

RECEIVED

BEFORE THE IOWA PUBLIC EMPLOYMENT RELATIONS BOARD (PERB) 8: 49

PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF ARBITRATION)	
)	
BETWEEN)	Marvin Hill
)	Arbitrator
THE CITY OF AMES, IOWA,)	
EMPLOYER)	Wages, Insurance &
)	Meal Allowance
-- and --)	
)	Interest Arbitration
LOCAL 55, INTERNATIONAL)	Successor collective bargaining
BROTHERHOOD OF ELECTRICAL)	
WORKERS, UNION)	Hearing Date: April 4, 2016
)	

Appearances

For the Employer: Judy Parks, City Attorney &
 Brian Phillips, Assistant City Manager
 Legal Department & City Manager's Office
 515 Clark Avenue, PO Box 811
 Ames, IA 50010
jparks@city.ames.ia.us
bphillips@city.ames.ia.us

For the Union: Rusty McCuen
 Assistant Business Manager
 IBEW Local 55
 1435 West 54th Avenue
 Des Moines, IA 50317
rusty@ibew55.org

PUBLIC EMPLOYMENT RELATIONS BOARD

2016 APR 12 AM 8:50

RECEIVED

I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

The City of Ames, Iowa (the "Administration," "Employer," or "City") with a 2014 population of 53,266 (an increase of 7.5% since 2010), and IBRW Local 55 ("Union"), have been in a working relationship since September 16, 1975. Local 55 represents all employees of the Electrical Distribution Division of the Electrical Utility Department of the City of Ames. It is one of five (5) units that work under a collective bargaining agreement with the City. The Electric Distribution Department currently employs one (1) records and materials specialist, one

(1) underground service worker, two (2) service workers, five (5) line workers, one (1) substation electrician, one (1) substation foreman, one (1) storekeeper, two (2) line foremen, two (2) substation apprentices, and two (2) electric meter repair workers. There are a total of 20 positions in the bargaining unit.¹ The current collective bargaining agreement (a three-year agreement) will expire on June 30, 2016.

The record indicates that negotiations for a successor collective bargaining agreement commenced on November 13, 2015, after the parties exchanged initial proposals in late October and early November. The parties negotiated over the course of three bargaining sessions and one mediation session with Iowa PERB Mediator Jasmina Sarajlija. A successor collective bargaining agreement had not been reached. Tentative agreements were reached on numerous items, however, and are included in the new agreement effective July 1, 2016.

The parties have traditionally used Cedar Falls Municipal Utilities (CFMU)(2014 population 40,859) and Muscatine Power and Water (MPW)(2014 population 23,888) as external comparables. In addition, the Employer urges that the Ames Municipal Electric System, which provides electric service to over 21,000 residential and 3,000 commercial and industrial customers (with an all-time peak load of 130 megawatts) is also a comparable. In addition to the transmission and distribution system operated and maintained by the Electric Distribution Division (EX 6), the City has its own generating facility (power plant) to meet customer energy demands.

As pointed out by the Administration, in the State of Iowa it is legislatively mandated that utilities have assigned exclusive service areas whose boundaries cannot be changed except under very limited circumstances (Iowa Code Sections 476.22-25). Accordingly, utility service boundaries do not change even if the City corporate boundaries change by annexation. Within the region, potential new customers who are choosing where to locate have five (5) utility providers in the immediate Ames vicinity, since the City competes against two investor-owned utilities and two distribution cooperatives who serve territories adjacent to the Electric Utility's service area. From a residential rates standpoint, Ames' rate is lower than the average of the other rates by approximately 25%. From a commercial rate standpoint, Ames is at, if not slightly higher, than the average of the neighboring utilities. From an industrial rates standpoint, Ames is nearly 9% higher than the average industrial rate of the neighboring utilities (See, Employer Ex. 7).

