

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute
Between

CITY OF INDEPENDENCE

and

TEAMSTERS LOCAL NO. 238

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PUBLIC EMPLOYMENT
RELATIONS BOARD

Appearances:

The Previant Law Firm, S.C., Attorneys at Law, by Jill M. Hartley, appeared on behalf of the Union.

Swisher & Cohrt, PLC, Attorneys at Law, by Steven A. Weidner, appeared on behalf of the Employer.

AMENDED ARBITRATION AWARD¹

Teamsters Local No. 238, herein referred to as the "Union," and City of Independence, herein referred to as the "Employer," jointly selected the undersigned from a panel of arbitrators provided by the Iowa Public Employment Relations Board, to serve as the impartial arbitrator to hear and decide the unresolved terms of their July 1, 2015, to June 30, 2016, collective bargaining agreement pursuant to Sec. 20.22, Iowa Code. The undersigned held a hearing on June 26, 2015, in Independence, Iowa.

ISSUES

There are three issues in dispute:

1. Wage Increase: The Union proposes a 3% across-the-board wage increase effective July 1, 2015. The Employer proposes a 2.1% wage increase across-the-board effective July 1, 2015.
2. Insurance Contribution: Under the current agreement, employees contribute \$35 per month for the single plan and \$140 per month for the family plan for the July 1, 2014-June 30, 2015 year. The Employer proposes to change this effective July 1, 2015, to a 90% employer contribution and 10% employee contribution. The Employer's proposal includes a 10% employee contribution to the Employer-

¹ This award was amended July 15, 2015, to correct a clerical error (correctly identifying counsel for the Employer).

administered part of the premium. The Union proposes to modify the insurance contribution as follows:

Employee single contribution shall be 10% of the total discounted premium, increase not to exceed \$10.00 monthly per year and total co-pay not [to] be less than \$35.00 per month.

Employee family contribution shall be 10% of the total discounted premium, increase not to exceed \$20.00 monthly per year and total co-pay not to be less than \$140.00 per month.

3. Overtime: The current overtime provision reads in relevant part:

Section 13.4 Overtime:

Employee shall be paid at the rate of time and one-half (1 ½) their basic hourly rate for hours actually worked in excess of eight (8) hours in a day or forty (40) hours in any work week. If the department conducts roll calls, the time shall be considered paid time. Any granted paid leave hours such as sick leave, funeral leave, vacation, or holiday time coming will be counted as time worked in computing forty (40) hour work week. All overtime hour calculations shall be computed to the nearest one-tenth hours.

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The Employer proposes to change this to eliminate overtime after eight hours as follows:

Section 13.4 Overtime:

Employee shall be paid at the rate of time and one-half (1 ½) their basic hourly rate for hours actually worked in excess of forty (40) hours in any work week. If the department conducts roll calls, the time shall be considered paid time. Any granted paid leave hours such as sick leave, vacation, or holiday time coming will be counted as time worked in computing forty (40) hour work week. All overtime hour calculations shall be computed to the nearest one-tenth hours.

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BACKGROUND

The Employer has two bargaining units, the police department unit and the public works department. Both are represented by the Union. The police department consists of 10 peace officers, a chief, assistant chief, captain, 2 sergeants and 5 patrolmen. The sergeants and patrol officers are in the bargaining unit.

DISCUSSION

Standards

The arbitrator is required to select the final offer of one party or the other as to each impasse item in dispute that is closest to appropriate by evaluating the parties' offers under the following criteria in Sec. 20.22(7), Iowa Code. The standards are:

7. The arbitrator shall consider, in addition to any other relevant factors, the following factors:
 - a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
 - b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
 - c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
 - d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

The arbitrator has the responsibility to determine the weight to be attached to each factor. In general, a party seeking to change a contract term must show first that there are changed circumstances requiring a change in the current provision and that its proposal is the more appropriate proposal to deal with the changed circumstances. In economic terms proposals can be viewed together a "total economic package." Alternatively, a party may show that it has offered an appropriate, equivalent *quid pro quo* in exchange for obtaining the proposed change.

External Comparisons

Both parties offered external comparisons to cities of the similar size in Iowa. The Union included only those that were organized. It included the ten larger and fifteen smaller. The Employer included eleven communities, irrespective of whether they were organized. The Employer's group therefore included Decorah, and Charles City that were not in the Union's group.

Health Insurance

The Employer maintains a health insurance plan that has an annual high deductible. It then self-funds the payment of claims towards the amount of the deductible. The current Employer contribution is \$144,000. It is not clear how this amount is determined. Employees have not contributed toward that amount. The parties have historically had a contract provision which sets a specific dollar amount of the monthly contribution employees have made to health insurance. In the past, they have agreed to limit the annual contribution increase by no more than \$10 per month for the

single and \$20 per month for the family. The single monthly premium is \$445 and the family monthly premium is \$1,117 for the contract year in dispute. Under the Union's proposal, those with single coverage would pay \$44.50 and those with family plans would stay at \$140 per month, but would not contribute to the cost of the Employer's self-funded plan. Under the Employer's proposal they would also contribute 10% of the cost of the Employer's self-funded portion. The Employer's proposal would result in a monthly contribution of \$57 single and \$149 family.

In the public works unit, the parties agreed upon a 10% contribution for the contract year in dispute for the total discounted premium, but not to exceed a \$10 increase in the monthly premium for the single and \$20 for the family plan monthly premium over the last year's premium.

The Employer offered comparisons to its group of comparables. These tend to favor the Employer's position.

The Employer's reasons for its proposed change to 10% is to automatically deal with rising costs during an impasse and to avoid the Cadillac health insurance tax under the Affordable Care Act. These proffered reasons are not persuasive on the basis of the current record.

The Union relied upon the internal comparable of the public works settlement. It did not offer comparisons on this subject.

