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PUBLIC EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF ARBITRATION)	
)	
Between)	Marvin Hill
)	Arbitrator
GARNER-HATFIELD-VENTURA COMMUNITY SCHOOL DISTRICT, EMPLOYER)	
)	
-- and --)	Hearing Date: July 14, 2015
)	Garner-Hayfield-Ventura
)	Elementary School, Garner,
)	Iowa
GARNER-HAYFIELD-VENTURA EDUCATION ASSOCIATION, UNION)	
)	Issue: Two-Tier
)	Family Health Insurance

Appearances:

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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

The essential facts giving rise to this interest dispute (apparently one of first impression in the state of Iowa) are not in dispute. In a nutshell, this matter concerns the Administration’s proposal for a two-tier family insurance provision, applied to new employees only, after a merger between Garner-Hayfield with a smaller district from Ventura, Iowa. As such, no Garner-Hayfield-Ventura teacher will be affected by the District’s proposal. Pursuant to Iowa Code, there is no dispute that the Garner-Hayfield master collective bargaining agreement (the existing agreement) is the “base” contract the parties are bargaining from. The Administration readily acknowledged that it has the burden to show that the change it proposed to health insurance are more reasonable than the Teachers’ proposal which is no change at all (*status quo*).

Background

The Garner-Hayfield-Ventura Community School District (hereinafter the “Employer,” the “District,” the “Administration,” or “Management”) is located deep in northwest Iowa (about 20 miles west of Mason City) and serves three (3) communities within a 10-mile radius. The district population is 5,867 and the combined enrollment is approximately 1,055 (954.6, for the 2014-1015 school year, according to the Teachers). Its combined size ranks it as the 239th largest school district in a state of approximately 337 school districts.

Prior to this round of negotiations, the parties have bargained contracts for the school years 1976-77 through 2014-15. This is the first time the parties have utilized the impasse services of a neutral arbitrator.

Significant in this case is this: Garner-Hatfield began the process of merging with Ventura in 2011 when it began sharing a superintendent. In 2014-2015 the Districts Board voted to merge the two Districts, effective July 1, 2015. The combined student enrollment (with relevant enrollment changes) of the District (with Ventura added) is outlined as follows:

Year	Certified Enrollment	Change
2012-2013	1,109.18	(95.58)
2013-2014	1,013.60	(59.30)
2014-2015	954.30	

Source: Board Ex. 26.

There are four (4) attendance centers in the merged Districts. These include a high school and elementary school located in Garner, IA and a middle school and elementary school Located in Ventura, IA.

The combined District, Garner-Hayfield-Ventura, employs approximately 186 employees including: six (6) full time administrators, 94 teachers, and 19 aids (para-educators).

The District has two employee units organized for purposes of collective bargaining under Chapter 20 of the Iowa Code: Education Association (teachers) and the Educational Services Association which includes aides, cooks, bus drivers and custodians (See, EX 1).

Statutory Criteria

Under Iowa Code Section 20.22 (Binding arbitration), 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

Under 20.22 (11) the determination of the arbitrator "shall be final and binding subject to the provisions of section 20.17, subsection 6." Also, the statute mandates that the arbitrator "shall give written explanations for the Arbitrator's selections and inform the parties of the decision." *Id.*

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).

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

II. ISSUE FOR RESOLUTION

One issue/impasse item remains for resolution of the parties' successor collective bargaining agreement: a two-tiered insurance proposal of the Administration. The Union's position is *status quo* (Board Ex. 4).

The Board proposes the following provision regarding health insurance:

10.1 Types

The Board agrees to provide all employees the following insurance option protection for 12 consecutive months beginning on July 1, 2015:

Preferred Provider network identified by the Claims Administrator

Premium Payment

- A. **For all employees hired prior to September 1, 2015, the employer will pay for full-time employees 100 percent of the single hospitalization group health insurance premium including ACA fees; and, if applicable, 75 percent of the premium including ACA fees for family hospitalization group health insurance. Part-time employees shall receive the same coverage and payment will be in the percentage as their part-time employment bears to a full-time employee. Employees hired prior to September 1, 2015 shall have the right at any time after July 1, 2015, to effect or to add family health insurance, and the employer will pay 75 percent of the premium including ACA fees for family group health insurance from and after the time of that election or addition.**

For all employees hired on or after September 1, 2015, the employer will pay for full-time employees 100 percent of the single group health insurance premium including ACA fees; and, if applicable, an additional \$300 per month for family group health insurance. Part-time employees shall receive the same coverage and payment will be in the percentage as their part-time employment bears to a full-time employee.

