

March 15 deadline for the completion of impasse procedures. The parties also mutually agreed that this award will be issued “nunc pro tunc” and to be effective July 1, 2014 to July 1, 2015.

The undersigned Arbitrator was selected by the parties from a list of arbitrators supplied by the Iowa Public Employment Relations Board (hereafter Board). An arbitration hearing was held on October 16, 2014 at the City Hall in Clinton, Iowa. After a preliminary discussion of hearing procedures, the hearing started at 10:00 a.m.

At the outset of the hearing the parties agreed to the following stipulations: (1) That all prior steps required by impasse procedures had been completed or waived and the matter was properly before the Arbitrator. (2) That the parties agreed to hold the arbitration hearing on October 16, 2014, waive any March 15 deadline to complete the impasse process and will not contest the arbitration award based upon the timeliness of the arbitration hearing. (3) That there was a timely exchange of final impasse offers between the parties. (4) That the Arbitrator has jurisdiction and authority to issue a final and binding award subject to the provisions of Section 20.22 of the Code of Iowa.

At the start of the hearing the parties also advised the Arbitrator that they had resolved other pending impasse issues by mutual agreement and they were in agreement that the sole impasse item presented to the Arbitrator for determination was that of wages. The City has proposed a 2.0% wage increase and the Unit has proposed a 2.35% wage increase. There are no issues other than wages to be resolved in the present arbitration.

During the course of the hearing the parties were provided a full and equal opportunity to present evidence and arguments in support of their respective positions. Both parties were offered equal opportunity to question opposing witnesses, if desired. All exhibits presented by both sides were received by the Arbitrator and made a part of the record in this arbitration. Those are Unit Exhibits A through Q and City Exhibits 1 through 13.

The hearing was electronically recorded by the Arbitrator in accordance with the rules and regulations of the Board. Both parties were represented by skilled and effective advocates. The professional and courteous manner in which the case was presented was appreciated by the Arbitrator.

At the conclusion of the presentation of all evidence and argument offered in support of or opposition to each party's impasse positions, the record was closed and the case deemed submitted for final determination by the Arbitrator. Based upon a thorough review of all evidence presented, including all exhibits of both parties, and consideration of the arguments presented, this arbitration award is issued consistent with the statutory criteria set out in Section 20.22 (7) of the Act. Further, this award is issued within the time limits stipulated and mutually agreed to by the parties.

BACKGROUND

The City of Clinton is located at the eastern border of Iowa adjacent to the Mississippi River. The city covers a geographical area of approximately 35 square miles and has a population of approximately 26,885 persons. (City Exhibit 7, Unit Exhibit F)

The Clinton Police Department Bargaining Unit consists of 35 sworn officers and 5 non-sworn officers, which include one public service officer, one CID investigative specialist, one records clerk, one office secretary and one animal control officer. The Unit and the City have had a collective bargaining relationship for many years. The parties are currently operating with a collective bargaining agreement which expired by its terms on June 30, 2014.

The City and the Unit have resolved all outstanding issues for a 2014-15 collective bargaining agreement with the exception of wages. The failure to resolve that impasse item generated the present arbitration.

FINAL IMPASSE OFFERS

1. Unit Final Offer: The Unit proposed an across-the-board wage increase of 2.35% for all bargaining unit employees as its final offer.
2. City Final Offer: The City proposed an across-the-board wage increase of 2.0% for all bargaining unit employees as its final offer.

ARBITRATION CRITERIA

Section 20.22(7) of the Act sets forth the criteria by which an arbitrator is to select, under subsection 9, “the most reasonable offer” on each impasse item submitted by the parties. Section 20.22(7) specifically provides as follows:

The arbitrator or panel shall consider, in addition to other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties, including the bargaining that lead 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 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 20.17(6) of the Act further provides:

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.

Further, PERB Rule 621-7.5(6) states: “The arbitration hearing shall be limited to those factors listed in Iowa Code Section 20.22 (9) (sic 7) and such other relevant factors as may enable the arbitrator to select the most reasonable offer, in the arbitrator’s judgment of the final offers submitted by the parties on each impasse item.”

The authority of the Arbitrator is also subject to the standard set forth in Maquoketa Valley Community School District v. Maquoketa Valley Education Association, 279 N.W.2d 510,513 (Iowa 1979) which requires an arbitrator to select final offers on each impasse item “in toto” (with the terms “impasse item” being defined as a Section 20.9 subject of bargaining).

