union's 85¢ per hour final offer here is an attempt to recoup some of those increased insurance costs without giving anything back. It contends that the Union's catch-up argument here should not be an element of the arbitrator's wage determination, since someone in a comparable group is always trying to catch-up. It asserts that historically the salary levels of elected officials are set by statute in Iowa after a recommendation is made by a county compensation board; that the Sheriff normally provides the same salary increase he/she received to his/her chief deputies; and that it is not helpful to interact that process with the bargaining process here. It claims that the Union's comparability data for deputies shows that the County's 40¢ per hour final offer will keep such deputies in approximately the same relative position as those employees currently occupy in the Union's comparability group, and that there is no showing that the Union's 85¢ per hour final offer is necessary when measured against legitimate comparators. Finally, it argues that its comparability group data shows that County dispatchers will receive higher than the wage rate effective July 1, 2013 for all four comparable employers for which actual wage data is available, even under the County's final offer.

DISCUSSION

The arbitrator has carefully examined the wage rates for the classifications of deputy, jailer and dispatcher effective July 1, 2013 among employers in the arbitrator's comparability group in comparison to those resulting from the parties' final offers here. In examining the wage rates of those comparable employers, the average wage level has been used where a wage level range

exists in the data. That data generally produces the following wage levels among reporting comparable employers:

COUNTY	DEPUTY	JAILER	DISPATCHER
Plymouth	\$26.82	\$16.91	\$16.91
Sioux	\$26.17	\$18.59	\$17.66
Allamakee	\$21.65	\$14.86	\$14.86
Wright	\$21.92	\$13.15	
Cass	\$21.60	\$15.80	
Union	\$21.87	\$16.38	
Chicasaw	\$21.49	\$12.51	\$15.01
Louisa	\$22.26	\$16.49	\$16.99
Shelby	\$20.87	\$14.07	
AVERAGE	\$22.74	\$15.42	\$16.29
CHEROKEE	CO. \$22.23 UNION \$22.68	CO. \$15.63 UNION \$16.08	CO. \$15.63 UNION \$16.08

That evidence thus shows that, while Jailer pay would remain above the comparability group average irrespective of which of the final offers is adopted by the arbitrator, the average pay rate for both deputies and dispatchers would remain behind the average in the comparability group, even if the Union's final offer is adopted here. However, that disparity would be greatly minimized over that currently in existence, in that the Union's final offer for deputies would raise deputy sheriff pay to a level within 6¢ per hour of the average in the comparability group, and would come within 21¢ per hour of the average in that group for dispatchers. In addition, while it is true that only one county in the arbitrator's comparison group will receive a higher wage increase than that contained in the Union's final offer here, deputies in all of the comparable counties will receive top end wage increases in excess of the County's final offer, with most such comparators receiving between .51¢ and .66¢ per hour for deputies.

In addition, although the County claims that the Union's final offer is an attempt to make up for compensation losses Union-represented employees experienced due to recent requirements

that such employees pay an increasing percentage of their health insurance premiums, the evidence does not support a finding that comparable employees' experience in the area of cost of health insurance premiums creates a monetary advantage for bargaining unit employees over such comparable employees. It is more than likely that such comparable employees have also experienced increased health insurance percentage costs similar to those of the bargaining unit involved here. Bargaining unit employees here have not been shown to have such an advantage in this area that would require a continued significantly lower than average wage level, and particularly so for deputies and dispatchers.

Finally, the arbitrator cannot agree with the County's argument that a degree of "catch-up" in wages is not appropriate here because some group(s) among comparable employers are always trying to "catch-up." Even if one or another group of comparable employees is always trying to "catch-up" as the County contends, this arbitrator in past cases, when comparing the right to interest arbitration to the right to strike as a final impasse procedure step, has described interest arbitration as an "equity" process, compared to the right to strike – a "power" process. All other things being equal, interest arbitration is designed to move employees toward the average among pertinent comparators, and to thereby bring a degree of "equity" to contract resolution. The arbitrator's awarding of the Union's final offer in this case is consistent with his view of the relative "equity" intended in interest arbitration, when compared to a system where the right to strike is the final impasse step.

AWARD

The Union's final offer on wages of 85¢ per hour is the "most reasonable" of the final wage offers before the arbitrator. It is hereby awarded.

CONCLUSIONS OF LAW

In accordance with Section 22.7 and 22.9 of the Act, and for the reasons set forth above,

the arbitrator makes the following findings of the "most reasonable" final offers on the impasse items before him and set forth below.

1. FAMILY ILLNESS SICK LEAVE USE

The Union's final offer.

2. SHIFT DIFFERENTIAL

The County's final offer.

3. ON-CALL/STAND-BY PAY

The County's final offer.

4. WAGES

The Union's final offer.

June 28, 2013



RONALD HOH
Arbitrator