

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Contract Between

CITY OF CLINTON

and

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 609

IOWA PERB

Case CEO 159/Sector 2

(2014-15 Contract)

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Appearances:

Ms. Dorothy A. O'Brien, Esq., 2322 East Kimberly Road, Suite 100E, Davenport, Iowa 52807, on behalf of the Union.

Mr. William J. Sueppel, Esq., Meardon Sueppel & Downer, PLC, 122 South Linn Street, Iowa City, Iowa 52240-1802, on behalf of the City.

ARBITRATION AWARD

Pursuant to Chapter 20 of the Iowa Code, the parties jointly selected Arbitrator Sharon A. Gallagher through the Iowa Public Employment Relations Board to hear and resolve their dispute over the terms of the 2014-15 labor agreement. There is a potential negotiability dispute between the parties concerning the Union's offer on Maternity Duty. The City has not yet filed a petition with the Public Employment Relations Board regarding this part of the Union's offer, preferring to wait until this Arbitrator rules on this item before deciding to bring this provision to the Public Employment Relations Board. The parties do not have an independent impasse resolution procedure but they have agreed to proceed with this case and they have waived the statutory time limits. The parties advised they expect this Arbitrator to issue her Award within 15 days of the close of the record herein as provided by law. The parties stipulated herein that they had reached agreement on two provisions in Article 22, Sections C and F.

The hearing was held by agreement of the parties on July 8, 2014 at Clinton, Iowa. The parties had a full and fair opportunity to make opening and closing statements, to submit evidence and to make arguments and objections. The Union submitted 5 exhibits (Union 1 – 5). The City submitted 18 exhibits (City 1-18). All exhibits were reviewed/described by the advocates and both advocates asked clarifying questions of the other and the witnesses. Five witnesses were called who were sworn by the Arbitrator on oath or affirmation. As required by law, the Arbitrator recorded the proceedings. The parties chose to give closing arguments at the end of the hearing. The record in this case was closed on July 8, 2014.

STATUTORY CRITERIA

This case is controlled by Section 20.22(9) of the Iowa Code. That Section reads as follows:

9. The panel of arbitrators shall consider, in addition to any other 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.

Section 20.22(11), stats., also requires the Arbitrator to select the “most reasonable offer of the parties’ final offers on each impasse item.”

The City stipulated that it is not arguing inability to pay (Factor c) or levy taxes (Factor d) for the Union's offer. Evidence was given herein by both parties on Factors a and b and the remainder of Factor c.

FINAL OFFERS

Union Offer:

June 27, 2014

1. General Wage Increase of 2% 2014-2015
2. Accept a PPO Insurance Plan as follows
 - Deductible In-Network Single \$500 Family \$1000
 - Deductible Out-of-Network Single \$1000 Family \$2000
 - Co-Insurance In/Out 80%/80%
 - Maximum Out of Pocket In-Network \$1000/\$2000
 - Maximum Out of Pocket Out-of-Network \$1000/\$2000
 - Preventive 100% of all services
 - Emergency Room 80% after Deductible
 - Prescription Co-pays

- Generic \$5
 - Brand Formulary \$25
 - Brand Non-formulary \$55
- We will agree to contribute 3% of the premium monthly with a maximum cap of \$30 for a single plan and \$70 for a family plan
 - These changes will be applied January 1st 2015

3. Add Article Titled Maternity Duty (Health and Safety)

It is highly recommended but not required, for a pregnant firefighter to notify the Chief of the Department that she is pregnant. This should be accomplished as early in the pregnancy as possible, preferably upon confirmation of the pregnancy, so that the firefighter can receive the necessary counseling and information on the hazards and risks to pregnant firefighters.

Upon notification of the pregnancy the firefighter will meet with the human resource professional or designee to receive a copy of NFPA 1582 Appendix C, Essential Structural Firefighting Functions. This information will present to the firefighter's physician the job performance requirements of a firefighter. A medical release form will be provided to the firefighter's physician for the purpose of certifying the employees' fitness for duty. The firefighter's physician will then be able to advise the firefighter on whether she should continue to work in operations, request a modified duty status or be placed on Maternity Leave.

Modified Duty shall be a reassignment from regular shift responsibilities on a temporary basis (with no reduction in pay and benefits), when one of the following occurs:

It has been determined by the firefighter's physician that to continue working operations will jeopardize the (sic) and well-beings of the firefighter and her child

The firefighter herself requests modified duty assignment

The firefighter is no longer able to perform regular shift assignments safely and efficiently as determined by observed and documented deficiencies due to her pregnancy.

The affected firefighter may be reassigned, at the Chief's discretion, to those duties deemed appropriate to her condition and ability. If the firefighter elects to continue working, (and does not request modified duty) the firefighter will be allowed to continue duties after signing appropriate release of liability paperwork. The firefighter will be allowed to continue on full duty status until the firefighter is no longer able to do so according to documented deficiencies. The job performance deficiencies shall be based on the inability for the firefighter to complete

essential job functions for the position. At that time Maternity Leave will commence. The firefighter will return to full duty status when deemed medically fit for duty by the firefighter's physician.

City Offer:

1. The City proposes an across-the-board wage increase of one percent (1%) for all employees covered by the Collective Bargaining Unit.
2. The City proposes that Article 16, "Medical Insurance," be revised to read as follows:

The City agrees to provide health insurance for each full-time employee. The insurance shall be the same or similar as set forth in City Council Resolution No. 2013-532 (Modified Preferred Provider Option), attached to this contract.

Effective January 1, 2015, an employee receiving a single health insurance plan shall pay three percent (3%) of the premium cost.

Effective January 1, 2015, an employee electing family health insurance coverage shall pay three percent (3%) of the premium cost. The City shall pay the remainder of the premium. The City of Clinton proposes no other changes to the existing contract, except as previously agreed upon.