It is the obligation of the present Arbitrator to make a decision based upon the specific factors listed in Section 20.22(7) of the Act and such other relevant factors as may enable the Arbitrator to select the final offer of one party or the other. The statutory duty of the Arbitrator is to select the most reasonable offer on an impasse item. Section 20.22 (9) of the Act states “The arbitrator shall select within fifteen days after the hearing, the most reasonable offer, in the arbitrator’s judgment, of the final offers on each impasse item submitted by the parties.” (Emphasis added)

DISCUSSION AND ANALYSIS

Comparability

At the hearing both sides offered a comparability group for the purpose of comparison of the unit with other similarly situated public employees. The Unit proposed a comparability group consisting of the following cities: Bettendorf, Burlington, Coralville, Fort Dodge, Johnston, Marshalltown, Marion, Mason City, Muscatine and Ottumwa. The City’s proposed comparable cities are: Bettendorf, Burlington, Cedar Falls, Fort Dodge, Marion, Marshalltown, Mason City, Muscatine and Ottumwa. (Note: Unit Exhibit G lists Marion as comparable but contains no data from that city. The second page of that exhibit omits Marion.) Neither group presents definitive comparability comparisons.

The Unit group omits Cedar Falls. The City group includes Cedar Falls, but omits Coralville and Johnston. The Unit did not object to the City’s inclusion of Cedar Falls in its group. (Note: showing a 2.0% wage increase, City Exhibit 3) However, the City’s advocate did voice an objection to the Unit’s use of Coralville and Johnston; arguing both cities were dissimilar and located in metropolitan areas not comparable in size or location. (Note: showing 3.25% and 2.25% wage increases respectively, Union Exhibit G)

In the present case the Arbitrator is not required to fashion a comparability group for the parties. The propriety or impropriety of the inclusion or exclusion of the cities of Cedar Falls, Coralville or Johnston does not have a significant effect on a final determination of the impasse issue in the present case. Therefore, neither group is adopted as the sole basis for comparison of wages for the involved employees with those

of other public employees doing comparable work. The present Arbitrator has considered all data presented by each side in a comparison of the Unit with other public employees doing similar work. Further, it should be noted that an appropriate comparability group is but one of the factors required to be considered in formulating an impasse arbitration decision. The Arbitrator has given a great deal of consideration to the comparison criteria set out in Section 20.22 (7) (a) of the Act.

Findings and Conclusions

There is little to no dispute between the parties with regard to the cost of their respective proposals. The City calculates the cost of its proposed 2.0% increase to be \$41,867.00, and the cost of the Unit's 2.35% proposal at \$49,217.00. This is a difference of \$7,350.00. (See City Exhibit 2) The Unit in its Exhibit G calculates the cost of the City 2.0% increase to be \$40,100.08 and its proposed 2.35% raise to be \$47,117.59. (See also Unit Exhibits H and I) This is a difference of \$7,017.51. Neither side objected to the other's cost calculations.

The Unit contends the average percentage wage increase in its comparability group is 2.53%. (See Unit Exhibit F) This average is somewhat skewed by the inclusion of Coralville at 3.25%, Fort Dodge at 3.25% and Ottumwa at 2.70%. The City argues that Fort Dodge and Ottumwa were not correctly shown on the Unit's Exhibit because their percentages phase in at intervals and do not reflect a true percent for a full contract year. As indicated above, the City also objects to the inclusion of Coralville and Johnston as not being comparable to Clinton. It argues the criteria of Section 20.22(7) (a) should not be applied to those two cities.

The City asserts the average percent wage increase for 2014-15 is 1.96%. (See City Exhibit 3) The City lists Fort Dodge at 2.25% (not 3.25%) and Ottumwa at .88% (not 2.70%). It includes Cedar Falls at 2.0% and of course excludes Coralville and Johnston. Thus it contends its 2.0% proposal is a reasonable percentage increase, being slightly above its calculated average.

Both parties presented exhibits showing hourly wage rates for sworn officers. (See City Exhibit 4 and Unit Exhibit F, page 2) City Exhibit 4 shows the average of hourly wage rates for sworn officers in its selected group of cities. It is important to note

that both the City and Unit proposed wage increases result in hourly wage rates below the average in all categories. No evidence was presented by either side with respect to comparable wage rates for non-sworn officers. There is nothing in the record to show how they compare with other public employees doing comparable work.

The City also argues that consideration must be given to internal comparables. Both the Fire and Public Works bargaining units settled for a 2.00% wage rate increase. Therefore its proposal to the police bargaining unit is comparable to and consistent with those other units. The Unit argues that its members do not perform comparable work and should not be compared to fire fighters or public works employees. The Unit's hours and conditions of employment (i.e. on duty time, safety) are totally dissimilar to the other city units. The Arbitrator finds there is a dissimilarity of duties which may justify differences in wage rates.