Association Ex. 1; Board Ex. 3 (emphasis in original)

While salary is not an issue before me, at one time salary was an issue that the parties contemplated submitting to arbitration. Upon exchange of final offers, the offers

matched at approximately 4.5%.² The parties accordingly withdrew wages from my consideration (more on this later).

III. DISCUSSION

A. Focus of an Arbitrator in an Interest Dispute

As I pointed out in numerous arbitration decisions, arbitrators and advocates are unsure whether the object of the entire interest process is simply to achieve a decision rather than a strike, as is sometimes the case in grievance arbitration, or whether interest arbitration is really like mediation-arbitration, where, as noted by one practitioner, “what you do is to identify the range of expectations so that you will come up with a settlement that both sides can live with and where neither side is shocked at the result.” See, Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics and Equity: Discussion*, in *Arbitration – 1976, Proceedings of the 29th Annual Meeting, national Academy of Arbitrators* (B.D. Dennis & G.C. Somers, eds) 159, 186 (BNA Books, 1976).

A review of case law and the relevant literature indicates that arbitrators attempt to issue awards that in theory reflect the position the parties would have reached if left to their own impasse devices. Recently, one Arbitrator/Mediator traced the genesis of this concept back to Arbitrator Whitley P. McCoy who, in the often-quoted *Twin City Rapid Transit Company* decision, 7 LA (BNA) 845, 848 (1947), stated the principle this way:

Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of the contract rights ought to be. In submitting . . . to arbitration, the parties have merely extended their negotiations, having agreed upon . . . [T]he fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to? . . . [The] endeavor is to decide the issues as, upon the evidence, we reasonable negotiators, regardless of their social or economic theories, might have decided them in the give and take process of bargaining.

² The wage provision at issue reads as follows:

The Board proposes that the regular generator base increase by \$672 from \$27,723 to \$28,395. The Board proposes that the TSS generator base decrease by \$177 from \$3,600 to \$3,423,
The Board proposes that the total regular generator base increase by \$495 from \$31,322 to \$31,818.
The Board proposes that the hiring base increase by \$510 from \$32,263 to \$32,773.

(Board Ex. 3)

The Board’s final offer matched exactly the Association’s proposal and, accordingly, it was taken off the table. As indicated in this opinion, however, it remains relevant for consideration of the insurance provision.

See, *City of Galena, IL*, Case S-MA-09-164 (Callaway, 2010).

Similarly, Chicago Arbitrator Harvey Nathan, in *Sheriff of Will County and AFSCME Council 31, Local 2961*, Case S-MA-88-9 (1988), declared that the award must be a natural extension where the parties were at impasse:

[I]nterest arbitration is essentially a conservative process. While obviously value judgments are inherent, the neutral cannot impose upon the parties' contractual procedures he or she knows that parties themselves would never agree to. Nor is his function to embark upon new ground and to create some innovative procedural or benefits scheme which is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining." *Will County Board and Sheriff of Will County v. AFSCME Council 31, Local 2961* (Nathan, Chair, 1988), quoting *Arizona Public Service*, 63 LA 1189, 1196 (Platt, 1974); Accord, *City of Aurora*, S-MA-95-44 at p.18-19 (Kohn, 1995).

. . . The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations is to place the onus on the party seeking the change. . . . In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

- (1) that the old system or procedure has not worked as anticipated when originally agreed to or
- (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and
- (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.

Sheriff of Will County at 51-52 (emphasis mine), as cited in *City of Danville*, S-MA-09-238 (Hill, 2010); See also, *Sheriff of Cook County II*, at 17 n.16, and at 19. See generally, Marvin Hill & A. V. Sinicropi, *Winning Arbitration Advocacy* (BNA Books, 1998)(Chapter 9)(discussing the focus of interest neutrals).

Chicago Arbitrator Elliott Goldstein had it right and said it best: “Interest arbitrators are essentially obligated to replicate the results of arm’s-length bargaining between the parties, and to do no more.” *Metropolitan Alliance of Police, Chapter 471, FMCS 091103-0042-A (2009).*³

There is no question that interest arbitrators, operating under the mandates of the Iowa statute, *supra*, apply the focus as articulated by Arbitrator Goldstein and others. Interest arbitration is not the place to dispense one’s own sense of industrial justice similar to the former circuit riders in the United States, especially in the public sector.⁴ Careful attention is required regarding adherence to the evidence record put forth by the parties and, however difficult, coming up with an award that resembles where the parties would have placed themselves if left to their own devices (i.e., a strike or lockout). There is indeed a presumption that the bargains the parties reached in the past mean something and, thus, are to be respected.