City Resolution 2013-532

WHEREAS, applicable provisions of the Medical Plan grant the Employer the right to amend the Plan, and

WHEREAS, the a committee of non-bargaining employees has worked with administration for the last year to review the financial status of the City's self-insured plan, select an administrator for the City's self-insured plan, and to review and recommend plan design changes to the City Council, and

THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLINTON, IOWA, the City of Clinton approved the following two plan designs for non-bargaining employees effective January 1, 2015:

	Modified Preferred Provider Option	High Deductible Health Plan
Deductible- In- Network Single Family	\$500/\$1,500	\$1,250/\$2,500
Deductible Out of	\$1,000/\$2,000	\$2,500/\$5,000

Network Single/Family		
Coinsurance In/Out	80%/60%	90%/60%
Maximum Out of Pocket In-Network	\$2,500/\$5,000	\$2,000/\$4,000
Maximum Out of Pocket Out-of- Network	\$4,000/\$9,000	\$5,000/\$10,000
Preventive RX Co-pays	100% on all services	100% on all services
Generic	\$5	Subject to Deductible and Coinsurance
Brand Formulary	\$25	
Brand Non- Formulary	\$55	
Specialty	\$75	
Mail Order 2x Retail	Yes	N/A
Emergency Room	80% after deductible plus \$100 copay	90% after deductible
All other services	80%/60%	90% after deductible
In-Network and Out of Network amounts satisfy each other	No	No

BE IT FURTHER RESOLVED, the City will consider the implementation of a health savings account for employees electing participation in the High Deductible Health Plan when premium ratings for the new plans are available.

BE IT FURTHER RESOLVED, if the City does not achieve the required participation rate for the high deductible health plan, the plan cannot be used during the plan year beginning January 1, 2015, but shall remain as an available plan design option for the plan year beginning January 1, 2016.

BE IT FURTHER RESOLVED, non-bargaining employees will be required to contribute three (3) percent towards the premium amounts beginning January 1, 2015.

. . .

BACKGROUND

The City of Clinton, Iowa is located on the Mississippi River south of Dubuque and approximately 35 miles north of the Quad Cities. Its recorded population in 2010 was 26,885,

down 3.2% from 2000 when the City's population was 27,772 ((City Exh. 11). There are three unionized units in the City: Police, Fire and Public Works. All other city employees are non-union. There are 44 bargaining unit employees in the Police Department and approximately 40 unit employees employed in Public Works. In the Fire Department there are 39 unit positions, 38 of which are filled. (One position in the Fire Department has been open since June 20, 2014.) The City has not settled with any of its unionized employees for the 2014-15 contract year. The City has granted its non-union employees a 0.5% increase in 2014-15. There are a total of 220 employees covered by the City's self-funded insurance plan.

The City's firefighters have been represented by the IAFF, Local 609, for some time. The City and the Union have traditionally voluntarily settled in the past. This case is the first time the parties have gone to Interest Arbitration under Chapter 20 of the Iowa Code.

Bargaining History

The following constitutes the only evidence presented herein on this factor. The parties' labor contracts have had 0% employee contributions toward monthly health premiums for some time. It is also undisputed that pay rates for Clinton Firefighters have remained very low compared to comparable communities.

Before this case, the parties had voluntarily settled their labor agreements without going to Interest Arbitration, although they have gone to Fact Finding at an unknown time in the past.¹ In 2011-12 and 2013-14 the Union voluntarily agreed to wage freezes recognizing the City's financial challenges. The Union also proposed a wage freeze for 2012-13 but because the City agreed to a 2% increase with its other unions, the City gave the same increase to City firefighters. This factor is relevant and important herein and it weighs in favor of the Union as it shows that the Union has been reasonable and responsive to the City's difficulties in the past.

The External Comparables

Without any prior cases or other evidence demonstrating the appropriate comparables group, this Arbitrator must determine same. The City and the Union's comparables lists are very similar, the Union using the following seven and the City using those seven plus Cedar Falls and Fort Dodge. These cities are located in different counties spread all over the eastern half of Iowa east of Highway 35 (with the exception of Fort Dodge). These communities range in population as of 2010, from 22,886 (Muscatine) to 39,260 (Cedar Falls), as follows:

City	2010 Population	Union
Bettendorf*	33,217	Bettendorf
Burlington	25,663	Burlington
Cedar Falls*	39,260	
Fort Dodge	25,206	(Used for INS.)
Marion*	34,768	Marion
Marshalltown*	27,552	Marshalltown
Mason City	28,079	Mason City

¹ No evidence was presented on this record regarding what comparables were used by the parties in Fact Finding or what the Fact Finder's recommendations were.

Muscatine*	22,886	Muscatine
Ottumwa** ^A	25,023 ^B	Ottumwa

(U. Exh. 3; City Exhs. 11)

It should be noted that the Union presented no evidence why Cedar Falls and Fort Dodge should be excluded. Also I note that the Union used Fort Dodge for its insurance item only. In these circumstances and given the fact that the City's nine comparables are very close in population to Clinton, that all nine comparables are spread across the eastern half of Iowa and Fort Dodge is just 23 miles east of Highway 35, I find that the City's comparables are reasonable and appropriate and they shall be used in this case.

Power to Levy Taxes

The parties stipulated that the City has not argued and will not argue that it lacks the ability to pay for/the power to levy taxes and appropriate funds to conduct its operations under Factors 20.22(9)(c) and (d), in that it is otherwise unable to pay for the Union's offer should the Union prevail. However, the City did make a series of arguments regarding its current and future legal and financial situation. These legal and financial arguments will be addressed under Factor 20.22(9)(c), the interests and welfare of the public. In the circumstances this power to levy factor is not in play and has no weight in deciding this case.

