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PUBLIC EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF ARBITRATION

BETWEEN

THE CITY OF DUBUQUE, IOWA
EMPLOYER

-- and –

TEAMSTERS LOCAL UNION 120

Grievance No. 11-109
Seniority Rights Grievance

Marvin Hill
Arbitrator

Appearances:

For the City:

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For the Union:

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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

The City of Dubuque, Iowa (hereinafter the "City," "Employer," "Administration" or "Management") is a community of approximately 60,000 residents, located in northeastern Iowa along the Mississippi River and borders the states of Wisconsin and Illinois. Founded in 1785, it is the oldest city in Iowa. It is the 10th most populous city in the State of Iowa with growth and success over the past few years. This success has been recognized by a range of national publications, with Dubuque getting accolades like: Four-STAR Rating, May 2015 for National Excellence; Named 2d Most Relaxed Small City in America; Best American Riverfronts – 2014, by USA Today; All American City—2013, 2012, 2007, by National Civil League; American's Crown Community – 2013, 2009, 2003, by Read News Release; #14 on "America's Best Small

Cities to Move to" – 2013, by MOVOTA Real Estate; 10th Most Secure Small City in the U.S. – 2013, by Farmer's Insurance Co.; Fastest-Growing Economy in Iowa in 2012; 27th Fastest Growing Nationally – 2013, by the U.S. Department of Commerce, Bureau of Economic Analysis; Ten Great Places to Live – Kiplinger, July 2013, by Kiplinger Personal Finance; 10th Best Performing Small Metro – 2013, by Milken Institute 2013 Best-Performing Cities Index; Top Ten Smartest Cities on the Planet; Excellence in Economic Development; 100 Best Communities for Young People – 2012, 2011, 2010, by America's Promise Alliance; 3rd Best in the U.S. for Job Growth; and Best Small Places for Business; 5th in U.S. in "Top Metropolitan Areas," by Site Selection Magazine, 2013, and #2 Among Top 10 places for Healthcare – 2012, by the Commonwealth Fund, to name just a few.

The City has two bridges spanning the Mississippi River permitting access to Wisconsin and Illinois. Dubuque is considered the commercial and cultural center for the "Tri-State Area." To this end, with just three percent (3%) of the state's population, Dubuque has added nearly eight percent (8%), or 5,200, of the State's new jobs for 2010-2013. The 5,200 job increase is the highest percentage increase in the State. In February 2014, Dubuque had an unemployment rate of 4.3% in comparison to 4.4% in the State and 6.7% nationally.

The Dubuque Police Protective Association ("DPPA") was certified by the Iowa PERB in December 1975 (Case #3317) to represent as the exclusive bargaining agent the patrol officers and corporals of the Police Department. The Police Department has the seventh largest staffing of municipal agencies in Iowa with approximately 104 sworn and 9 civilian, for a total of 113 personnel. Authorized staffing for FY 2016 is 109 sworn and 9 civilian. The parties' collective bargaining agreement between the City and the Dubuque Police Protective Association ("Police" or "Bargaining Unit") covers 84 patrol officers, 17 of which are promoted positions (corporals). Historically, actual staffing for the Dubuque Police Department is less that the total authorized staff, generally having five (5) to nine (9) sworn personnel less than authorized each year. Since 2012, twelve (12) veteran police officers have resigned from the Department, a fact stressed by the Union as a rationale for its wage proposal. Indeed, the Union points out that over the past 20 years, the retention rate of officers hired by the City has been 49 percent.

The parties presented one impasse issue to the undersigned Arbitrator: wages. The parties agree that my authority is limited to selecting from one or the other final offer, consistent with Section 22 of the Iowa Public Employment Relations Act (more on this later). For the record, on May 20, 2015, the parties exchanged final offers (CX 1 (City Final Offer) & 2 (Police Officer Final Offer)).

Historical Comparability Group. Interestingly, the parties have not reached any accord on the bench-mark jurisdictions to be used in impasse procedures. During contract negotiations on 1/06/05, a comparable group was mutually agreed to include just four cities: Ames, Council Bluffs, Iowa City and West Des Moines, Iowa.

During contract negotiations on 11/06/07, the City proposed a change to the comparable group to exclude Ames and Iowa City because they are home to Iowa's two largest educational institutions, Iowa State University (Ames) and the University of Iowa (Iowa City). The Administration proposed a comparable group to include: Cedar Rapids, Council Bluffs, Davenport, Des Moines, and Waterloo, which was accepted by the Association.

During negotiations between the parties on 11/20/07, Randy Peck pointed out that Des Moines, Davenport, Council Bluffs, Cedar Rapids, Sioux City and Waterloo have been used as the comparability group since at least 1979, when Mr. Peck started with the City.

During contract negotiations between the parties for FY 2012, the City refused to discuss a comparability group. Negotiations reached an impasse and the City and the Association went to arbitration. At the time Dubuque was ranked 8th in the State with respect to population. The Association comprised a comparability group of include the fifteen (15) largest cities in Iowa, seven larger and seven smaller: Des Moines, Cedar Rapids, Davenport, Sioux City, Iowa City, Waterloo, Council Bluffs, Ames, West Des Moines, Ankeny, Urbandale, Cedar Falls, Marion, and Bettendorf. The City comprised a comparable group to include fifteen Iowa cities with populations between 20,000 and 60,000: Ames, West Des Moines, Ankeny, Urbandale, Cedar Falls, Marion, Bettendorf, Mason City, Marshalltown, Clinton, Burlington, Ottumwa, Fort Dodge, and Muscatine. Of the City's group, Dubuque was ranked second in population and had a population that was at least twice that of seven cities.