B. The Parties’ Health Insurance Proposals

California Arbitrator Ronald Hoh, in *Black Hawk County, IA & IBT 238, PERB CEO #783/Sector 2 (2003)* observed the problems that surface in insurance arbitrations:

It has unfortunately become virtually axiomatic in interest arbitration cases that employers and employees are faced with double digit (and sometimes high double digit) percentage increases in health insurance costs, and that bargaining table decisions regarding how those increases are to be met involve

³ See also, *City of East St. Louis & East St. Louis Firefighters Local No. 23, S-MA-87-25 (Traynor, 1987)*, where the Arbitrator, back in 1987, recognized the task of determining where the parties would have landed had management been able to take a strike and the union able to withhold its services. In Arbitrator Traynor’s words:

Because of the Illinois law depriving the firefighters of the right to strike, the Union has been deprived of a most valuable economic weapon in negotiating a contract with the City. There seems to be little question that if the firefighters had been permitted to strike, and did so, insisting on increased wages, public pressure due to the lack of fire protection would have motivated the City Council to settle the strike by offering wage increases.

Id. at 11.

Management advocate and author R. Theodore Clark has argued that the interest arbitrator should not award more than the employees would have been able to obtain if they had the right to strike and management had the right to take a strike. R. Theodore Clark, Jr., *Interest Arbitration: Can The Public Sector Afford It? Developing Limitations on the Process II. A Management Perspective, in Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators (J.D. Stern & B.D. Dennis, eds) 248, 256 (BNA Books, 1982)*. Clark referenced another commentator’s suggestion that interest neutrals “must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take a strike.” Id. Accord: *Des Moines Transit Co. v. Amalgamated Ass’n of Am. Div., 441, 38 LA (BNA) 666 (1962)(Flagler, Arb.)* (“It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table.” Id. at 671.

⁴ In the United States, the act, once undertaken by a judge, of traveling within a judicial district (or circuit) to facilitate the hearing of cases. The practice was largely abandoned with the establishment of permanent courthouses and laws requiring parties to appear before a sitting judge. Source: <http://www.answers.com/topic/circuit-riding>

substantial economic impact upon both employers and employees alike. In such circumstances, the parties have little alternative other than to either seek new insurance cost bids for coverage they can live with, and/or to closely monitor costs claimed by medical providers to assure that the parties receive the highest possible “bang for the (insurance) buck.” It is hoped that both the County and all of its unions work together to assure that such a result occurs given the significant increased costs involved.

That being said, it is the criteria for arbitrator awards set forth in the Act which must provide the framework here for the arbitrator’s determination of the “most reasonable” of the parties’ final offers.

The Association points out that the District’s two-tiered proposal constitutes a significant departure from the *status quo* for several reasons: (1) The District’s proposal departs from historical bargaining results, as the parties have a long-standing historical practice of bargaining total package settlements that include family health insurance coverage; (2) Family health insurance has been paid at 75% by the District since at least 1977-1078, a period of over 40-years of collective bargaining without a change to that provision; therefore, status quo should be maintained on the issue of family insurance; (3) The District cannot meet its burden to prove to the undersigned Arbitrator that a major change of a long-standing contract provision should be made through an arbitrator rather than through the traditional bargaining process that has been successful with these particular parties for decades; (4) Ability to pay is not an issue in this case; the Administration will achieve no cost savings for the contract year (2015-2016). Any potential health insurance savings would be in the future and not necessarily to resolve the current year’s bargaining dispute; (5) The Association has suggested to the Administration that it would consider insurance modifications that did not involve two-tiered benefits; (6) While there may be some examples of tiered benefits in other Iowa District Master Contracts, those were reached by mutual agreement between the parties; (7) Once the Administration has a two-tier insurance proposal in the collective bargaining agreement (albeit for families), nothing will prevent Management from seeking a similar two-tier proposal for current employees. In a nutshell, the Association’s position is this: “The District could not achieve mutual agreement from the Association, so it is now asking the Arbitrator to disturb a long-standing bargaining history between the parties and dramatically alter one piece of a total package bargaining equation for the future, which would immediately undo past bargaining and penalize the Association for trading lower salaries for higher benefits.”