Interests and Welfare of the Public

Union

The Union has argued that its Maternity Duty provision would positively affect female firefighters and their fetuses in Clinton by saving them from exposure to smoke and heat during pregnancy that can cause birth defects. The public, who need firefighters at 100% strength, would also be positively affected by having pregnant female firefighters taken off the front line. As a general matter, the Union basically argued that its wage and insurance offers were reasonable, responsible and responsive to the City's current financial situation and taxpayer concerns. Even with the Union's 2% wage offer, City firefighters pay would not change the City's ranking as second to last in wages,² and this would be in the public interest. Regarding insurance, the Union urged that its voluntary and significant offered changes in insurance are reasonable and responsive to the City's financial problems. The Union's offer, with lower out-of-pocket maximums and co-pays is also in the public interest as firefighters with catastrophic insurance claims would not become impoverished as they would were the City's offer selected.

City

The City provided several exhibits and testimony by City Administrator Jessica Kinser showing the City has had some unusual and significant problems due to litigation against it and

^A The starred communities showed an increasing population between 2000 and 2010. All others, including Clinton showed decreasing population for that period.

^B Union Exhibit 3 listed some city populations that were different from the above, taken from City Exhibit 11. I do not find the differences significant.

² The Union did not use Fort Dodge in its wage argument. With Fort Dodge, according to the City, Clinton is third from the bottom on wages.

by it which have affected its wage and insurance offers herein and will affect the City's financial situation in the future.

In 2011, the City's major corporate taxpayer Archer Daniels Midland (ADM) received a favorable ruling in Iowa District Court holding that in 2010 and 2011 ADM facilities in the City of Clinton had been overvalued, that ADM had overpaid property tax to the City in the amount of \$2,676,774 and that the City of Clinton owed ADM \$1,050,206 in tax credits, its portion of the over payment. Pursuant to the Court's orders, the tax credits that the City must grant to ADM will be made up annually by taking money from the City's General, Debt Services and "other funds," as follows: In FY2013-14 (\$473,367), FY 2014-15 (\$312,448) and FY 2015-15 (\$264,391). The lion's share of funds for these tax credits will be taken each year from the City's General Fund. (City Exh. 8).

City Administrator Jessica Kinser stated herein that no reduction in the City's General Fund was made for the tax credit in FY 2013-2014 but in FY 2014-015 ADM will have to be credited \$156,497 from the General Fund and in FY 2015-16 the Credit will be \$132,426, again from the General Fund.³

At some point prior to 2010, the U. S. Department of Justice (DOJ) sued the City, following a federal whistleblower charge of Medicare fraud against the City. The DOJ and the City settled this lawsuit in 2010 with the City's agreement to pay \$4.5 million in damages to be paid over a 10 year period in equal payments of \$450,000 per year. The City made the first \$450,000 payment in 2010 out of its General Fund. For 2011, the City was able to use its Debt Service levy to make the \$450,000 payment so nothing came out of the City's General Fund.

In 2011 the City sold a major asset, the Municipal Dock, for \$3 million to help pay for its various obligations. Moody's had down-graded the City's bond rating in November, 2011 because of lack of reserves. The City levies a tax to cover reserves and has never transferred funds from the General Fund to replenish the reserve fund.

In 2012 the City had a very bad insurance claims year to its self-insured fund. According to City policy, the City tries to maintain \$2 million in reserves for payment of claims to cover at least 6 months of claims. Due to 2012 claims, however, the City had to pay \$1.8 million in claims, leaving its reserves at only \$200,000.

On June 30, 2012 the State Insurance Office sent the City a warning letter stating that the City's reserve level was inadequate under State requirements and that the City needed to bring its reserve account up to a higher level. The City was not fined as the Insurance Division's warnings carry no penalties. Since 2012, the City has raised its reserve level up to between \$600,000 and \$800,000, having added \$135,000 on June 30, 2013. The City has not experienced a bad claims year since 2012.

At some point during this period of time, the City fired the former Fire Chief and filed a malpractice suit against the former City Attorney. The Civil Service Board later found that the Chief had been wrongly discharged as he had engaged in no wrong-doing. And the City's cost for hiring different counsel on an hourly basis to represent it in its various actions resulted in the City incurring legal fees in excess of \$1 million.

³ No evidence was presented to show when the \$237,097 would have to be credited back to ADM.

Finally, City Administrator Kinser described the effects of state property tax reform legislation on the City's future taxable values of commercial, industrial and multi-family residential. In 2015 and 2016, the State will reduce the taxable value of Clinton commercial and industrial properties by \$24 million each year. State legislation provides that for 2015 and 2016, the State will reimburse Clinton for its loss of over \$360,000 in taxes each year. (Approximately \$197,000 of each refund will go to the City's General Fund). However, there are no State plans to backfill municipal budgets for these changes in valuation beyond 2016. Kinser stated that a tax rollback is also planned for multi-family residential property, proposed to begin in 2015. Rules must be put in place so no taxable value amount/financial impact is known for Clinton. Kinser stated no State backfilling is planned for this program.

It is significant that in 2014, the City lowered the tax levy which actually reduced residents' taxes by \$260,000. The City accomplished this by using its emergency tax fund to pay for insurance claims/reserves. Kinser stated that the City's insurance consultant expects that insurance premiums for 2015-16 will decrease by 4%.

For reasons stated *infra*, this interests and welfare of the public factor, although certainly relevant and important to understanding the complete picture in Clinton, is not weighty enough to be determinative in this case.

Comparison of Clinton to Comparables

There are three items before me: Wages, Insurance and Maternity Duty. Chapter 20.22(9)(b) of the Iowa Code states the comparability factor as a

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

The parties have not raised any evidence of “peculiar” factors herein except the City's evidence concerning its legal and financial situation, being considered under the “Interests and Welfare of the Public” factor.

A. Wages

At the hearing, it was discovered that there were errors on City Exhibit 4 which purported to show the annual salaries as of FY 2014-15 of 10 year and 15 year Firefighters and Lieutenants in all 10 comparables, except Mason City on which City Exhibit 4 stated “not settled”. Upon close examination, only some comparables numbers in City Exhibit 4 were accurate: the annual salaries of 10 year firefighters and 10 year lieutenants and the annual salary of 10 year firefighters in Fort Dodge. The City's descriptions of its and the Union's wage offers for 2014-15 was accurate.