All of the foregoing have been reviewed in connection with the statutory requirement of comparison wages 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. This leads to the conclusion that the Unit employees are below average with respect to their wages when compared to other similar employees. Either of the City or Unit wage proposals do little to alter that status. Either a 2.0% or a 2.35% wage increase is within the range of percentage increases established in other comparable cities. A 2.35% increase is on the high end of the comparability group selected by the City. It is below the average percent increase in the group selected by the Unit. The disparities among the cities of Coralville, Johnston and proper calculation of the Ottumwa percentage remain at issue.

The parties did not submit any evidence of past collective bargaining agreements, other than the submission of their last bargaining agreement for the period July 1, 2012 to June 30, 2014. (See City Exhibit 13, Unit Exhibit C) However, the evidence is undisputed as to the bargaining process which occurred and lead up to the contract which is the subject of this arbitration.

The evidence is undisputed that for 22 years the City has paid the full cost of health insurance for Unit employees. Employees have never paid all or part of monthly health insurance premiums. In bargaining prior to this arbitration the Unit agreed to a

change in health insurance whereby employees will assume payment of a portion of monthly health insurance premiums. Effective January 1, 2015 employees receiving a single policy plan will pay 3% of the monthly premium cost up to a maximum cost of \$30.00 per month. Effective January 1, 2015 employees electing family plan coverage will pay 3% of the monthly premium cost up to a maximum cost of \$70.00 per month.

Those same health care plan payment changes have also been agreed to by the City's Fire Department and Public Works in their labor agreements with the City. (See Unit Exhibit D, City Exhibit 1)

The Union contends that this new added insurance cost effectively reduces any wage increase because payment of monthly premiums is a cost offset to wage payments. In its Exhibits G, H and I it calculates the total Unit employee insurance cost to be \$24,783.12. When this is subtracted from \$40,100.08 generated by a 2.00% raise, the net increase is \$15,136.96. This equates to a .76% raise. Even if the Unit's wage proposal is accepted the dollar reduction caused by insurance payments is a net of \$22,334.47. This is the equivalent of a 1.11% raise in wages. Thus the Unit contends that its 2.35% wage increase proposal is really a 1.11% increase and is the most reasonable choice.

The City strongly opposes this claim by the Unit. The City argues that the insurance change was voluntarily accepted by the Unit independent from any wage raise. There was no quid pro quo agreement in which the insurance change was accepted subject to any specific wage increase. In simple terms, the Unit did not "trade" participation in health insurance cost for any wage rate guarantee.

The City is correct that there is no evidence in the record to establish any quid pro quo of insurance payment for a wage raise. However, it is clear the Unit is not asserting this claim to establish an agreement to accept the Unit's wage proposal in exchange for the Unit's agreement to partially pay health insurance premiums. This may be considered as evidence of the bargaining history and shows that the dollar amount of any wage raise is reduced by required insurance payments. Therefore the Unit argues its wage proposal is more reasonable. Further, this contention may be considered under the statutory criteria of "factors peculiar to the area and classification involved," or as is stated in Section 20.22(7) of the Act, "other relevant factors." It is a significant factor to be considered in terms of the most "reasonable" offer.

The Arbitrator is required to consider 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.

The Unit spent considerable time offering evidence in support of its contention that the interests and welfare of the public were adversely affected by the City's lower arbitration offer.

It asserted that the number of sworn officers had severely declined in recent years. There was also a more modest decrease in non-sworn employees. This decline in the number of Unit employees, without replacement, has an adverse impact on work loads. The City has been shifting officers back and forth from one division to another to maintain staffing requirements. Officers are moved from Criminal Investigation (CID) to patrol, with the investigations then suffering from a lack of personnel. There has been an increase in calls for service without an adequate number of sworn officers to respond to those calls, if necessary. There has been an increase in the number of incident reports. However, the Unit admits incident reports rise and fall and do not necessarily conform to calls for service. Overtime work is increasing. This is added cost to the City and may be additional stress for an officer. With an increase in work load comes more stress. A shortage of staff affects officer training. Criminal investigation has become almost overwhelming due to an inadequate number of officers. All of the above assertions were made through the testimony of various sworn officers.

The City's response was that none of the Unit's exhibits reflected its staffing concerns. Its evidence regarding an adverse impact on the welfare of the public was anecdotal and based on opinion and speculation. The present Arbitrator is unable to conclude that an award of either side's arbitration offer will have a negative impact on public welfare. The evidence offered was far too speculative to have any probative value.

The present Arbitrator is also unable and unwilling to conclude that an award of either impasse offer will adversely affect the ability of the City to finance any economic adjustments. Any adjustments will not affect the normal standard of services.

The City does not claim that the Unit's wage proposal is beyond its ability to pay. However the City does contend that it faces financial restraints that mitigate the need to

award the Unit's proposal. The city presented evidence to demonstrate its concern that economic limitations may not allow it to provide the level of service the public expects.