The City refused to discuss comparability groups during negotiations for a collective bargaining agreement for FY 2013.

During contract negotiations between the parties for FY 2015, the City again refused to negotiate a comparability group and advised that it would be using the 14 cities with populations between 20,000 and 60,000.

In the City's FY 2015 budget presentation, Management compared the City to Des Moines, Cedar Rapids, Davenport, Sioux City, Iowa City, Waterloo, Council Bluffs, Ames, and West Des Moines (the ten largest cities in Iowa) in crime statistics, property tax rates and revenues, bond ratings, water/sewer rates, and solid water rates.

During arbitration between the parties on May 8, 2015, Arbitrator Curtiss Behrens considered a comparability group to include the five larger and five smaller cities, which included Iowa City, Waterloo, Council Bluffs, Ames, West Des Moines, Ankeny, Urbandale, Cedar Falls, Marion and Bettendorf. See, *City of Dubuque, Iowa & Dubuque Police Protective Association* (May 29, 2014). Significantly, like Arbitrator Pegretter before him (2011), he declared that "the undersigned Arbitrator will draw guidance from both parties' comparison groups." *Behrens* at 7.

For the purpose of this arbitration the Police Officers have accepted Arbitrator Behrens' comparability group of five larger and five smaller cities, which is reflected in its exhibits. In contrast, the City submits 14 Iowa cities as comparable bench-mark jurisdictions with populations between 20,000 and 60,000: Urbandale (population 39,463); West Des Moines (56,609); Ames (58,965); Bettendorf (33,217); Ottumwa (25,023); Mason City (28,079); Clinton (26,885); Fort Dodge (15,206); Cedar Falls (39,260); Marion (34,766); Ankeny (45,582); Marshalltown (27,552); Muscatine (22,886); and Burlington, Iowa (25,663)(See, CX 15). The City asserts that it has used this comparison group for at least 16 years.

II. POSITION OF THE DUBUQUE POLICE PROTECTIVE ASSOCIATION (DPPA)

The DPPA proposes the following provision on Wages to be included in the parties' successor collective bargaining agreement, a two –year agreement beginning July 1, 2015 through June 30, 2016:

Article XXV – Wage Plan
Effective July 1, 2015

Patrol Officer Step C: No Change
Patrol Officer Step D: No Change
Patrol Officer Step E: No Change
Patrol Officer Step F: No Change
Creation of Patrol Officer Step G (9 years/108 months of service); 4.88 above Step F
Police Corporal Step D: 2.25% increase
Police Corporal Step E: 2.25% increase
Police Corporal Step F: 2.25% increase
Creation of Patrol Corporal Step G (7 years/84 months at rank of Corporal): 4.88% above Step F

Article XXIX – Duration and Negotiations

One (1) year agreement beginning July 1, 2015 through June 30, 2016.

* * * *

In support of its proposal, the police officers offer the following considerations:

1. Costing Analysis. According to the Union, the costing includes the following: base wage, longevity, education bonus, shift premium, clothing allowance, maximum holiday pay, and employer contribution to the pension system. With no changes to the current pay scale, the cost to the Administration of the 84 officers covered by this agreement would be $7,006,696 (baseline) for FY 16.

Of the 84 officers covered by this agreement, under the DPPA's proposal, 23 patrol officers and 7 corporals would qualify for Step G on July, 2015. An additional seven patrol officers and one corporal would qualify for Step G during FY 16. The costing of Step G for the increases of the initial 30 officers qualifying for the step is $7,151,734. There is then an additional $16,744 in costs for the other eight officers who will qualify for Step G during FY 16. The total cost of the DPPA's proposal being $7,1687,478 for FY 16, which is a 2.3% increase above the baseline.

In contrast, the City's proposal of a 2.25% increase across-the-board would be $7,162,614. During FY 16, nine (9) officers will qualify for step increases between steps C & F, costing an additional $9,000 above this cost under the DPPS's proposal. The total cost of the City's proposal at $7,171,614 for FY 16, which is 2.35% above the baseline.

All in all, the Union's offer will cost $3,136 less than the Administration's proposal in FY 16. In theory, the Union acknowledged that its proposal will result in increased costs to the City in future years, as more officers reach newly-added Step G. However, given the current turnover in the Department, the Union's proposal makes sense. To this end the Union points out that there are two Step G police officers, a Step G corporal, and a captain expected to retire in FY 16. All of these positions will eventually be replaced by new officers and advancements within the Department. The new police officers will then be paid at a frozen Step C, which will result in savings to the City. The promoted corporal would then be paid at entry-level scale, instead of Step G, resulting in savings to the Administration. Natural attrition will keep the numbers in check, According to the Union.

2. Historical Analysis Regarding Lifetime Earnings. Over a 30-year career, at the current rate, a Dubuque police officer will earn $1,912,383, which includes base wage, educational incentive, longevity, uniform allowance, and holidays. In comparison with police officers from the other ten cities in the bench-mark jurisdictions, Dubuque ranks 11th. According to the Union, Dubuque is 9.8% below the average of the other 10 cities. Dubuque is the 6th most populous city in the comparability group. While it is true that Dubuque's Officers earn the highest starting salaries in the comparable group and receive maximum salaries (at 2 ½ years of service) earlier than any other department in the bench-mark jurisdiction group, Dubuque falls out of the top half in earnings after five (5) years of service and are surpasses by nine (9) of the comparable cities by seven (7) years of service. After eleven (11) years of service, Dubuque Officers rank last and remain at the bottom until 25 years of service, when the unit surpasses Cedar Falls, IA by $114 yearly.