To assist her in analyzing the wage data, the Union gave the Arbitrator Union Exhibit 5, excerpts from the P.E.R.B.'s websites description of contract provisions for six comparables: Marshalltown (2011-13), Bettendorf (2010-14), Burlington (2009-16), Mason City (2012-14), Muscatine (2011-13), Marion (2012-14). There were many problems with this data as well as difficulties using Union Exhibit 3 which purported to show “average yearly % increases” for six comparables (excluding Ottumwa and Cedar Falls). And Union Exhibit 3 complicated the

inquiry here by sometimes including 2013 and even 2012 (Marshalltown) and 2015 (Marion and Mason City) and at times excluding 2013 in its wage percentage averaging. This was far from helpful. In addition, Union Exhibit 5 showed that there are no 10 year steps in Bettendorf and Muscatine. And Union Exhibit 3 did not list a 15 year step for firefighters so a comparison to City Exhibit 4 on that point was impossible.

Based on my study of all of the record documents, I have constructed the following chart showing a comparison of comparable wages, the best I could do in the circumstances:

City	Firefighter 10 Yrs.	Lieutenant 10 Yrs.	City 4 %	Union 3 Ave. % Per Year
Bettendorf	\$55,922	\$64,026	1.9%	3%
Burlington	\$52,280	\$57,177	2%	2%
Cedar Falls	\$55,074	No info	4.5%	---
Fort Dodge	\$46,477	\$56,114	4.5%	4.3% (3 years) ⁴
Marion	\$58,293	\$65,066	1.5%	2.95% ⁵
Marshalltown	\$55,468	\$59,134	2.1%	2.02%
Mason City	\$51,135	\$58,756	“Not settled”	3.7%
Muscatine	\$51,792	\$55,298	2.25%	No info
Ottumwa ⁶	No info	No info	2%	---
Clinton City	\$51,120	\$55,292	1%	
Clinton Union	\$51,626	\$55,840		2%

The simple takeaway from the chart above is that none of the comparables gave its firefighters 1%. in 2014-15 Seven comparables, according to City Exhibit 4, gave their firefighters 2% or more. The only exceptions were Bettendorf and Marion, which appeared to give their firefighters less than 2%. Based on the information in Union Exhibit 5, I believe the City’s 1.5% figure for Marion is incorrect. I note that the lift received in Marion from April 1, 2014 through April 1, 2015 was 4.1%. Concerning Bettendorf, Union Exhibit 5 showed that the City also matches up to 1% when firefighters put from 3% to 4.5% into their deferred compensation accounts. This is an additional benefit none of the other comparables has.

Looking at other information in the record here, I note that Lieutenant Mike McQuiston stated without contradiction that City firefighters' entry pay is the lowest among the comparables at \$40,784. Looking at the City's exhibits, Clinton ranked fifth of 10 in population (City Exh. 11). It ranked fourth of 10 comparables (\$42,441) in median household income with Bettendorf first at \$69,083 and Marion second at \$59,120 while Fort Dodge was ninth at \$38,292 and Ottumwa was tenth at \$37,251 (City Exh. 15). City Exhibit 16 showed that Clinton tied for fourth of 10 comparables (with Burlington and Fort Dodge) for the highest percentage of the population below the poverty level, at 17.3%. The three cities with higher percentages of the population below the poverty level were Ottumwa, Cedar Falls and Muscatine. City Exhibit 12 showed that the city is third of ten comparables in debt per capita – only Fort Dodge (1st) and Bettendorf (2nd) have higher debt per capita than Clinton. Finally, City Exhibit 14 showed that Clinton was tied with Fort Dodge (at 4.8%) for fourth of 10 in greatest percentage of

⁴ Regarding the average 4.3% increase listed by the Union, this was for increases in 2014, 4.5%; 2015, 4.5%, and 2016, 4%.

⁵ Union Exhibit 5 actually showed Marion had a tradition of split increases, coming each year in April and July and that Marion Fire received 1.25% in April, 2014 and 1.5% in July, 2014 and 1.35% in April, 2015.

⁶ For Ottumwa, neither party could get detailed information on wages there. No evidence was provided to show how the City came up with a 2% wage increase for that city.

unemployed as of April, 2014 with Marshalltown (5.9%), Ottumwa (5.4%) and Burlington (4.9%) having higher unemployment rates and Cedar Falls (2.6%), Marion (3.2%), Bettendorf (3.8%), Muscatine (4.1%) and Mason City (4.3%) doing better than Clinton on this point.

The above evidence shows Clinton is generally in the middle of the pack in all areas raised by the City. But Clinton would be dead last in wages were the City's wage offer selected here. Even if this Arbitrator awards the Union's 2% wage increase, 10 year City firefighters will only move ahead of Mason City firefighters with 10 years' seniority by \$491 per annum. And City Lieutenants with 10 years' seniority will only move ahead of Muscatine lieutenants (with 8 years tenure) by \$542 per annum. These amounts are insignificant in my view, given the increases all Clinton firefighters will experience in insurance premium and deductible payments. The comparables factor strongly weighs in favor of selection of the Union's final offer on wages.

The question arises whether the City's legal, financial and legislative problems should weigh against comparability. The City has indeed suffered a number of significant setbacks due to its business and expenditure decisions as well as errors it has made and unanticipated levels of insurance claims. The evidence here showed that in the past 3 years the Union has taken 2 wage freezes and it proposed a third freeze, but the City decided to grant firefighters the same 2% it gave its other units. The Union has been very sensitive and responsive to the City's concerns. The record also showed that the City has effective plans and strategies in place to meet all of its financial and legal challenges. Paying its firefighters an additional \$18,992, 2% in wages under the Union's offer rather than 1%, will not have any effect on the City's other obligations, litigation costs, tax valuations or settlements. In my view, the Union has proposed a very modest increase in recognition of the difficult challenges the City now faces.