In many respects, the Association’s position is well taken and finds support in the arbitral community.

Minnesota Arbitrator Christine D. Ver Ploeg, in *Burlington IA Municipal Waterworks & IBT Local 238*, PERB CEO #99/Sector 3 (2003), refused to order a change in the *status quo* health insurance language (where employees paid nothing for single and family insurance), and reasoned that this is an issue traditionally left to bargaining by the parties. In so holding, she concluded as follows:

I have reviewed the Employer's proposed change and find that it may well represent a better plan for many employees than they are currently provided. Nevertheless, the issue of medical coverage is such overriding concern to most employees – and it certainly is to these employees – that many arbitrators (including myself) entertain a strong presumption that parties should be left to negotiate for themselves significant changes to an existing package. Although that presumption can be overcome with compelling evidence of financial exigency and strong comparability data, the evidence presented at the hearing that supports unilaterally imposing this change upon these employees does not rise to that level. It may be possible that given time and other employees' experience with the new plan, these employees will themselves prefer to come within its provisions. However, now is not the time to force them to do so. (*Ver Ploeg* at 7-8)

Significantly, Arbitrator Ver Ploeg was writing in 2003, long before the “great recession” and an explosion in health care costs.⁵

Arbitrator Kim Hoogeveen, in *Cedar Rapids Professional Firefighters, Local 11 & City of Cedar Rapids, IA* (2005), acting as a fact finder, stressed the partnership angle with respect to health insurance and the obligation of employees to eventually assume some of the costs:

With respect to health insurance, a partnership between the Union and the City should exist, as each has an interest in securing the greatest possible bang for every dollar expended. Yet to state the obvious, it is the employees, and not the City, who benefit from health insurance, and as such employees must be prepared to assume a portion of the risk and to share in at least a fraction of the increased cost. As health insurance costs continue to rise, employees have no reason to expect that their partner will bear 100% of cost increases while they retain all the benefits. The collective bargaining agreement should not be used to shield employees from an obligation to fund an equitable portion of the benefits they enjoy. (*Hoogeveen* at 13).

See, City of Davenport, IA & Union of Professional Police, PERB Case CEO 196/3 (Dorby, 2000) (“For those of you who have not yet figured out that the health care system

⁵ *See, e.g., Michael Lewis, The Big Short* (2011), dealing with the impending financial crisis of 2008 and who knew before the financial crisis that a silent crash in the bond market and the real estate derivatives market was about to implode, resulting in a world-wide economic “crash.” Lewis discusses what led up to the darkest days of the crisis, helping the average, non-financial expert to see how the great financial storm developed. The so-called “great recession” had a profound effect of local and state governments, who by law are required to balance their budgets, unlike the federal government, who continues to accumulate record deficits and can simply print money to operate. The fallout from 2008 and the imploding derivative markets, resulting in numerous bank failures starting in 2009, is still being felt by governments, not just in the states, but world wide.

My point is this: Although the District has recovered from the 2008 “recession hole” and has not entered an inability to pay defense, it is not out of line in urging caution with respect to expected health care costs, and its goal of making future employees participate via in some way toward reducing the Administration's burden. Simply because the District is financially healthy does not mean it cannot deal with the subject of health care in a measured way.

is broken, here is a wake up call. The problem here is that health care costs are out of control.” *Dorby* at 9). Accord: *City of Davenport, IA & Association of Professional Firefighters, IAFF Local 17*, PERB 190/3 (Dworkin, 2003)(“Next to wages, this [health insurance] is a most fundamental and diverse issue. There are no pretty solutions.” *Dworkin* at 11, quoting Arbitrator Dorby in a 2001 fact finding). Mr. Dorby may not be wrong (as Congress has yet to realize with respect to Medicare and Medicaid).

C. Comparability Group

The Administration (correctly, I hold) submits that three comparability groups are consistent with the two factors that third-party neutrals most consistently use with formulating appropriate comparability groups in interest arbitration: size and location.

To this end (as cited above, *supra* at 2) the statute requires the Arbitrator to consider the criterion of “comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work given consideration to factors peculiar to the area and the classifications involved. Significantly, the Code does not specify the weight to be given to any specific criterion in any specific dispute.