3. Comparability Analysis. Asserting that the Union's proposal is a "give and take" proposal, it nevertheless acknowledged that a majority of the officers (46) will not experience a pay increase in FY 16. Additionally, new hires will be paid at a lower wage saving the City money. Under the City's proposal, Dubuque police officers earn

the highest wages in the first year than any other city in the comparability group. The Union's proposal would only drop that ranking to 3rd. When the Department has only retained 29% of new hires during the probationary period in the past 20 years, it would be more reasonable to shift those moneys to experienced officers who have dedicated themselves to the City.

According to the Union, across the comparability group police get paid higher salaries than firefighters, and there are multiple reasons for this. Firefighters are rarely victims of violence, with police officers being assaulted on a daily basis. Being "gunner down" is becoming more and more frequent. Firefighters and police respond to many of the same emergency calls, but firefighters return to their normal affairs after the injured person has been transported to the hospital, the victim pronounced dead, or the accident scene cleared. Police have to carry out the investigation, interview parents of a dead infant, notify family of a loved one's death, and investigate the sexual assault of a toddler.

When examining Dubuque Police Officers' pay in comparison to other similar cities, Dubuque is lagging. In law enforcement, the only other public employees doing like work are other law enforcement officers. The Union's proposal is not a "catch up" proposal; rather, it is a "keep pace" proposal. Since 2007, all of the other cities have experienced far greater wage increases for top-step officers. On the average, Dubuque police officers will earn $144,885 less in their career, although the Union concedes that police officers' other benefits, such as vacation accrual, holidays and casual days, and shared insurance premium costs are on par with the relevant bench-mark jurisdictions.

Still discussing external comparability, the Union points out that Dubuque Firefighters' scale ranks 6th out of 11 cities, just $823 below the average. Dubuque Patrol Offficers' scale ranks last out of 11 cities, or $5,883 below the average. The Union's wage proposal would increase a Patrol Officers' scale to $66,665 per year, earning a rank of 9th. This would result in the Dubuque Patrol Officers earning $2,053 more than Dubuque Firefighters, which is well below the average.

4. Average Wage Increases for the Bench-Mark Jurisdictions. The Union further points out that the average wage increase across-the-board for FY 2016 for the bench-mark jurisdiction cities is 2.47%, with the lowest being 1.84% for Urbandale and the highest being 3.0% for Waterloo. The average wage increase across-the-board for contracts settled this year (Iowa City, Urbandale, and West Des Moines(is 2.37%.

5. The Administration's Refusal to Recognize the Retention Problem. In the Union's eyes, the City is refusing to recognize that the Department has a retention problem. Retaining only 49% of police officers hired since 1995 is unacceptable. Twelve veteran officers (not related to discipline or retirement) have left the Department in the last 2 ½ years. Prior to Diestelmeier (the 12th in that group) leaving, the average years of service for those leaving was eight (8) years. That burden falls on the officers

that have remained with the Department, by running short, currently 11 officers (5 vacancies, 3 in the academy, and 3 in the FTO program). The burden is compounded by nonstop training of new officers. An officer serving as an FTO is not nearly as efficient as a solo veteran officer. Since 2010, 35 new officers (not counting the three current officers) have been placed in the FTO program and 31% have washed out.

The Union maintains that not only does the vast turnover rate impact police officers still employed with the Department, it causes a negative impact on public service to the community. With the Department unable to reach maximum staffing levels and the continued loss of experienced police officers, it is unreasonable to believe that the Department is providing the best services possible.

In further support for its wage proposal, the Police Officers point out that 87% of the Firefighters hired by the City are still employed today. Last year only 85 applicants took the Civil Service Entrance Exam for the Police Department, followed by only 74 this year. These numbers are far below the averages of the past decade and greatly reduced from decades prior, when testing numbers were in the hundreds. As stated by Arbitrator Terry D. Loeschen in an arbitration between Woodbury County and the CWA, Local 7013 (2010):

> Generally, the type of showing necessary to impose a change on an unwilling party is one of compelling or unique circumstances which mandate that change. An example of such circumstances would be documented inability of an employer to retain staff or to hire new staff.

When examining the City's attempt to maintain the same wage schedule between police and fire, it is the opinion of the Police Officers that this is not a case of being "fair" but a successful strategy of minimizing police wages. In the words of Union Counsel: "We don't believe 67 police officers being paid at the same rate as 22 firefighters as being 'fair,' when the vast majority of fire personnel are in promoted positions earning higher wages than the vast majority of police officers." In the Union's view, its proposal will not only provide incentive for veteran officers to remand employed with the Department, it will make the Department more competitive with the other Departments with respect to recruiting efforts.

6. The Union's Proposal for a New Step is Not a New Concept in Negotiations. The union points out that this is the fourth contract negotiation in a row where a new step has been proposed. To this end past negotiating committees for the DPPA also proposed adding a new step around the turn of the century (per Captain Stecklein). The City has refused to negotiate the changes to the wage scale matrix, no matter the percentage increase or the years of service where the step would fall into place. The Union's ability to negotiate for wage increases to not only keep pace with or even attempt to be competitive with the comparability group has been non existent, for the City refuses to negotiate an increase greater than one agreed to be any other unit in

Dubuque. As stated by Randy Peck in the arbitration hearing between the City and the Dubuque Firefighters on June 11, 2015:

> We have assumed the bargaining unit that arrived at the first negotiated settlement that we would not enter into a voluntary agreement with any other bargaining unit that significantly deviated from the first voluntary agreement.