In all the circumstances here, I find that this comparability factor outweighs the interests and welfare of the public factor. This is so because the trouble the City is in is not attributable to the actions of this unit. In addition, I note that this contract covers only one year, which makes it unfair to charge a portion of the City's various future financial problems (which may never materialize) against this unit. at this time Therefore, I find that this comparability factor strongly favors the Union's offer, as detailed above, and comparability is determinative on the wage item. The Union's wage offer is selected.

I turn now to the second item addressed at the hearing.

B. Maternity Duty Provision

The Union has offered the above-quoted Maternity Duty provision to be added to the 2014-15 labor agreement. The City has offered the status quo. The following contract provision appears in the current agreement at Article 22:

LEAVE OF ABSENCE

...

B. MATERNITY LEAVE

An employee anticipating a maternity leave, may be entitled to a leave of absence without pay if she has exhausted her sick leave. All employees requiring such

leave shall notify the Fire Chief of the anticipated date of birth and may be assigned to duty as long as health permits.

The employee requesting maternity leave shall present a doctor's statement verifying when the employee's condition required her to leave work and shall present a doctor's statement following the birth or miscarriage as to when the employee is able to return to work and unless the employee returns to work within seven (7) calendar days of such date, the employee will be considered to have voluntarily resigned or retired. (U. Exh. 4).

Of the 38 bargaining unit firefighters currently employed by the City, only one, Mrs. Karen McQuiston (hereinafter McQuiston), is female. McQuiston was single when she was hired by the City in 2001. She later married and as she stated herein, she became pregnant in April, 2011. McQuiston recounted her experience as a pregnant Clinton firefighter, including suffering smoke inhalation and fire heat, facing the dangers of lifting/carrying victims, of falling and of having to wear ill-fitting gear as her pregnancy went on.

McQuiston recounted that she requested she be assigned to light duty while she was pregnant but the then-Chief Regenwether denied her request, saying light duty was only available to firefighters injured on the job and that the City could not afford to give light duty to those with off-the-job injuries.⁷

The Department has no shortage of light duty. The Building Neighborhood Services Division (BNS) has to perform inspections. The Department also provides educational programs to groups and schools, does hydrant checks, pre-plans for businesses in case of fire, performs sprinkler checks and lock/key box and smoke detector installations and provides shift training (U. Exh. 4, p. 2). It is also undisputed that the City used to employ an independent contractor to do BNS inspections but that currently, an employee of the City Fire Department does that work (at his overtime rate) more cheaply than the contractor that performed it in the past.

McQuiston submitted the following internal and external comparables information (U. Exh. 4):

...

The cities that have an unofficial policy that includes light duty for pregnant firefighters are:

(Ames)
(Davenport)
(Cedar Rapids)
(Sioux City)
Marshalltown
Mason City
(Waterloo)
Burlington

⁷ Current Fire Chief Mike Brown stated herein that he has never taken the position that light duty for pregnant firefighters is a bad idea. Rather, Brown stated that the Department has negotiated with the Union on the subject but no agreement to change Article 22B has been reached. Brown stated that the Department's minimum manning goal is 11 firefighters per shift (on each of 3 shifts), so light duty can create overtime and/or the need to change firefighters' shifts.

(Dubuque)
(Council Bluffs)
Marion
(Urbandale)

The cities that do not have a maternity policy or light duty but have alternative policies

Cedar Falls – unlimited sick time accrual and city paid disability insurance 60%
Fort Dodge – unlimited sick time accrual
(Altoona) – unlimited sick time accrual
Ottumwa – unlimited sick time accrual
(Keokuk) – 142 day sick time accrual
(Iowa City) – 90 day sick time accrual and communal sick leave bank
(Boone) – unlimited sick leave accumulation
Bettendorf – 100 duty days sick leave accrual, 30 continual days light duty and city paid disability insurance 60%⁸

...

The City's comparables information is as follows:

Bettendorf:

Pregnancy leave provision in the contract which allows for sick leave to be utilized when regular employment is to be discontinued as advised by a doctor.

Burlington:

No specific provision in the contract.

Cedar Falls:

No specific provision in the contract.

Fort Dodge:

No specific provision in the contract.

Marion:

No specific provision in the contract.

Marshalltown:

A leave of absence may be granted when deemed necessary by a physician and extend through six (6) weeks after the date of birth. The leave may be extended beyond six weeks by mutual agreement. Sick leave may be used for the maternity leave.

Mason City:

No specific provision in the contract. Contract does include light duty for employees who are sick or injured but there is no mention of pregnancy in this article of the contract.

Muscatine:

No specific provision in the contract.

Ottumwa:

No specific provision in the contract. (City Exh. 7)

⁸ Cities in parentheses are not agreed-upon or suggested comparables herein. The Union has not suggested an "informal policy," nor has it offered "alternative policies" as described in Union Exhibit. The Union's offer is for the addition of a new, formal contract provision.

It is undisputed that Karen McQuiston filed a lawsuit against the City on March 28, 2012 (two weeks after she returned to work in the same position and at the same pay following 6 months' pregnancy leave), alleging that the City had discriminated against her on the basis of sex by refusing to give her light duty while she was pregnant, in violation of the Iowa Civil Rights Act and the Iowa Constitution (City Exh. 8, p. 2). On February 3, 2014, the Iowa District Court granted the City's Motion for Summary Judgment, holding that the record, including the pleadings, discovery and affidavits on file, established there is no genuine issue of material fact such that the moving party is entitled to judgment (dismissing the suit) as a matter of law. Mrs. McQuiston has filed an appeal which is currently pending before the Iowa Supreme Court.

Finally, the City submitted its Exhibit 18, a 2009 preliminary ruling on a negotiability dispute by the P.E.R.B. between the City and this Union over a proposal for "alternate duty for bargaining unit members who are pregnant" which listed the alternate duty and other working conditions as follows:

...

work such as: fire inspections, blueprint reviews, planning and leading training sessions, and any other Fire Department related activity that does not require the employee to enter an IDLH atmosphere.