According to the Union, the parties were close on signing off on one of the issues submitted to the undersigned Arbitrator – meal language (EX 5) – but the City pulled off and claimed it was an economic issue that should be included as part of its total package. The City could not provide a cost to this proposal based on how many times a year this cost would occur (See, *Union Opening* at Tab 1). According to the Union, the two issues that remained – wages and out-of-pocket max for prescription drugs – were close to resolution by the parties. The Union wanted 2.75%, 2.75%, 3.0% and 3.0% to accept the increase. However, this contract allocation never came to pass. By this time, notes the Union, three of five units had already settled a successor collective bargaining agreement. *Id.*

¹ The organization chart for the Electric Services Department is outlined in Employer Exhibit 6.

Significantly, the ability of the Employer to pay the cost of the Union's request is not at issue in this proceeding, although the impact of labor costs on the Employer's ability to operate in an efficient manner is always an issue in an interest proceeding.

For the record, a hearing in the above-cited matter was held by the undersigned Arbitrator at City Hall, Ames, Iowa, on Monday, April 4, 2016. The parties appeared through their representatives and entered exhibits and testimony. The parties closed by making oral arguments that same day.

II. ISSUES FOR RESOLUTION

Three (3) economic items remain and are submitted for final offer arbitration: Wages, Meal Allowance, and Prescription Out-of-Pocket Maximum.

III. SCOPE OF THE ARBITRATOR'S AUTHORITY

The Administration points out that 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.”²

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).

The above-cited criteria are generally referred to as bargaining history, comparability, interests and welfare of the public, and power to tax. These categories are implemented, as well as other cited criteria under the “other relevant factors” criterion.

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

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 (the City of Ames) or the entire final position of the Employee Organization (IBEW Local 55). Thus, an arbitrator does not have discretion to award part of either party's positions (unfortunate in this case). 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.”³ Therefore, with respect to insurance, the undersigned is to select the State' final offer in total or the Union's offer, in this case *status quo*, or no change to the current collective bargaining agreement. 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).⁴

Furthermore, “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,

² For the record, this award is issued with due regard and application for all of the cited statutory criteria.

³ 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.’”

⁴ Interestingly, in his opinion the Arbitrator wrote: “By way of the dicta the parties are urged to make insurance their first priority for negotiations for [the successor collective bargaining agreement]. A mutually negotiated result is far superior to one dictated by an arbitrator.” *Loeschen* at 15.

These parties would do well to copy Arbitrator Loeschen's mandate.

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).

While it can be argued that there are no significant “breakthrough” items in this case, the Administration’s desire to establish an increase in the prescription drug out-of-pocket maximum, a jump from the *status quo* of \$750 (per covered member) and \$1,500 (per covered family unit) to \$1,000 and \$2,000, respectfully, this item comes close to significant breakthrough, and arguably should be treated as such.

B. Focus of an Arbitrator in a Interest Dispute

As I pointed out in a *Des Moines Police* decision, 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 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.

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)*.⁵

There is no question that arbitrators, operating under the mandates of the Iowa statute, apply the same 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.⁶ 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. There is indeed a presumption that the bargains the parties reached in the past mean something and, thus, are to be respected.

V. IMPASSE ITEMS: DISCUSSION AND ANALYSIS

As noted, three (3) economic issues are in play in this proceeding: Wages (EX 4), Meal Allowance (EX 5), and Prescription Out-of-Pocket Maximum (EX 4).

A. WAGES

The Union’s final offer is for a three percent (3.0%) increase to base wages across-the-board for all classifications, effective July 1, 2016.

In support of its position the Union submits that the relevant external comparables include Muscatine Power and Water (MPW) and Cedar Falls Utilities (CFU) for analysis. Since

⁵ 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.

⁶ 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>

Cedar Falls and Muscatine include their Generation and Water Departments in the same collective bargaining agreement, for simplicity sake the Union compares the three (3) Line Departments in each unit.