Archer Daniels Midland Company (ADM) has a large industrial facility which adds significant value to the City's property tax base. As a result of litigation between ADM and the Board of Review of the City, the District Court modified valuations for assessments, 2010, 2011 and 2012. The further result of that decision was a determination that ADM overpaid property taxes and should be refunded the overpayments by tax credit against future property taxes. (See City Exhibit 5)

Ms. Jessica Kinser, City Administrator, is obviously knowledgeable in city finance, and was an articulate witness. She testified that the financial impact of the ADM litigation is a loss to the City of \$473367.00, \$312448.00, and \$264391.00 for fiscal years 2013-14, 2014-15 and 2015-16 respectively.

The City Administrator also expressed concern about State legislation which approved a rollback in assessed value for commercial and industrial property. This change in the tax law also modifies multifamily residential property classifications. (See City Exhibit 6) The Administrator testified that while the State of Iowa will "backfill" the loss in taxable values for fiscal years 2015 and 2016, there is no guarantee beyond fiscal 2016. The City wants to implement a long term strategy to ensure revenues are adequate to meet expenditures on an annual basis.

Additional financial concerns for the City are that there is a declining population trend (see City Exhibit 7), there is a high amount of debt per capita (3rd highest of 10 comparables – City Exhibit 8), and employee benefits are 29% of the fiscal year 2014 tax levy. (See City Exhibit 9) The City has a high unemployment rate, low median household income and a high percentage of its population below poverty level. (See City Exhibits 10, 11 and 12) The City argues those last three concerns result in lost income, economic decline and ultimately a reduction in the tax revenues.

In opposition, the Unit contends that the City chose not to levy an optional tax to fund employee salaries. Further the City has considerably improved its cash reserve due to the sale of a dock facility. The Unit notes that the cost difference in the two wage proposals even using the net increase amounts after adjustment for insurance cost is

\$7017.51. The Unit argues the City can afford that amount. After the adjustment for employee insurance cost the Unit claims a 1.11% net raise in wages is very reasonable.

The Arbitrator is required by Section 20.22(7) of the Act to consider the power of the public employer to levy taxes and appropriate funds for the conduct of its operations. Based on the above described financial and economic contentions the undersigned Arbitrator finds and concludes that the City of Clinton has the power and ability to levy taxes and appropriate funds for its operations, including the ability to pay the cost of the Unit's wage proposal. The Arbitrator further finds the City has the ability to finance the Unit's final offer without any negligible effect from such wage adjustment on its normal standard of services.

No comment need be made regarding the City's ability to finance its 2.00% offer. Obviously it would not have made that offer if it did not have the ability to pay its cost.

All of the foregoing notwithstanding, the present Arbitrator is required to select the most reasonable offer, in the Arbitrator's judgment of the final offers on each impasse item. (See Iowa Code Section 20.22(9))

The choice, on its face, is 2.35% versus 2.00%. If one accepts the Unit's position of adjusting those percentages by the newly required health insurance premium payments the percentages change to 1.11% versus .76%. It should be repeated that the 2014-15 contract year is the first time in 22 years that Unit personnel have paid any portion of health insurance cost. While the City is correct in its claim that there was no quid pro quo exchanging the cost of premiums for wage adjustment, the fact remains that the premium cost decreases the amount of spendable dollars in wages. At the same time, the Arbitrator is very much aware that the insurance change is also in place for the fire and public works units of the City who both accepted a 2.00% wage increase. However, I am not convinced that this percent must be imposed upon the police unit.

The assumption of health insurance cost is the factor which "tips the scales" in favor of the Unit's final offer as the most reasonable. The Unit surrendered a long term benefit which directly resulted in a loss of spendable income. Conversely stated, a .76% net raise is not the most reasonable.

Based upon the above analysis and a thorough review of all evidence, testimony, written exhibits and arguments of the parties and with due regard for all of the statutory criteria set out in Section 20.22 of the Act, the Arbitrator issues the following award.

AWARD

I hereby award the final arbitration offer of the Clinton Police Department Bargaining Unit as follows: an across-the-board wage increase of 2.35% for all employees within the collective bargaining unit.

This award is effective nunc pro tunc for a collective bargaining agreement in effect from July 1, 2014 through June 30, 2015.

Dated October 23, 2014



Terry D. Loeschen, Arbitrator
960 Orchard Lake Drive
Daleville, VA 24083
(540) 992-4446
(540) 526-4454 (cell)

CERTIFICATE OF SERVICE

I certify that on the 23rd day of October, 2014, I served the foregoing Award of Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Mr. William Sueppel
122 South Linn Street
Iowa City, IA 52240

Mr. David M. Pillers
333 4th Avenue South
Clinton, IA 52732

I further certify that on the 23rd day of October, 2014, I will submit this Award for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, IA 50319.



Terry D. Loeschen
Arbitrator