With exceptions, and as stated by Arbitrator James Scoville, “A general rule in public sector interest arbitration is to use external comparisons for wages and internal comparisons for benefits.” *Central Decatur Schools & Central Decatur Education Ass’n, PERB CEO #127/3* (Scoville, 2004). “This is not invariable, but as Elkouri & Elkouri puts it: ‘Benefits issues, such as health insurance, are often resolved through the use of internal comparables.’” *Scoville* at 4. Particularly relevant in this case, Arbitrator Scoville went on to observe:

Arbitrators are notoriously reluctant to change long-standing provisions of an agreement. Thus, although the parties are encouraged to accept the general validity of the distinctly different uses to which internal and external comparisons are commonly put, this Arbitrator will not use them to destroy a long-prevailing benefit, especially one restored to full coverage through bargaining. (*Scoville* at 5).

In *Macon County Board and AFSCME, Council 31 and Local 612*, S-MA-94-70, Illinois Arbitrator Peter Feuille stressed geography and size in selecting comparables. His reasoning is instructive in this case:

I selected 12 comparison counties from the Union’s comparability group that I believe are the most comparable for pay comparison purposes (those listed in UX 3, excluding Madison, St. Claire, and Winnebago Counties). Eleven of these are central Illinois counties in the area bounded generally by Kankakee and Peoria on the north, Springfield on the west, Effingham on the south, and Champaign on the east. These counties fall generally between Interstate 80 and Interstate 70, and they exclude counties in the St. Louis metropolitan area

(Madison and St. Clair). It is well known that pay levels in larger metropolitan areas generally are significantly higher than in other areas, and just as it would be inappropriate to compare Decatur-area salaries with those in the Chicago area, so it is inappropriate to use St. Louis area jurisdictions. Five of these counties – Champaign, McLean, Peoria, Rock Island, and Sangamon – are larger (i.e., more populous) than Macon, and seven counties – Christian, Coles, DeWitt, Effingham, Kankakee, Knox and Logan – are smaller than Macon. With the exception of Rock Island and Kankakee Counties, these comparison counties are geographically close to Macon County and these counties include an equitable mix of larger and smaller jurisdictions. These may not be the 12 best comparison counties in the entire state, but they are the most appropriate comparison counties with precise starting salary and maximum information in the record. Feuille at 14-14 (footnote omitted).

Arbitrator Steven Briggs, in *City of Mt. Vernon & IFOP*, S-MA-94-215 (1995), likewise found *geographic proximity* and *local labor markets* as primary considerations in selecting comparables:

The selection of appropriate comparables for an interest arbitration proceeding is educated guesswork. No two cities or towns are mirror images of one another; thus, no two are absolutely comparable. The task is made much easier for interest arbitrators if, during the bargaining process, the parties have mutually adopted a set of benchmark communities for comparison purposes. But that is not the case here. In the present dispute each party has taken a different approach to identifying what it believes is an appropriate comparables pool.

It is axiomatic that communities used for comparability purposes in an interest arbitration proceeding should be located within the same local labor market as the community where the interest dispute exists. That principle has been upheld again and again by interest arbitrators and there is no need to discuss it at length in these pages. Suffice it to say that in attracting and retaining qualified police officers, Mt. Vernon competes with communities lying within a reasonable commuting distance. The City has defined that distance as fifty miles, which is certainly not inordinately restrictive. *Briggs* at 10 (footnote omitted).

Significantly, Arbitrator Briggs found many of the comparables proposed by the Union as “just too far away to be meaningful for comparison purposes.” Briggs determined that Dixon, Macomb, and Jacksonville – more than 100 miles from Mt. Vernon – were inappropriate comparables. He likewise found Mattoon, at 75 miles from Mr. Vernon, “as being outside of the local labor market in which Mt. Vernon competes for police officers.” *Briggs* at 11. Like Arbitrator Feuille, Arbitrator Briggs found inappropriate bench-mark jurisdictions that were close enough to St. Louis to fall within its local labor market. *Id.*

Arbitrator Herbert Berman, in *City of Peru & IFOP*, S-MA-93-153 (1995), likewise 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 (emphasis mine).

Illinois 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.