According to the Union, an across-the-board wage increase of three percent (3.0%) to the base wage rate is fair and reasonable. When contemplating a proposal for wages the Union believes it is imperative to use the external comparables that have been agreed upon by the parties. In the Union’s eyes, *internal comparables are irrelevant when it comes to wages because they are not comparable in job duties, training or safety factors (Union Opening at Tab 3).*

The Union notes that another factor that went into the Union’s final proposal is the total package of each collective bargaining agreement. In the Union’s view, each agreement has several similarities that make them comparable such as meal allowance, overtime pay, on-call pay, etc. All these similarities are industry standards and can be found in collective bargaining agreements across the country. Still, supplemental pay and benefits vary because every place is different and has a different bargaining history. In the Union’s words: “It is through the “give and take” process that one area can increase their compensation through supplemental pay that works for that area as opposed to another.” (*Union Opening Tab 3*).

A side-by-side comparison reads as follows:

ESTIMATED WAGE PROPOSALS SIDE-BY-SIDE COMPARISON

	AMES	CEDAR FALLS	MUSCATINE POWER
2015	\$35.97	\$36.33	\$36.56
UNION PROPOSAL 3.0% (across-the-board)	\$37.05	2.75%	2.75%
CITY PROPOSAL 2.75% (across-the-board)	\$36.96	\$37.33	\$37.57

According to the Union, the above chart shows that with the Union’s proposal it makes a modest gain, while under the City’s proposal it loses ground (Tab 3).

The City’s final offer calls for an increase in wages at 2.75% across-the-board, effective July 1, 2016.

In support of its final offer the Administration notes that the wages of the electrical workers have kept pace with those of workers at the two (2) comparable utilities, Cedar Falls and Muscatine, Iowa. To this end, the City offers the following analysis:

**IBEW COMPARABLES
2016-2017**

City	Lineworker Wage 7-1-16	Wage % 1-1-17	Wage% 1-1-18	Wage \$ 1-1-17	Longevity (15 yrs= \$300/2018)	Total Wage
Ames Mun. Elec. System	\$35.97	2.75% (City Proposal)	0%	\$36.96	\$.14/hr	\$37.10
Cedar Falls Utilities	\$36.33	2.75%	0%	\$37.33	0	\$37.33
Muscatine Power & Water	\$36.55	0%	(not yet negotiated)		0	unknown

Source: Employer Ex. 8

The City also offers an analysis of the cost increase to the City for the parties' wage proposals, plus related costs and known cost increases:

	City's Proposal 2.75% ATB	Union's Proposal 3.0% ATB
Wages	49,093	52,534
Health Insurance	22,320	22,320
Retirement	4,326	4,625
Longevity	300	300
Worker's Comp	3,413	3,646
FICA/Med	3,778	4,042
Total package Increase	83,230 4.15%	87,467 4.36%

Source: Employer Ex. 9

Of note, Cedar Falls Utilities have settled on a four-year collective bargaining agreement with a 2.75% increase on July 1, 2016, a 2.75% increase on July 1, 2017, a 2.75% increase on July 1, 2018, and a 3.0% increase on July 1, 2019. Muscatine's Electric Utility is not on the same July 1 – June 30th schedule as the City of Ames and Cedar Falls Utilities. Rather, the Muscatine contract year begins and ends on a floating date in mid-December each year. Muscatine settled at a 3.0% increase for the contract year beginning December 13, 2015 and has not initiated bargaining for the contract year that begins December 13, 2016. Because of the differences in contract schedules, for the past several years Muscatine's wages have been higher than Ames and Cedar Falls for six months, and then have been lower than both for the following six months in a cyclical fashion. Also, for the contract covering the majority of calendar year

2011, Muscatine did not increase wages. Since that time, Muscatine's average wages have increased at a pace faster than the wages in Cedar Falls and Ames. As argued by the Administration, these increases have the appearance of bringing Muscatine's wages more into alignment with Cedar Falls and Ames (See, Employer Ex. 10).

As the exhibits show, the City's proposal of 2.75% matches Cedar Falls' increase for the next fiscal year. In addition to the cash compensation received by Ames Electrical Workers, the total compensation package is enhanced by annual longevity pay, low employee insurance premiums, and a rich meal benefit. Further, the Utility pays for a 20 minute paid lunch period, while Muscatine provides a 15 minute paid lunch and Cedar Falls provides an unpaid lunch period.