This alternate duty shall be performed off of a normal shift and from the hours of 7:00 a.m. to 4:00 p.m., Monday through Friday. The above employee shall receive the normal benefits, but not receive Kelly Days during this time frame.

...

The P.E.R.B. found this proposal permissive. This ruling was preliminary and not a final agency action.

The Union has argued herein that provisions impacting health and safety are mandatory subjects of bargaining; that it is the danger of heat and smoke to the fetus that is emphasized in the Union's current offer which makes this offer different from the Union's 2009 proposal. The Union noted that its offer has a low cost (if anything) as there is only one female firefighter currently employed in Clinton. The Union argued that it is not relevant what the Supreme Court may do with McQuiston's appeal. Even if the Court rules against McQuiston the Union urged that the City can still bargain over its current offer and this Arbitrator should select the Union's offer on its merits.

The City asserted that the Union's Maternity Duty provision is a permissive subject of bargaining in the same vein as the Union's 2009 proposal as they both concern light duty during pregnancy. The City argued that given the City's minimum manning goal and its being one short already, the cost overruns and overtime generated by the offered provision when used would be cost prohibitive. The City noted that an employee might be disabled due to pregnancy and recovery for over one year. Here, it is the employee and their doctor, not the City/Police Chief that would ultimately decide how the Department will spend its money. The City called this "repugnant." In any event, the City argued, because this issue is still in the courts the Arbitrator should not put her oar in; she should reject the Union's offer on this point.

The Union's offer on this point would constitute a new benefit. It is axiomatic in labor relations that new benefits should be negotiated between the parties in the give and take of collective bargaining. New benefits should not be imposed by third party neutrals in cases like this one. The Union has argued the provision would cost the City nothing. But that is not the point, as no new benefits no matter their cost should be imposed in arbitration.

I note that the Union offered no *quid pro quo* in exchange for this new benefit. In addition, the "comparables" gathered by McQuiston only included four municipalities in the appropriate comparability group: Marshalltown, Mason City, Burlington and Marion. McQuiston described these cities as not having "an unofficial policy that includes light duty for pregnant firefighters" but only an unofficial policy thereon (U. Exh. 4). In other words, none of the communities found comparable herein has a formal contractual provision like that proposed here by the Union. In these circumstances there is no comparability support for this proposal.⁹

The Union has impliedly argued that its Maternity Duty provision would be in the interests and welfare of the public and of pregnant firefighters. Although supported only by McQuiston's experience, the evidence on this point rings true. However, given the pendency of McQuiston's court case which may come out in her favor, a ruling on this item becomes less critical. Furthermore, as the Union admitted, McQuiston is the only female Clinton firefighter, so the potential impact on the public and the bargaining unit even if the provision were selected would be minimal. In these circumstances, the interest and welfare of the public factor has less weight than the comparability factor.

Regarding the bargaining history factor, I note that the evidence showed that the City has negotiated with the Union regarding the Union's various maternity leave/duty proposals since at least 2009. It is important to remember that there is no requirement that employers or unions make concessions in bargaining. The fact that the City has refused to concede to McQuiston's and the Union's requests is not illegal. Nor is it a reason, without much more, to force the City to include the offered Maternity Duty provision in the parties' 2014-15 contract.¹⁰

Finally, in my view, the Union's Maternity Duty proposal herein appears very similar to its 2009 proposal found preliminarily permissive by the P.E.R.B. Based on the record, the Union failed to prove that its offer is the most reasonable under comparability of the factor which I find controlling. This conclusion is supported by the bargaining history factor evidence which I find weighs significantly against the Union's offer. The Union's interests and welfare of the public evidence is outweighed by the evidence on the other two factors. Therefore, the City's *status quo* provision is selected on this item.

C. Health Insurance

The last item is insurance. The parties stipulated that there is no difference in cost between the Union's offer and the City's offer on insurance in 2014-15, but there are differences in the two offers which will affect future costs or will affect some employees now and in the future if they choose out-of-network for high cost services. It should be noted that City Administrator Kinser stated that the City's insurance consultant expects premiums to decrease in

⁹ The fact that Cedar Falls, Fort Dodge, Ottumwa and Bettendorf have "alternative policies" on sick leave accrual and no maternity policy is irrelevant as such alternative policies are not before me in this case.

¹⁰ Once in a labor agreement it is very difficult to remove a provision from a contract absent a voluntary settlement which may not be attainable on any terms.

2015-16 by 4%, equal to 90 cents per month decrease on Single and a \$2.18/month decrease on Family employee premium contributions.

The parties presented no evidence concerning the bargaining history of premium increases/decreases in the past. Therefore, this statutory factor does not apply.

The Union offered its Exhibit 2 which compared the insurance currently in effect with the Union and the City's offers for 2014-15. For ease of comprehension, the current insurance had the following features:

Family Premium Contribution	0
Single Premium Contribution	0
Single Deductible	\$250
In Network and Out	
Family Deductible	\$500
In Network and Out	
Co-Insurance In Network	90%
Co-Insurance Out	80%
Max OOP (Network) S/F	\$500/\$1000
Max OOP (Out) S/F	\$500/\$1000
Emergency Room	90% after deductible
Preventive	100% of 1 st \$300
	90% after
RX Co-pays	\$5/\$20/\$30

For 2014-15 both parties have proposed to change virtually every aspect of the current insurance plan. The Union's Exhibit 2 made the following comparison of the two offers:

	Firefighter's Proposal	City Proposal
Contribution Family	3% monthly cap \$70	3%
Contribution Single	3% monthly cap \$30	3%
Deductible In-Network Family	\$1,000	\$1,500
Deductible In-Network Single	\$500	\$500
Deductible Out-of-Network Family	\$1,000	\$2,000
Deductible Out-of-Network Single	\$500	\$1,000
Co-Insurance In-Network	Agreed	80%
Co-Insurance Out-of-Network	80%	60%
Max out of pocket In-Network Family	\$2,000	\$5,000
Max out of pocket In-Network Single	\$1,000	\$2,500
Max out of pocket Out-of-Network Family	\$2,000	\$9,000
Max out of pocket Out-of-Network Single	\$1,000	\$4,000
Emergency Room coverage	80% after the deductible is met	80% after \$100 co-pay
Preventive	Agreed	100% of all services
Prescription co-pays	Agreed	Generic \$5