Consistent with the above arbitral authority, the Administration maintains that since January 2010 there have been 20 interest arbitration decisions for teacher/certified staff, and in nearly every case, the neutral looked at enrollment size or geographic location, or both, when performing comparability analysis (Board Ex. 5). Here, the Administration submits two groupings: certified enrollment, ten up, ten down (10/10) from 1,055; and enrollment within a 75-mile radius (between 755 and 1,355). *Id.*

For the 10/10 grouping, and focusing on average salary (\$49,399 at Garner-Hayfield-Ventura), the District is \$464 less than the average of \$49,863 (Ventura is \$3,532 less than the average for the 10/10 grouping). The numbers are worst for the 75-mile radius bench-mark jurisdiction criterion, with Garner-Hayfield being \$1,715 from the average of \$51,114, and Ventura being \$4,783 from the average (Board Ex. 6). Both

sets of data support the Administration's view that the salary needs to be raised for Garner-Hayfield-Ventura to be competitive.

Equally significant is the average percentage increase (total package) for the 10/10 group is 3.26%, placing Garner-Hayfield-Ventura at 4.50%, or 1.24% above the average (Board Ex. 8). With respect to the 75-mile radius criterion grouping, the number is 1.10% above the 4.5% that the Administration is offering (Board Ex. 11). Again, the District's view is supported by the numbers in the relevant bench-mark jurisdictions.

Focusing on health insurance, the Administration points out that within the 10/10 criterion, 10 of 20 school districts do not make any contribution to family health insurance (Board Ex. 17). Significantly, only 4 of 20 districts pay more than \$300 for family health insurance. *Id.* In the 75-mile radius group, 9 of 18 make no contribution for family insurance (Board Ex. 18). Only 4 of 18 districts pay more than \$300 for family health insurance. *Id.*

As indicated by the above numbers, clearly, with respect to the statutory comparability criterion, the Administration advances the better case.

D. School Districts with Two-Tiered Contractual Benefits

Supporting the Administration's case is an analysis of large jurisdictions (230 districts with enrollment over 500) that have incorporated two-tier-type contractual benefits, a number of them requiring new employees to take the District health insurance benefit. Using the Administration's numbers (Board Ex. 19), 151 jurisdictions (48%) out of 230 have two-tier provisions. Insurance ranks at 64. Indeed, some 42% of jurisdictions with enrollments over 500 have two-tier *insurance* provisions. I find these numbers significant and supporting the Administration's proposal.⁶

I also find it significant the Administration's argument with respect to reorganized school districts with insurance provisions in the merged contract (from 7/1/04 to 7/1/14) different than the provisions in the contract of the larger district (Board Ex. 22). The District's point that it is not uncommon for merged districts to re-formulate insurance provisions is well taken.

With respect to any argument that a two-tiered family insurance provision will create some type of animosity or divisiveness among teachers, I find there is no evidence this will result. An allocation of \$300 for family health insurance is more than most comparable districts provide, and teachers are wise to the realities of interest proceedings after the great recession of 2008.

⁶ If additional data is required, numerous jurisdictions outside of Iowa have adopted two-tiered salary schedules. Specifically, in northern Illinois, Northbrook, Park Ridge, Winnetka, and Evanston Illinois have all adopted what can be termed "two-tier salary structures."

E. The Historically Low Cost of Living Data Supports the District’s Final Offer

While not dispositive of the outcome in this case, of note is the downward trend in the cost of living data. The most recent CPI-U cost of living data released by BLS for the period through May 2015, shows that for the most recent 12 month period, CPI-U was unchanged, i.e., there was no increase in the CPI-U. Indeed, the CPI is forecasted to increase by 0.7% in 2015, and by 2.1% in 2016. *See, City of Rock Island and Illinois FOP Labor Council*, Case No. M-MA-183 (Benn, 2013); Federal Reserve Bank of Philadelphia’s Second Quarter 2017 Survey of Professional Forecaster (May 15, 2015). Inflation rates that run below two percent clearly support the value of an overall 4.5% increase to the bargaining unit. The overall salary package going to new teachers will exceed changes in the cost of living over the contractual period.