The Administration further asserts that from an internal standpoint, three voluntary settlements were negotiated in the fall. The Blue Collar Unit (IUOE Local 234) and the Fire unit (IAFF) both settled for a three-year agreement with wages at 2.75% for the first year, 2.75% for the second year, and 3.0% for the third year. The Power Plan Unit (IUOE Local 234), which has the very same comparables as the IBEW Unit, voluntarily settled for a three-year collective bargaining agreement at 2.62% for the first year with a \$1.50/hour increase to one classification, 2.75% for the second year, and 3.0% for the third year. The police bargaining unit wages are in arbitration for an award on March 25th.⁷ Across Iowa, a survey of the 118 settled public-sector bargaining agreements indicates the average wage increase for 2016 as 2.52% (See, Employer Ex. 11).

Finally, in support of its position the Administration points out that wages have more than kept up with the consumer price index (CPI) as a measure of the cost of living (*Employer Opening Statement* at 8; Employer Ex. 12). Indeed, early indications for calendar year 2016 suggest that the CPI is flat or negative for the first portion of the year, which indicates that any upward wage adjustment would have been greater buying power than previous years.

* * * *

Only a *de minimis* difference exists between the parties' wage proposals – one percent over four years. The externals – with a 3% mixed in – arguably supports the Union's proposal, while the internals arguably favor (somewhat) the Administration's position. I hold that the Union has advanced the better case with respect to its final offer on wages. An across-the-board increase of 3.0% will prevent further loss in comparative position relative to the external comparables. Again, the difference between proposals is minimal and in view of my award on the two remaining issues, the correct award is in the Union's favor.

⁷ The specifics of the City's offer to the police unit was not made part of the record in the IBEW case.

B. MEAL ALLOWANCE

The Union's proposal reads as follows:

6.6 Meal Allowance: The Utility will provide meals as follows:

(a) When an employee is called to perform unscheduled work prior to the normal starting time and works one hour or less of the starting time, the employee shall be entitled to a meal at the Utility's expense but not on Utility time. However, the employee will lose no time on the regular work day due to this meal (up to a maximum of 45 minutes for the meal). *An employee shall be entitled to a breakfast and a lunch meal while working alternate hours Monday through Friday.*

According to the Union, the intent behind the original language is that you are entitled to a meal if you are called in before your designated start time because you are unable to make or eat your breakfast. This works great when working a regular schedule because you have an unpaid hour to go home and make lunch or stop somewhere to eat. The Union's proposal is to identify and clarify that when working an alternate schedule 7 – 3 with a 20 minute lunch you do not have time to make breakfast or lunch if you get called out before your shift. You also could not go home or somewhere else to get lunch and eat it before your 20 minutes was over (*Union Opening TAB 2*).

The Union asserts that it was led to believe through negotiations that this was a done deal and, as such, would be made part of a voluntary settlement. Accordingly, it asks that the Arbitrator rule in favor for a proposal that was agreed on and has little impact, if any (*Union Opening Tab 2*).

The Administration's position is *status quo*.

In support of its position it asserts that the current meal allowance section under the parties' collective bargaining agreement is the compilation of a series of situation-specific provisions which have been incorporated over a long period of time, as each has arisen. Because of how it came to be, it is complex and hard to administrator. The overall impact, argues the Employer, is that more and more meals have come to be compensable over time without a systematic reason for that situation. To this end, because of its complexity the Administration has found it necessary to diagram it in order to understand how and when it applies (Employer Ex. 13, attached *infra*).

* * * *

This meal allowance language is truly a convoluted and administratively complex provision, as argued by the City (See, Employer Ex 13, attached). Moreover, as noted by City Counsel, it is not without cost to the City. This matter is better remanded to the parties for resolution at the bargaining table. The Administration's final offer is awarded.