	Agreed	Brand formulary \$25
	Agreed	Brand non-formulary \$55

The changes the Union has agreed to are very significant given the extremely low costs to employees of their insurance prior to and during 2013-14. The Union here is voluntarily agreeing to pay toward single and family premiums, for the first time. It has agreed to increase deductibles by \$250 single and \$500 Family In-Network and by \$500 and \$1000 Out-of-Network. It has increased employee In-Network Co-Insurance payments by 10% and it has agreed to increase employee costs for brand drugs by \$5.00 and to raise non-formularies employee costs by \$25.00 per prescription.

The aspects of this 2014-15 insurance that the parties could not agree on were 1) Family deductibles In-Network and Out-of-Network Family and Single deductibles; 2) Out-of-Network co-insurance; 3) Maximum out-of-pocket Single and Family in and out of Network; 4) a separate \$100 Emergency Room coverage co-pay and 5) the dollar cap on monthly contributions.

Both parties presented evidence concerning comparability. The City's legal and financial situation will be considered under the interests and welfare of public factor. I have used City Exhibit 2, 5 and 6 as well as Union Exhibits 1 and 5 to construct the following comparability charts:

City ¹¹	Employee Premium Contribution		7/1/14 Premium		7/1/14 \$ or % Equivalent	
	Single	Family	Single	Family	Single	Family
Bettendorf ¹²	\$30	\$65	\$763	\$1,695	3.93%	3.83%
Burlington	2.50%		\$442	\$1,236	\$11.05	\$30.90
Cedar Falls	\$10	\$65	\$430	\$1,239	2.33%	5.25%
Fort Dodge	8%		\$500	\$1,296	\$40	\$103.68
Marion	\$50	\$100	\$445	\$1,113	11.24%	8.98%
Marshalltown	15%		\$516	\$1,218	\$77.40	\$182.70
Mason City ¹³	9%		\$564	\$1,085	\$50.76	\$97.65
Muscatine	5%		\$440	\$1,172	\$22.02	\$58.58
Ottumwa	10%		\$680	\$1,586	\$67.98	\$158.60
Clinton	3% ¹⁴		\$751	\$1,820	\$22.53	\$54.60

Average Dollar Contribution:

Single \$40

Family \$96

Average Percent Monthly Contribution: 7.09%

7.09% of Clinton Monthly Premiums = \$53, Single; \$129, Family

2014-15 Clinton Premiums are ranked 1st of the ten comparables in total cost.

¹¹ Marshalltown, Bettendorf, Mason City, and Muscatine limit the employer's right to change the level of insurance coverage (U. Exh. 5).

¹² Bettendorf has a 125 Plan so that employee insurance contributions come out of gross pay in pre-tax dollars (U. Exh. 5). Fort Dodge has an HSA or deductible reimbursement for its two plans respectively. On Plan A one half the employee's deductible is put into an HSA and on Plan B up to 80% of the employee's deductible is reimbursed by the City (U. Exh. 1).

¹³ Mason City has a \$70/mo. cap on Single contributions and a \$100/mo. cap on Family contributions (U. Exh. 5).

¹⁴ The Union has offered 3% with \$30 and \$70 caps for Single and Family respectively. The City proposed 3% with no caps. At least for 2014-15, the caps will make no difference.

City	In-Network Deductibles		In-Network Max. Out-of-Pocket	
	Single	Family	Single	Family
Bettendorf	\$150	\$300	\$385	\$660
Burlington	\$500	\$1,000	\$1,500	\$3,000
Cedar Falls	\$500	\$1,000	\$1,000	\$2,000
Fort Dodge	\$500	\$1,000	\$1,000	\$2,000
Marion	\$750	\$1,000	\$1,500	\$3,000
Marshalltown	\$500	\$1,000	\$1,000	\$2,000
Mason City	\$500	\$1,000	\$1,000	\$2,000
Muscatine	\$500	\$1,000	\$1,000	\$2,000
Ottumwa	\$300	\$600	\$1,000	\$2,000
Average Deductible	\$467	\$878		
Average Maximum Out-Of-Pocket			\$1,043	\$2,073
Clinton Proposal	\$500	\$1,500	\$2,500	\$5,000
Union Proposal	\$500	\$1,000	\$1,000	\$2,000

Clinton proposes out of network OOP employee maximums of \$4,000 Single and \$9,000 Family (City Exh. 6; U. Exh. 5).¹⁵

City Position

The City has argued that it has given its non-union employees 0.5% for 2014-15 and they will be subject to the 3% insurance premium payments as well as all other City design changes as of January 1, 2015. It has urged that the average employee contribution to premiums among the comparables is over 7% so its 3% premium contribution here is reasonable and that the City made the plan changes in consultation with its insurance consultant and “in keeping with national figures.”¹⁶ Although the City has not argued inability to pay, the City pointed to its legal and financial problems, to the unemployment rate, median income and residents living below poverty rate in Clinton to show that the City is not yet out of the recession.¹⁷ The City urged the Arbitrator to select its offer on insurance.

Union Position

The Union asserted that if the Arbitrator selects the City’s offer a firefighter’s family with serious medical problems would be left destitute by the uncovered co-pays, deductibles, OOPs and co-insurance provisions of the City’s plan. Union witness Mike McQuistion stated herein

¹⁵ I can find no references to out-of-network maximum out-of-pocket employee costs in Union Exhibit 5. Therefore, it appears that five of nine comparables have the same maximum OOP both in and out of network (Bettendorf, Burlington, Marion, Marshalltown, Mason City and Muscatine).