7. Summary. Since 1984, the Union has not received a voluntary increase greater than that of any other unit in the City, except in FY 12 when the DPPA received in an arbitration award of a 2.0% across-the-board increase and longevity schedule to mirror that of the firefighters. The following two years the City would not agree to an increase matching that of the other units (2.5% and 2.5%) to recoup the 2.0% awarded in FY 12. In short, if a bus driver, mechanic, engineer, or firefighter voluntarily settles for a certain percentage increase, the DPPA no longer has the ability to negotiate, even if the proposal is a "wash," as is the case in this years' DPPA proposal. In the Union's view, the City refuses to recognize that the other units have wage scales that are competitive with the external comparative bench-mark jurisdictions, unlike the police officers. Additionally, the positions within the City such as City Manager, City Attorney, Police Chief, and Fire Chief are compensated at rates higher or on par with others in like cities. The retention numbers clearly show that many employees in the Department have opted for work at other cities, whether private or public sector. As stated by the late Arbitrator Richard Pegnetter (and former University of Iowa Business Administration Professor) in an arbitration between the City of Dubuque and the DPPA, dated September 23, 2011:

> The importance of internal wage comparisons that do not reflect similar working conditions and duties is not as significant as comparisons with similar job titles in similar cities. Internal comparisons might gain some relevance and importance if the employer is seriously struggling financially to meet all employee compensation needs in general.

Such is not the case here, the Union argues, for the DPPA's proposal costs less than the City's proposal. Additionally, the City added funds to its budget by partnering with the DRA to cut Dubuque Police Officers' overtime earnings at the Mystique Casino by $130,000/year, which significantly impacts the Union.

Based on the statutory criteria for arbitration, the Union asserts that it has shown compelling reasons to deviate from the status quo wage scale matrix.

III. POSITION OF THE CITY OF DUBUQUE

The City's position on wages (presented on May 20, 2015) is as follows:

Article XXV – Wage Plan

Effective July 1, 2015 through June 30, 2016, the wage plan in effect on June 30, 2015, shall be increased by 2.25% across-the-board.

All other language of this article shall remain the same.

* * * *

In support of its Final Offer of 2½ percent across-the-board, the City advances the following arguments:

1. The City's final offer – a 2.25% across-the-board base wage increase, effective July 1, 2015 (an increase in total compensation of 2.46%) – is identical to the wage increase to be received by employees represented by the Teamsters Union (IBT), the Firefighters Association, Transit Union and Operating Engineers Union in Fiscal Year 2016 (FY 2016). In the City's view, its offer affords equality of treatment for employees who are "similarly situated." Employees represented by these Unions will receive a 2.25% across-the-board base wage increase effective July 1, 2015. On July 1, 2015, employees represented by the IBT will receive a 2.1% across-the-board wage increase and an additional holiday for part-time bus operators, which will provide a 2.25% increase in compensation in FY 2016.

2. The City's proposal will maintain the historical wage relationship of providing identical maximum rates for the positions of Patrol Officer and Firefighter. In the City's view, the Association's wage proposal – an actual increase in compensation of 2.62% -- would destroy this wage relationship. According to the City, the Association's proposal will provide 29 police officers an annual increase in compensation of at least $2,797. Fourth-three (43) police officer or over half of the bargaining unit will receive no wage increase if FY 2016. The Union's proposal will result in unequal treatment of employees represented by this bargaining unit. In contrast, the Administration's proposal of 2.25% across-the-board base wage increase will ensure that the bargaining unit is treated fairly.

3. When comparing wage rates of Police Officers in other Iowa cities, Dubuque's rates are one of the highest. Here, the City points out that the number of pay steps and length of service requirements to reach the maximum base rate for police officer and corporal has been in effect for over 40 years (CX 7 & 8). All voluntarily settlements and all arbitration awards have maintained the same number of pay steps and length of service requirements to reach the maximum base rate of pay. Such a dramatic change in the pay plan arrangement or "breaking new ground" needs to be addressed at the bargaining table, argues Management. The City pays the minimum rate and the highest rate after 2.5 years and has one of the highest rates after 10 and 25 years of thiose cities in the bench-mark jurisdiction group (CX 15). In addition, Dubuque has the shortest length of service requirement (2.5 years) to reach the maximum rate of pay, which means that combined with the high starting rate, police officers in Dubuque receive their money "up front." The rate of pay in Dubuque is higher than the average minimum rate of pay and the average rate of pay after 2.5, 10 and 25 years.

4. Employees represented by this bargaining unit receive a level of benefits that are more lucrative than the level of benefits received by police officers in other Iowa cities and the level of benefits received by other City of Dubuque employees.

5. The City's wage proposal is higher than the average FY 2016 wage increase for the other cities in the bench-mark jurisdiction group. The average wage increase is 2.12% and the City's wage proposal provides for a 2.46% increase in compensation. Indeed, only three other cities in the bench-mark jurisdiction group have the promotional rank of corporal (CX 16). Dubuque has the second highest minimum rate and the second highest rate after 1.5, 10 and 15 years of all the cities in the comparison group. The maximum rate of pay for corporal after 25 years in Dubuque is the second highest of the cities in the comparison group of cities. There is simply no justification to increase the maximum rate of pay for the rank of corporal by 4.88%.

6. The wages received by employees covered by this bargaining unit have exceeded the increase in inflation and the level of benefits provided to employees in this bargaining unit have been enhanced over the years. Specifically, the CPI-U for April 2015 is – 2.0% from April 2014 (CX 5). Indeed, the annual rate of pay exceeds the projected rate of pay for a police officer (Step F) based on the CPI-U by $10,999.82/year, and the actual rate of pay exceeds the projected rate of pay for corporal (Step F) based on the CPI-U by $15,502/year. Clear and simple, wages for the employees covered by this bargaining unit have far exceeded the rate of inflation as measured by the CPI-U (which generally overstates the actual rate of inflation).