C. PRESCRIPTION OUT-OF-POCKET MAXIMUM

The City has a self-insured health insurance program that provides prescription drug coverage under three tiers. To this end the City’s health plan provides an out-of-pocket maximum for health coverage and a separate out-of-pocket maximum specifically for prescription drugs. Following consultation with the City’s insurance provider, Wellmark, the City proposed a restructuring of the tier schedule and the out-of-pocket maximum for prescription drugs. This proposal includes adopting the co-pay schedule indicated as follows:

	Tier 1	Tier 2	Tier 3	Tier 4
Current employee co-pay	\$4	\$15	\$20	NA
Proposed employee co-pay	\$5	\$20	\$35	\$35
Definition	Generic and Selected over-the-counter drugs	Preferred brand-name drugs	All other prescription drugs	Limited value drugs

In addition, the City’s proposal includes increasing the out-of-pocket maximum for prescription drugs from \$750 *per covered member* and \$1,500 *per covered family unit* to \$1,000 and \$2,000, respectively. Significantly, the Union’s arbitration position indicates acceptance of the revised-tier schedule, but not the out-of-pocket maximum (*Employer Opening* at 9).

The Administration submits that prescription drug costs are the fastest-growing component of providing health insurance coverage to the City’s employees. With a self-funded insurance program, costs for covered services are financed by premium contributions from employees and the City, co-payments, and co-insurance payments. The City anticipates a 7% increase in premium contributions from both employees and the employer to cover the increasing cost of medical services. Wellmark has indicated to the City that, in order to encourage users to make the most cost-effective choices when considering whether to use expensive name-brand medications or less-costly alternatives, a two-fold approach is necessary: 1) providing a greater separation between the co-payment amounts across each tier, and (2) increasing the out-of-pocket maximum to send signals to users that generics and preferred name brand drugs will have a lower cost impact on both themselves and the plan as a whole than costlier drug choices. These changes are intended to result in lower premium increases for both the City and employees in the future. Wellmark has identified lower-tier equivalent drugs for the drugs that would constitute the new Tier 4, according to Wellmark’s formulary (*Employer Opening* at 9-10).

Significantly, the City presented similar changes to each of its five bargaining units in the course of bargaining. The other four units (Power Plant, Blue Collar, Fire, and Police) have accepted the proposed changes, including the maximum out-of-pocket amounts. Additionally, the City’s proposal will be implemented for the City’s merit employees, who are not covered under a collective bargaining agreement (*Employer Opening* at 10). In summary format, the internal data reveals the following:

Bargaining Group	# of covered positions	% of covered positions	Agreed to Tier/OPM Changes
Blue Collar	231	35.7%	Yes
Fire	49	7.6%	Yes
Power Plant	38	5.9%	Yes
Police	58	9.0%	Yes
IBEW	20	3.1%	No
Merit – Non-Bargaining	251	38.8%	NA at this time
Total	647		

The Union’s position would require Wellmark and the City to set up an entirely separate accounting of the Electric Distribution Unit’s health care plan for the 20 individuals within this unit and their dependants (*Employer Opening* at 10). A separate plan would be more challenging to administrator, and will cause confusion among beneficiaries, administrators, and Wellmark with respect to what the applicable benefits are. *Id.*

The Employer asserts (correctly) that even while relying upon primarily external comparables to establish wage rates, third-party neutrals have traditionally relied upon internal comparables when dealing with employer-provided health care plans.⁸ Counsel summarizes its position as follows: “As an employer with a self-insured health plan, the City of Ames and those covered under its health insurance realize great savings by having a large group with common plan elements. Since 97% of the City’s employees and beneficiaries will be subject to the new drug OPMs effective July 1st, granting the Union’s request to retain the current OPMs would fragment this one component of the City-wide plan design should other arbitrators follow suit, that would lead to a general disintegration of the plan’s standardized elements into smaller and smaller sub-groups, thus jeopardizing the efficiencies and plan benefits now realized by over 1,500 covered individuals.” (*Employer Opening* at 11).