The Union's offer is preferred. It is more consistent with the public works contract. It is more consistent with an appropriate total package wage and benefit adjustment.

Overtime

This is the main issue between the parties. The Employer seeks to eliminate overtime after 8 hours primarily for fiscal reasons. The Employer takes the position that it needs to control costs because of its ever tightening revenue streams. The Iowa Legislature has placed substantial restraints on the Employer's ability to increase property taxes over the years. For instance the mandated roll back of certain property will roll back their base valuation from 110% to 54% over the next five years. The only other source that is appropriately available is the Employer's "miscellaneous" receipts. Utility receipts cannot be used for salaries. Debt receipts are not appropriate for salaries.

Paying overtime after an 8 hour shift prohibits effective management of this expense by adjustments later in the work week. In most cities in the Employer's comparability group overtime is only after 40 hours in a week. The Fair Labor Standards Act only requires overtime after 40 hours in a week. Employees should share in the sacrifice.

The Union takes the position that two unit officers left in the last few years and the Employer has chosen not to fill the positions. This has increased police overtime. Non-unit supervisors have been required to do more overtime. The Union's overtime position is supported by its external comparisons. Police services are different than the forty hour operation of the public works department. The internal comparison relied upon by the Employer is not useful. The parties have the option by mutual agreement to go to a 10-hour shift system.

In the last fiscal year, the police department had \$24,293 of overtime of which \$11,539.61 was taken as compensatory time. By comparison, the whole city had \$105,545 in overtime.

The police department is a 24 hour, seven day per week operation with sworn officers on duty throughout that period. Two police officers have left in the past two years. They have not been replaced. Police supervisors have increased the amount of time they spend on patrol to help keep coverage.

Of the fifteen external comparables offered by the Union, eight pay overtime after 8 hours and one pays overtime after 12 hours in a shift. Four of the 11 communities in the Employer's comparability group pay overtime after 8 hours. In general, the comparisons are evenly divided. As noted above, the Union agreed in the new contract to change the public works department from overtime after 8 hours to only after 40 hours.

The Employer has shown a need for some fiscal relief, but it has failed to show that its proposal as to overtime is the most appropriate way of dealing with its need. This Employer like other smaller Iowa communities is having its property tax revenue limited by outside authority. This is particularly difficult for smaller communities whose flexibility is limited by the small size of their workforce.

The Employer and Union do share common interests in dealing with the outside fiscal restraints. The Employer seeks to maintain its current level of services as much as possible while the Union seeks to preserve unit work. At the same time, the interest and welfare of the public involves not only having the appropriate level of services, but also in having those services provided in the most efficient manner.

There is a major difference between the effect of this proposal in the public works department and in the police department. In the public works department 40 or so hour per work week, the Employer has the ability to control when most of the work is done. If the Employer is faced with snow plowing or emergency work outside the normal work day, it can delay other work and send employees home early on another day to stay within 40 hours. By contrast, the police department is continuously staffed and has little ability to determine when work will be done. If unit employees have overtime and are then sent home early, the Employer must either operate with less staff for that time or have another officer fill the time. This is a small department. It is essentially understaffed as it is. It is not likely that there will be times when unit officers can be sent home early without having someone fill in on overtime. In those circumstances, the

Employer's incentive is to increase, not decrease, the amount of time non-unit supervisors will be required to do that work. This will take them away from supervision. The Employer's proposal will not be in the parties shared interest and will not be in the interest and welfare of the public.

The Employer has argued that it offered a *quid pro quo* to the public works department of .9% wage increase in exchange for eliminating overtime after 8 hours. It is unclear here whether the .9% wage increase is an equivalent trade for the elimination of overtime after 8 hours. However, the parties' shared interest and the public interest are best served by having a lower wage increase than possibly disrupting the efficient operation of the police department.

Wage Increase

The Union seeks its 3% increase based upon the fact that the Employer granted a similar increase in the public works unit and its proposal is more consistent with the increases given in comparable communities. The Employer believes that its 2.1% increase is appropriate because unit employees are relatively well paid. The Employer's revenues are being severely and its needs fiscal austerity. It did grant a 3% wage increase to the public works unit, but the difference is because that unit agreed to eliminate overtime after eight hours in a day to be only after forty hours in a week.

As noted above, the Employer is in a fiscal squeeze. It is in the parties shared interest to preserve unit work. Some fiscal restraint is appropriate.

Unit employees are paid on a flat wage after completing training. The agreement includes a longevity plan. Based on the Employer's comparisons to unionized cities, patrol officers here are higher paid than all of the others. Sergeants are paid in about the middle of the group. Based on the Union's expanded group, unit employees are still paid better than most departments.

Percentage wage increases granted in that Employer group range from a low of 2% to a high of 3%, with two at 3% and 3 at 2%. The Union's comparisons show percentage wage increases ranging from 3.5% to a low of 2%. The average of those figures is 2.4%. Because there is difference of reported numbers for the same city, the best that can be said is that average percentage wage increase in the area slightly favors the Employer's position.

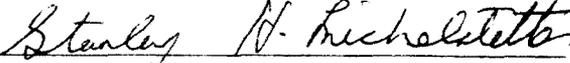
The Union's offer is more consistent with percentage increases granted by the Employer in recent years. It is also the same as that given the public works unit. The best conclusion based on the factors above, particularly the need for some wage restraint, is that the Employer's wage offer is closest to appropriate when the entire total package is considered.

AWARD

The parties 2015-16 collective bargaining agreement shall incorporate:

1. The Union's offer as to insurance;
2. The Employer's offer as to wage increase
3. The Union's offer as to overtime.

Dated at Sun Prairie, Wisconsin, this 9th day of July, 2015,


Stanley H. Michelstetter, Arbitrator