¹⁶ The City provided no national insurance data in this case.

¹⁷ City Exhibit 13 also showed that Clinton employee’s benefits as a percentage of the FY14 tax levy were 29%, third highest among the comparables. Only Ottumwa (35%) and Fort Dodge (33%) had higher percentages.

that firefighters would receive only about a \$50 raise in 2014-15 if they do not use their insurance.¹⁸ The Union noted that the City's exhibits showed there would be no cost impact if the Arbitrator chooses the Union's insurance offer. The Union argued that the City's legal and financial problems and its action to garner insurance concessions from the Union while offering a low wage increase draw into question the City's decision to cut 2014-15 taxes for residents. The Union observed that the City has the ability to pay the small cost of its offer, only \$18,992 more than the City's offer. The Union urged the Arbitrator to select its offer on insurance as the most reasonable.

The charts above require the following conclusions. This is the first year that Clinton Firefighters will pay any part of their health insurance premiums. One might say that in the current economic environment, this is long overdue. However, one could also just as easily observe, that Clinton Firefighters have traditionally been lowly paid *vis-à-vis* their comparables and logically this must have been done to offset their excellent insurance benefits.

What is also clear from these charts is that the Union has voluntarily agreed to most of the major design changes in the City's health plan. It is significant that the City's plan has the highest monthly premiums of all the City's comparable. Also, I note that the City has offered no *quid pro quo* for these insurance changes. Instead, it offered a 1% wage increase, the lowest wage increase of all the comparables. In these circumstances, the Union should be lauded for its reasonable and responsive approach to the City's problems and to its acknowledgment of the clear comparable data which calls for employee premium contributions to be made and increased deductibles to be paid.

In response to the City's arguments, I note that if City Firefighters were to pay 7.09% (the average of the comparable's contributions), they would pay more than seven of nine comparables because the City's premiums are the highest of the comparables. Only Marshalltown employees, who pay 15% of their premiums and Ottumwa employees, who pay 10% of their premiums, would pay more than Clinton Firefighters. On this record, we have no idea how long these two comparable groups have paid on their premiums. We do know that Clinton firefighters have never before paid toward their premiums, making 3% a reasonable starting point.

The City did not address the dramatic increases in out-of-network maximum OOP and the dramatic increases in Family network and Single and Family out-of-network deductibles under the City's plan. These are the parts of the plan that the Union has objected to most strongly, and for good reason. The increase in in-network Family deductibles is 300% and the increase for in-network Family maximum OOP is 500% and in-network Single maximum OOP is increased by 250% over these provisions under the current insurance plan. In addition, the City raised the out-of-network Family Single deductibles by 400% and the out-of-network maximum Family and Single OOPs by from 800% to 900%. Normally, employers seek to hold down the in-network cost of benefits in order to make out-of-network options less attractive. Here, the City raised both options significantly. The only explanation given by the City for these drastic insurance plan changes were that they were done in consultation with the City insurance consultant and in accord with national trends.

¹⁸ No evidence was presented to show how many unit employees highly use their health insurance and how many go out of network.

I am convinced that Union's insurance offer is the most reasonable for the following reasons. Although only three comparables have a cap on their employee premium contributions, I note that 3% of current Clinton premiums is 33% and 28% respectively less than the \$30 and \$70 caps on monthly premiums. This means that the 2014-15 premiums of \$751 Single and \$1,820 Family would have to rise around 30% before the Clinton Firefighters would start paying less than 3% per month in premiums. This also means there is time to negotiate a new cap. The City has conceded that the cost of the Union's insurance offer is no different from the cost of its offer; so there would be no additional cost to the City. Also, for most of the day-to-day costs of insurance the Union has agreed that its members need to share in the cost of these provisions. But for high users of either in-network or out-of-network insurance in any year, the \$2,500/\$5,000 or \$4,000/\$9,000 maximum out-of-pocket, in my view, would constitute impossible costs to employees which they could not anticipate or adequately plan for. It is important that the City has made no specific argument and it has shown no need for this change. And it has presented no comparability data in support of these provisions. The Clinton Firefighters have come a long way in this bargain toward recognizing their responsibility to share in the costs of insurance and the Union has come a long way toward meeting the needs of the City in this area. Given that the two insurance offers cost the same and that wage offer selected is quite modest, just under \$20,000 more than the City was willing to pay, I believe the Union's offer which avoids potential catastrophic costs to its members (which may never occur), is the most reasonable on the insurance item and it is selected.

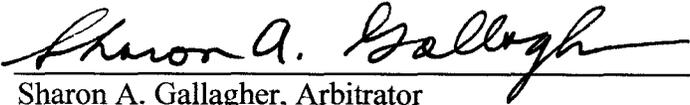
My conclusion is bolstered by the record evidence showing that the City has in two years added from \$400,000 to \$600,000 to its reserves and that it has plans and strategies in place to pay its legal and financial obligations, and to further add to its reserves. The fact that things may change in one year or in two years does not affect this 2014-15 agreement. If the City were not confident in its position, why would it give residents a \$260,000 break on their taxes in fiscal 2014-15? In these circumstances, the bargaining history factor weighs in favor of the Union's insurance offer and the interests and welfare of the public factor, as analyzed above in the wage section of this Award, is outweighed by the comparability factor. The comparability factor is determinative on the insurance item. Therefore, the Union's offer on insurance is selected

Based on the above analysis, and having considered all of the Chapter 20.22 factors, I issue the following

AWARD

1. The Union's offer on the wage item is selected.
2. The County's offer of the *status quo* on Article 22, Maternity Leave, in the 2013-2014 contract is selected.
3. The Union's offer on the health insurance item is selected.

Dated at Oshkosh, Wisconsin, this 19th day of July, 2014.


Sharon A. Gallagher, Arbitrator

CERTIFICATION OF MAILING

I hereby certify that on the 19th day of July, 2014, I served the foregoing Opinion and Award on the following parties at their respective postal addresses by USPS mail.

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