F. A Fifteen-Year Review of Third-Party Neutral Decisions Regarding Health Insurance Supports An Inference that Neutrals Routinely Alter the Terms of Health Insurance, Whether Individual or Family Contributions

In support of its position the Administration submitted Board Ex. 23, a comprehensive review of neutral decisions from 2001-2002 through 2014-2015. I summarize the Administration’s exhibits (including relevant information in footnotes) as follows:

<u>Year</u>	<u>Number of Proceedings Where Insurance was an Impasse Item</u>	<u>Number of Decisions Where Neutral Changed the Design of the Insurance Plan</u>
2001-2002	14 (arbitration proceedings) 10 (factfinding proceedings)	7 ⁷ 4
2002-2003	24 (arbitration) 22 (factfinding)	11 ⁸ 11
2003-2004	17 (arbitration) 25 (factfinding)	10 ⁹ 13
2004-2005	11 (arbitration) 15 (factfinding)	6 ¹⁰ 9

⁷ In 7 of 14 arbitration hearings the Arbitrator changed the design of the insurance plan or the employee’s contribution level. In two other proceedings (City of Cedar Rapids & AFSCME and Indianola Municipal Utility & Laborers) the Arbitrator awarded the Employer’s position and maintained current contract language.

⁸ In 11 of 24 hearings, the decision of the Arbitrator changed the design of the insurance plan or the employee’s contribution level. In two (2) proceedings the Arbitrator was making a decision for the first time, hence there was no collectively-bargained status quo.

⁹ In 10 of 17 arbitration hearings, the Arbitrator changed the design of the insurance plan, the employer’s contribution level, or both, and in one hearing (Story County & AFSCME) the Arbitrator maintained current contract language as proposed by the District.

¹⁰ In 6 of the 11 arbitration hearings the Arbitrator changed the design of the insurance plan, the Employer’s contribution level, or both.

2005-2006	9 (arbitration) 11 (factfinding)	3 ¹¹ 7
2006-2007	3 (arbitration) 6 (factfinding)	1 ¹² 2
2007-2008	7 (arbitration) 8 (factfinding)	2 ¹³ 2
2008-2009	1 (arbitration) 6 (factfinding)	1 ¹⁴ 3
2009-2010	7 (arbitration) 4 (factfinding)	7 ¹⁵ 4
2010-2011	6 (arbitration)	4 ¹⁶
2011-2012	4 (arbitration)	4 ¹⁷
2012-2013	5 (arbitration)	3 ¹⁸
2013-2014	1 (arbitration)	1 ¹⁹
2014-2015	4 (arbitration)	2 ²⁰

Again, the Administration advances the better argument with respect to the trend with arbitrators awarding changes in the parties' insurance. While at one time the better rule was to leave such changes to the parties, clearly an examination of what has taken place since 2001-2002 supports a conclusion that neutrals routinely award design changes.

¹¹ In 3 of these 9 arbitration hearings the Arbitrator changed the design of the insurance plan or the employee's contribution level.

¹² The decision of the Arbitrator changed the design of the insurance plan.

¹³ In two (2) of the arbitration hearings (Decatur County & PPME and City of Dubuque & Firefighters) the decision of the neutral changed either the amount or the manner of calculating the employee's contribution level.

¹⁴ In that hearing the Arbitrator changed the Employer's contribution as proposed by the District (LeMars CSD).

¹⁵ In 5 of 7 hearings the Arbitrator increased the Employee's contribution for family health insurance; in one hearing the Arbitrator increased the deductibles and maximum out of pocket payments by employees; and in the final hearing, consistent with the Employer's final offer, the Arbitrator increased the Employer's fixed dollar contribution by an amount less than the actual increased premium. In 2 cases (Delaware County and Ft. Madison) the neutral changed the contribution scheme from 100% paid by the Employer to either a fixed dollar amount of contribution by employees (Delaware County) or a fixed percentage of contribution by employees (Ft. Madison).

¹⁶ In four (4) cases the Arbitrator either changed the employees' contribution or made other changes.

¹⁷ In all four (4) hearings the Arbitrator either changed the employees' contribution or made other changes.

¹⁸ In three (3) hearings the Arbitrator either changed the employees' contribution level or made other changes. In one other hearing (City of North Liberty) the Union proposed a decrease in the amount of the employee's contribution, which was rejected by the Arbitrator in favor of the status quo.

¹⁹ The Union's final offer included a change from 100% premium payment by the employer for both single and family health insurance to a percentage contribution by employees for both single and family. The Union's final offer also included changes in deductibles, office co-payments and drug co-pay amounts.

²⁰ In two (2) hearings the neutral changed the employees' contributions.