7. With respect to a parity-type argument, or any argument that the Police Officers should be paid more than the Firefighters, the City asserts that the parties' bargaining history indicates that the Police Officers have, without exception, agreed to maintain identical maximum base rates of pay for Police Officers and Firefighters.

8. Addressing the structure of the Association's proposal so the wage package would be close to a 2.25% increase in FY 2016, the City notes that this number is actually an increase in compensation of 2.62% in FY 2016. The amount of wage increase for FY 2016 is a one-time occurrence. The increase is cost and compensation related to the Union's proposal will continue to escalate in future years. The 2.62% increase in FY 2016 will grow to a 2.94% increase in FY 2017 and 3.36% increase in FY 2018. In the City's view, the additional costs will not be offset by freezing the pay steps.

Moreover, in FY 2012, as a result of an Arbitrator's award, the Union received a 3.0% increase in wages, when all other City employees received a wage freeze. The Association thus received an increase in compensation over the last four years of 9.0%. All other City employees received an increase in compensation over the last four years of 8.0%. During this time period, the employee's contribution to the Iowa Public Employees Retirement System increased by 1.45%, and the employee's contribution to the Municipal Police and Fire Retirement System remains at 9.4%. The employee's contribution to the Municipal Fire and Police Retirement System remained at 9.4%.

Significantly, the employee's contribution to the Municipal Police and Fire Retirement System remained at 9.4%. The employees' contribution to the Municipal Fire and Police Retirement System has not increased since July 1, 2009.

9. There have been significant improvements in the level of benefits granted to employees covered by this agreement, such as: The introduction of an educational bonus plan (1971)(CX 11); Increases in uniform allowance (1976, 1981, 1986, 2005 and 2008); Sick leave (1976); Stand-by pay (2005); Introduction of shift premium pay (1976), which is available to only three other employee groups in the City 9CX 12); Improvements in the various leave provisions, such as funeral leave (1975, 1984, 1988, and 2002), casual days (1975), sick leave (1987), holidays (1975 and 1976), and vacations (1977, 1978 and 1999); Increases in compensation for performing the duties of Field Training Officer (1995 and 1999); Increases in shift premium payment (1999 and 2001); And an improvement in the longevity pay plan in FY 2012. These improvements have allowed employees of this bargaining unit to not only maintain a competitive salary and benefit structure, but have significantly protected the employees from the impact of inflation on discretionary income. As such, an increase in wages of 2.62% as proposed by the Association is not warranted or justified.

10. Addressing the Union's retention argument, the City maintains that since 1986, there have been only twenty-eight (28) employees who have voluntarily quit their employment with the City to accept employment elsewhere. One police officer also transferred to the position of firefighter during this period. The average number of applicants who took the entrance examination for police officer over the last nine years is 110/year.

For the above reasons, the City requests that its final offer of 2.25% across-the-board be awarded.

IV. DISCUSSION

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

Under Iowa Code Section 20.22, the parties are to submit their final offer on each impasse item in dispute. Iowa Code Section 20.22(7) requires that, when making this decision, the Arbitrator "shall consider, in addition to any other relevant factors," the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

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

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Moreover, Section 17.6 of the Act provides:

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

Further, Iowa PERB Rule 621-7-5(6) states: "The arbitration hearing shall be limited to those factors listed in Iowa Code Section 20.22 and such other relevant factors as may enable the arbitrator or arbitration panel to select the fact finder's recommendation (if fact finding has taken place) or the final offer of either party for each impasse item." [1]

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

There is no dispute that the jurisdiction of an arbitrator in a "final-offer" Iowa arbitration is limited to selecting either the final position of the Public Employer or the entire final position of the Employee Organization. Thus, an arbitrator does not have discretion to award part of either party's positions. See, *Maquoketa Valley Community School Dist. v. Maquoketa Valley Ed. Ass'n*, 279 N.W.2d 510 (Iowa 1979). Additionally, an arbitrator shall not vary from the presented final positions, even on language issues. **Clear and simple, Iowa Code Section 20.22(11) requires the arbitrator to select the most reasonable offer on each impasse item applying the statutory criteria. Unfortunate (or not), there is no Solomon-like "splitting of the child."** [2] Therefore,

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

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

with respect to wages, the undersigned is to select the City's final offer in total or the Union's final offer. As noted, the award must be made with due consideration given to the statutory criteria and be the more reasonable offer consistent with the statutory criteria mandate by law. See, *Delaware County & AFSCME Council 61, Local 1835*, Supplemental Arbitration Award, CEO #200/2 (Loeschen, 2012)(awarding the Union's final offer on insurance, noting that an arbitrator is without power to split the difference).