* * * *

Interest arbitrators regularly have adopted employer’s health insurance proposals that change employee contributions or out-of-pocket maximums in recognition of the significant increase in health insurance costs. *See Village of Steger*, Case No. S-MA-02-132 at 18; *Village of Deerfield*, Case No. S-MA-02-155 at 11. In adopting the employer’s health insurance

⁸ 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.

proposal basing employee contributions on a percentage of premium in Steger, Arbitrator Meyers recognized the following:

“[The Union’s] proposal quite simply does not go far enough, especially in light of skyrocketing premiums...the Employer’s proposal more realistically and reasonably addresses the economic pressure associated with the rising cost of health insurance coverage. The Employer’s proposal represents a reasonable and more equitable sharing of that burden.” *Steger* at 18.

Accord: *City of Rockford and City Fire Fighters Local 413, IAFF, AFL-CIO*, Case No. S-MA-12-108 (Goldstein, 2013)(rejecting union’s offer because it would not only cost the employer more in claims administration but also create a large gulf of disparity between the bargaining unit and the remainder of the employer’s workforce, in terms of both benefits and employee costs).

As I have recognized in numerous cases, health insurance is “uniquely specific” to each public employer, and the use of external comparables simply has diminished, if any, relevance because of the variations among units of local government in health insurance plan benefits, wages and other forms of direct and indirect compensation. This is especially true in the protective services where employees work 24/48 schedules (firefighters) or 12-hour shifts (police) and have different configurations of days off (Kelly Days with firefighters, for example). See *Village of Lansing and Teamsters Local 700, Records Clerks Union*, Case No. S-MA-11-197, at 18-19 (Hill, 2013)(citations omitted). Here, external comparability at Ames, Iowa is particularly inapt, given the evidence regarding uniformity by internal units. As articulated by the Administration: “Relatively small plan design changes such as the City’s proposed prescription drug co-pay and OPM increase play a key part in maintaining a self-funded health plan that maintains a relatively modest level of annual premium increases, even while providing an exceptional level of health care benefits to covered plan members.” (*Employer Opening* at 11).

More important is this: **Interest Arbitrators give greater weight to internal comparability *vis-à-vis* external comparability when health insurance issues are in play.** 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).

Accordingly, for the above reasons the District's health insurance proposals should be adopted.

VI. AWARD

For the above reasons, the following is awarded:

Wages: Union's final offer awarded.

Meal Allowance: City's final offer awarded.

Out-of-pocket maximums: City's final offer awarded.

Dated this 9th day of April, 2016,
at DeKalb, IL 60115



Marvin Hill
Arbitrator

CERTIFICATE OF SERVICE

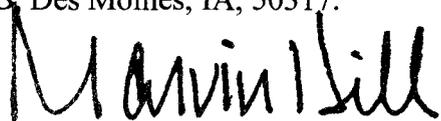
I certify that on the 9th of April, 2016, I served the foregoing Award and Opinion of the undersigned Arbitrator upon each of the parties by mailing a copy to them *via* U.S. Mail at their respective addresses as shown below:

For the Employer: Judy Parks, City Attorney &
 Brian Phillips, Assistant City Manager
 Legal Department & City Manager's Office
 515 Clark Avenue, PO Box 811
 Ames, IA 50010
 jparks@city.ames.ia.us
 bphillips@city.ames.ia.us

For the Union: Rusty McCuen
 Assistant Business Manager
 IBEW Local 55
 1435 West 54th Avenue
 Des Moines, IA 50317
 rusty@ibew55.org

In addition, I also certify that unsigned copies were electronically transmitted to the above representatives at the noted e-mail addresses on or before April 11, 2016.

I further certify that on the 9th of April, 2016, I submitted this Award for filing by mailing it to Ms. Sue Bolte, Iowa Public Employment Relations Board (PERB), 510 East 12th Street, Ste 1B, Des Moines, IA, 50317.



Marvin Hill, Arbitrator
330 North 2d Street
DeKalb, IL 60115

Dated this 9th day of April, 2016,
at DeKalb, Illinois, 60115.