G. An Examination of the Impact of Changing the Board's Contribution for Family Health Insurance from 75% to \$300/month for New Employees Favors the District's Final Offer

Here, I credit the Administration's numbers showing that a change in the Board's contribution from 75% to \$300/month for family health insurance for new employees is an increase of \$585 on the generator base (over and above the \$672 increase the Board is proposing)(Board Ex. 24). The new generator base under this hypothetical would be \$29,080 and the new beginning teacher salary would be \$33,478. *Id.*

H. Conclusion

The Administration has advanced a compelling reason why it desires to reduce its family insurance contribution to *new hires*: Its desire to boost the starting salary (low relative to the comparables) in order to attract and retain teachers. As articulated by Mr. Hanks during oral argument, this is not a situation where the District is "pocketing" the savings and diverting them to some other project. By re-adjusting the family insurance allocation to new hires, it is able to vector the savings to the base which, in the end, benefits the entire bargaining unit.

As I view this evidence record, this case is really *sui generis* (i.e., one of a kind) and, as such, is unlikely to be cited in a subsequent arbitration proceeding. At all times it must be remembered that no current teacher is disadvantaged in any way by the Administration's family health insurance proposal. While the Teachers advance a "parade of horrors" argument of what is possible under a two-tiered family health insurance provision, there is no evidence that any blowback will vector to the Teachers at Garner-Hayfield-Ventura. The change advanced by the Administration is modest by all accounts (\$300 for family health insurance for new hires), and is actually supported by the comparable bench-mark jurisdictions. Indeed, one half of the districts in the 10/10 grouping make no contribution toward family health insurance (Board Ex. 17). Nine of 18 in the 75-mile comparable make zero contribution toward health insurance (Board Ex. 18). Only 4 of 18 pay more than \$300. *Id.*

Finally, the change is engendered by a merger between two districts, one of which overall is lagging in benefits from Garner-Hayfield. In the Administration's view, it is an opportune time to effect such a provision.

Where does this record leave the parties?

Given arbitral precedent, the safe play here is to award the *status quo*, leaving it to the parties to fend for themselves and sort this out. And I have done this numerous times in the past when serving as an interest neutral. The problem in this case, however, is the absence of *any* valid reason to award the Association's *status quo* position based on an instance to a stance that defiles reality. The District has made a compelling case *squared*.

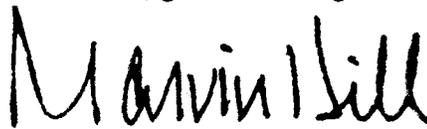
Again, no current teacher is disadvantaged *in any way*. To the contrary, an increase in the base favors the current bargaining unit. The change proposed by the Administration still exceeds the average of the comparables. The *quid pro quo* (4.5%) is more than adequate (and perhaps unnecessary).²¹ All in all, the Administration has carried the day in demonstrating by clear and convincing evidence that its final offer tracks the statutory criteria.

For the above reason, the following award is entered:

IV. AWARD

Applying the criteria in Section 20.22 of the Iowa statute, the Administration's final offer with respect to family health insurance, grandfathering the current bargaining unit, is awarded.

Dated this 20th day of July, 2015
at DeKalb, Illinois, 60115.



Marvin Hill
Arbitrator

²¹ To this end a note is in order.

One reason the District tendered a salary increase of 4.5%, 1.2% above the 10/10 comparable (Board Ex. 9) and 1.10% for the 75-mile radius bench-mark jurisdictions (Board Ex. 11) was as a *quid pro quo* for its two-tiered family health insurance proposal. Arguably a *quid pro quo* was not needed as the current bargaining unit, grandfathered under the proposal, would not experience any loss of benefits. Still, an above average salary increase was tendered. Effectively the Teachers "cherry picked" the Administration's salary offer, leaving the insurance issue to arbitration. One way to look at this record is as follows: The Teachers are fine accepting the Administration's generous salary offer, but dispute the reasoning behind the District's generosity. The Teachers cannot have it both ways. If they are against a two-tiered family health insurance proposal (and it is understandable why the IEA would be on record as opposing any two-tiered proposal) *applied to new hires only*, one that will give them more than the average in the comparables, an average salary increase (3% or so) was the play.

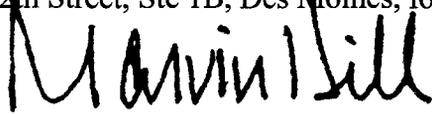
CERTIFICATE OF SERVICE

I certify that on July 20, 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:

For the District: **James Hanks, Esq.**
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jhanks@ahlerslaw.com

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800 U.S. Highway 18W
Clear Lake, IA 50428-1112
jenke@isea.org

I further certify that on July 20, 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