Furthermore, and especially relevant in this case, "It is well settled that where one or the other of the parties seeks to obtain a substantial departure from the party's *status quo*, an "extra burden" must be met. Additionally, where one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits at a *de minimis* level) or to markedly change the product of previous negotiations, the onus is on the party seeking the change." See, e.g., *Village of Maryville and Illinois Fraternal Order of Police*, Case S-MA-10-228 (Hill, 2011). As stated by Arbitrator James Cox in *Village of Broadview and FOP,* ILRB Case No. S-MA-06-145 (Cox, 2007)*("Village of Broadview")*, arbitrators have held that:

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

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

While the above principles have been articulated by numerous arbitrators hearing cases in Illinois (see citations), arbitrators operating under the Iowa statute have applied the same criteria. See, e.g., *City of West Des Moines & IBT 238* (Perry, 2010)(stating, "while not necessarily revolutionary [a two-tiered insurance proposal for new employees], this proposal is a substantial departure from the way health insurance has been bargained here in the past. I am not persuaded that the Union has had the full opportunity to evaluate this approach or these plans. * * * I am not convinced that the parties are unable to bargain some substantial changes to be achieved between these parties [that] would be far preferable to one imposed by the City or this Arbitrator."); *City of Clinton, IA & Clinton Police Department Bargaining Unit*, PERB Case CEO #162/3 (Miller, 2006)(rejecting the employer's plea for a change in insurance benefits, observing: "Interest fact-finding and arbitration often confronts neutrals with resolving

demands that represent innovative and/or significant structural changes to an agreement previously negotiated by the parties. Such situations should be approached with extreme caution. Accepting such demands too readily may well result in establishing a new or substantially modified agreement provision that the party seeking change would not have been able to achieve in a face-to-face negotiations. Such a result is contrary to the fundamental objective of fact finding and interest arbitration. The evidence and arguments by the party seeking change should be compelling. In addition, since the proposal significant change surfaces in negotiations, there must be an equitable *quid pro quo* for some other concession, with the evidence in support of the change showing what the parties would have deemed to be an appropriate compromise or trade-off. Absent such strong evidence in support of innovate or significant structural change, demands of this nature should ordinarily be rejected by neutrals and left to the parties to resolve in future rounds of collective bargaining negotiations." *Miller* at 7); *City of Cherokee, IA & IUOE, Local 234* (Yaeger, 2006)(declining to recommend changing the status quo, reasoning: "another important factor to be considered when a party is proposing a significant change in the negotiated *status quo* of a fringe benefit is whether the proponent of the change has shown that a legitimate problem exists which requires attention, that its proposal reasonably addresses the problem, and that the proponent of the change has offered an appropriate *quid pro quo* in return the agreement to the change." *Yaeger* at 23); *Dubuque County & Dubuque County Deputy Sheriff's Association* (Loeschen, 2008)("Many arbitrators in Iowa have expressed the view in interest arbitration cases, with impasse items which exclusively address contract language or which represent a radical change in long-standing contractual arrangements, that as a general premise, the changes sought are better made by the parties themselves during the 'give and take' of the collective bargaining process. An often stated rationale for this premise is because in collective bargaining negotiations there are frequently both give and take compromises in other contract areas to which the arbitrator is not privy. This is the so-called *quid pro quo* which is not apparent in the present case." *Loeschen* at 8).

B. Decision and Analysis

Applying the above authority, I hold that the City makes the better case and, accordingly, award its final offer of a 2.25% across-the-board wage increase for the one-year successor collective bargaining agreement. In support of this award, the following considerations are offered:

1. The parties' Bargaining History Favors the City's Final Offer. Management asserts that in any discussion regarding the parties' bargaining history (and factors peculiar to the City of Dubuque) it is important to point out that there has existed *for over forty (40) years* a practice of maintaining identical maximum rates of pay for the positions of Police Officer and Firefighter (CX 26, 27, 28, 29 & 30). As argued by Mr. Peck: "All voluntary settlements and almost all arbitration awards have maintained identical maximum wage rates for police officer and firefighter. The Association is now attempting to abandon the wage relationship that have sought to maintain. The Association has not presented a compelling reason to deviate from this historic wage

relationship." The fact that the Administration's across-the-board wage proposal maintains a historical relationship between police officer and firefighter favors its final offer.

2. Comparability Data Supports the Administration's Final Offer. As noted, the parties are not in agreement with respect to the relevant bench-mark jurisdictions. Arbitrator Herbert Berman, in *City of Peru & IFOP*, S-MA-93-153 (1995) provided an analysis of selecting comparables and declared:

> Geographic proximity and comparable population are the primary factors used to determine comparability. But these factors only establish the baseline from which comparisons may be drawn. When dealing with a fairly small city like Peru, the proximity of cities of similar population is obviously important; but it is not the sole critical factor. An adjacent city may draw largely from the same general labor market, but the nature of the work performed by the alleged comparable employees as well as bench-mark economic considerations may preclude its consideration for purpose of comparison. At some point, distance may foreclose consideration. Where that point lies is conjectural and might require a detailed study of the labor market and other economic and demographic factors. Without an expert study of hard data derived from reasonable hypotheses, an arbitrator must rely on the limited data available, his experience and his ability to make reasonable inferences and reach reasonable conclusions. As I noted in *City of Springfield & IAFF, Local 37*, S-MA-18 (Berman, 1987), at 26, "[d]etermining comparability is not an exact science." Or as Arbitrator Edwin Benn wrote in *Village of Streamwood & Laborers Int'l Union, Local 1002*, S-MA-89-89 (Benn, 1989), at 21-22:
>
> > The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more toward hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.
>
> In addition to population and proximity, critical factors are the number of bargaining-unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes. *Berman* at 9-10.

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

> Thus, in selecting a comparability group, the arbitration panel should look to "those features which form a financial and geographic core from which a neutral can conclude that the terms and conditions of employment in the group having similar core features represent a measure of the marketplace." The features often accepted are population of the community, size of the bargaining

unit, geographic proximity, and similarity of revenue and its sources. *Kohn* at 7 (emphasis mine).

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

Especially relevant is the fact that arbitrators give greater weight to internal comparability *vis-à-vis* external comparability when health insurance is at issue. See, e.g., *Elk Grove Village & Metropolitan Alliance of Police (MAP)*(Goldstein, 1996)(concluding: "the factor of internal comparability alone required selection of the Village's insurance proposal." Goldstein observes that arbitrators "have uniformly recognized the need for uniformity in administration of health insurance benefits."); See also, *Loess Hill Area Education Agency No. 13 & Loess Hills AEA No. 13 Education Association, PERB CEO #27/1* (Gallagher, 2008)("Regarding the Agency's argument that internal comparables should be more compelling on the insurance issue, this Arbitrator generally agrees." *Gallagher* at 13. Arbitrator Gallagher further notes: "significant changes in benefits should be bargained for and agreed to in the give-and-take of negotiations." *Id* at 14); *Winneshiek County & UE Local 869 (Roads Unit)*, PERB CEO #463/2 (Feuille, 2008)(selecting County's insurance proposal providing no contribution for dependant health insurance, reasoning that internal comparables indicate "the County had not ever contributed toward the cost of dependant insurance for any of its employees." *Feuille* at 22); *Dubuque Community School District & Dubuque Education Association* (Thompson, 2011)(rejecting employer's proposal for greater contribution, reasoning: "The Arbitrator is reluctant to change the insurance based upon internal comparability, especially given the fact that other employees receive 75%, not the 71% noted in the Employer's arbitration position." *Thompson* at 12); *AFSCME Council 61 & City of Cedar Rapids, IA, PERB CEO #113/2* (T. Gallagher, 2010)("the use of external comparisons when determining health insurance issues has diminished relevance because of variations from city to city in health insurance plan benefits and in wages and other forms of direct and indirect compensation." *Gallagher* at 17); *City of Iowa City, IA & Police Labor Organization of Iowa City, PERB CEO #338* (Jacobs, 2011)("Finally, as many arbitrators have noted, health insurance is uniquely specific to each public employer. It may not be completely accurate to compare 'costs' without comparing the plan themselves along with a variety of other factors in comparing them. *This is why internal consistency is generally the most important factor for such a fringe benefit because of the unique history of each such plan may have and how it may have changed over time with differing concessions, bargaining history and negotiated changes in exchange for other things across jurisdictional lines.*" *Jacobs* at 10; emphasis mine).

Similar to my holding in *Town of Normal & IAFF 2442* (2007), applying the above principles, and conceding that "this analysis is anything but an exact science," I find the Employer's comparability analysis with respect to the fourteen (14) bench-mark jurisdictions (and numbers) more on point than the Union's assertions.

There is no serious dispute that the goal in determining comparables is to select similar units within the "local labor market." *Macoupin County Health Department and AFSCME, Local 3176*, ILRB Case No. S-MA-08-103 at 15 (Hill Arb.) (2008). "The features often accepted are population of the community, size of the bargaining unit, geographic proximity, and similarity of revenue and its sources." (*Id.* at 16-17, quoting *City of Aurora & Aurora Firefighters Union, Local 99*, ILRB Case No. S-MA-95-44 (Kohn Arb.) (1995). Relevant data typically includes:

population;
department size;
total number of employees;
number of bargaining unit members;
income levels;
sales tax revenues;
EAV (Equal Assessed Valuation);
general fund revenues; and
geographic location.

See, Edward Benn, *A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Pubic Labor Relations Act*, 15, No. 4 Illinois Public Employee Relations Report 1, 2 (Autumn 1998); *City of Alton and Policemen's Benevolent and Protective Association, Unit 14*, ILRB Case No. S-MA-02-231 (Kossoff Arb.) (2003); Village of Oak Brook and Teamsters Local Union No. 714, ILRB Case No. S-MA-96-242 (Kossoff Arb.) (1998). When selecting the comparable jurisdictions, arbitrators most commonly apply a comparability range of plus or minus fifty percent (± 50%) to the various criteria. *City of Alton* at 7-8, 16. Aside from the fact that the City has used this grouping for 16 years, i.e., cities between a population of 20,000 and 60,000, places a relatively tight band for comparative purposes, certainly consistent with a criterion of plus or minus 50 percent, the so-called "industry standard."

With respect to the internal comparability criterion, I note for the record that the City's final offer not only maintains identical maximum wage rates between the positions of Police Officer and Firefighter, it is also consistent with increases in compensation to be received by all other bargaining-unit employees (Firefighters, Operating Engineers, Teamsters, and (to a lesser extent) Transit Employees) [3] in FY 2016. I find no compelling reason advanced by the police officers for unsetting the historical relationship between the units, including similar across-the-board increases.

Addressing external criteria, I note that only three (3) other cities in the relevant bench-mark jurisdiction group have the promotional rank of Corporal (CX 16). Indeed, the maximum rate of pay for a corporal after 25 years of service in Dubuque is the second highest of the cities in the comparison group. This works in favor of the Administration's

[3] According to Management, the Transit Employees Union will receive a 2.1% across-the-board wage increase and an additional holiday for part-time employees, which will provide a 2.25% increase in compensation for FY 2016. *Management Hearing Brief* at 27-28.

argument that an increase of the maximum rate of pay for a Corporal at 4.88% is not justified by the evidence record.

More importantly, an across-the-board increase of 2.25% (2.4% total increase in compensation) is more than competitive relative to the bench-mark jurisdictions cited by the City. Only Ames (2.50%), Cedar Falls (2.3%), and Marshalltown (2.50%) exceed the Administration's wage offer for Dubuque (See, CX 25). Indeed, six (6) of the fourteen (14) comparables in the Employer's comparability group settled at numbers less than 2.25% (CX 25). The average wage increase is 2.12% (CX 25). Again, the Administration's position is favored by the evidence record.

3. The Union's "Turnover" Argument is Not Compelling. The Police Officers have advanced the argument that its wage proposal (adding two steps) will somehow solve the high turnover problem at Dubuque. I am allowed to take judicial notice of all things known to reasonable people. See, Hill & Sinicropi, Evidence in Arbitration 28- 31 (BNA Books, 1987)(2d edition)(discussing judicial notice)("It is generally conceded that the concept of judicial notice applies in full force in the arbitral forum."). It is not at all apparent to me that the turnover experienced in Dubuque is fueled (or can be cured) by higher salaries. Indeed, national studies indicate that numerous factors account for police officers leaving the profession, including an opportunity to obtain better retirement, advancement in a profession, or a more challenging position. Other reasons include: Frustration with the department management structure or its leadership style, administrative and personnel policies, schedule issues, and overall frustration with the criminal justice system or corrections policies. Job stress, family pressures and workload are also important factors in making a decision to exit the profession. Notwithstanding the above, it may indeed be the case that police officers in general are re-thinking a profession that more and more is characterized by getting shot at by the very public it is sworn to defend. Bottom line: The evidence record is insufficient to conclude that the Union's step proposal will have the effect it asserts regarding turnover.

4. The Union's Proposal "Freezes Out" a Significant Part of the Bargaining Unit, A Position Clearly Politically Unacceptable to the Administration. While not dispositive of the issue, a major consideration in the resolution of this case is this: **Acceptance of the Union's final offer will result in a significant number of police officers not receiving any wage increase.** At the hearing both parties asserted that the number of police officers not receiving a wage increase was somewhere between 43 and 46. See, Management *Brief* at 6; DPPA *Brief* discussing "Costing." In a post-hearing email, the Police Officers asked to correct their presentation, noting: "I need to make a correction to the DPPA's presentation in reference to the number of officers who will not experience a base wage increase in FY16. In paragraph 2 of the "Costing" page, I had noted 46 officers would not experience an increase. I forgot to account for the 9 corporals who would receive a 2.25% wage increase. This would change this number to 37 who would not receive a raise. This number was also noted in paragraph 2 of the "Closing Argument." Even assuming authority to correct a party's presentation *after the record is closed*, the City's declaration that it was not feasible to voluntarily conclude an

agreement where 46 officers would not get a raise is well taken. It is one thing for a Union to propose a contract that creates new steps in the salary structure. It is quite another when the Union is requesting a contractual provision that would mandate a salary freeze for a significant number of police officers, in this case either 46 or 37. On all counts, the Union's wage offer is difficult to award given its effect on a large portion of the bargaining unit. Clearly, one can understand why this aspect of the Union's offer was politically unacceptable to the City.

5. A Recently Awarded Longevity Step Favors the Administration's Wage Offer. As pointed out by the Administration, employees represented by the Association and the Firefighters' Association now receive the most lucrative benefit of all City employees (See, CX 6). Prior to the FY 2012 arbitration award, the Association received the following longevity benefit:

Years of Service	Percent of Base Wage
6	1%
12	2%
18	3%
24	4%
30	4%

For FY 2012 the Arbitrator awarded an enhanced longevity pay plan that provided additional wage increases based on length of service. The new longevity plan is as follows:

Years of Service	Percent of Base Wage
5	1%
10	2%
15	3%
20	4%
25	7%

Significantly, at the high end (25 years) the Union received a favorable bump (going from 30 to 25 years to max out) and a favorable percentage increase (from 4% to 7%). The longevity benefit – recently upgraded through the arbitration process – favors the City's position that any proposal to provide additional compensation based on length of service, such as the present proposal to add two steps, has already been addressed in an arbitration that favored the Police Officers. When other contractual benefits are considered (such as the educational bonus, shift premium payments, vacation days, and the low percentage of pension (9.4%, which has not increased since 2009) and health insurance contributions (10%) [4] mandated), I find that the Unit is not at a competitive

[4] In FY 2006, the Association agreed to pay 10% of health insurance premiums in exchange for an additional 2.4% wage increase, which (the Administration points out) "more than offset the cost of the employee's contribution to the health insurance premium. The total wage increase in FY 2006 was 5.4%, not insignificant given the recessionary

disadvantage. Given that this unit has received 9.0% over the last four (4) years, while other City employees received 8.0%, fares well for both the Unit and the Administration.

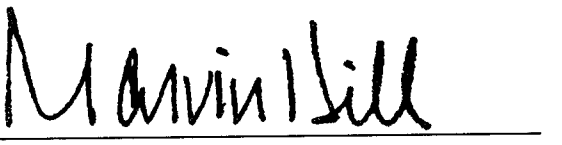
* * * *

For the above reasons, the following award is issued:

V. AWARD

The final offer of the City is awarded.

Dated this 6th day of June, 2015
at DeKalb, Illinois, 60115.



Marvin Hill
Arbitrator

impact of 2008 (still being felt in numerous sectors of government). Currently, 10% is at the low end in numerous cities. Many have moved to 15% and higher (including increased co-pays and deductibles).

CERTIFICATE OF SERVICE

I certify that on June 6, 2015, I served two signed copies of the above Opinion and Award upon each party's representative to this matter by mailing a copy to them at their respective address as shown below:

Randy Peck
Personnel Manager
City's Manager's Office, City Hall
50 West 13th Street
Dubuque, Iowa 52001-4864
citypers@cityofdubuque.org

Officer Kurt Rosenthal
770 Iowa Street
Dubuque Police Protective Association
Dubuque, Iowa 52001
krosenthal@cityofdubuque.org

I further certify that on June 6, 2015, I submitted a signed copy of this Opinion and Award for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Ste 1B, Des Moines, Iowa, 50319.

Marvin Hill, Jr.
Arbitrator