

ILRB
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**ILLINOIS STATE LABOR RELATIONS BOARD
BEFORE ARBITRATOR ROBERT PERKOVICH**

RESOLVED
JAN 17 2001

**In the Matter of an Interest
Arbitration Between**

City of Blue Island)
)
 and)
)
 Illinois Fraternal Order of Police,)
 Labor Council)

Case #S-MA-00-0138

A hearing was held before Arbitrator Robert Perkovich, having been jointly selected by the parties, City of Blue Island ("Employer") and Illinois Fraternal Order of Police Labor Council ("Union"). The Employer was represented by its counsel, Cary Horvath. Testifying for the Employer were Donald Peloquin and Joseph Kosman. In addition, the Employer presented its evidence in narrative fashion. The Union was represented by its counsel, Thomas Sonneborn, and its Legal Assistant, Becky Dragoo. The Union chose to present its evidence exclusively by narrative. The parties filed timely post-hearing briefs which were received by the undersigned on November 7 and 13, 2000.

STATEMENT OF THE ISSUES

The parties agree that the issues presented for resolution are as follows:

- 1. Is the issue of residency arbitrable in interest arbitration?
- 2. If so, which of the parties' two competing final offers should be selected?

BACKGROUND

The Employer is a non home-rule municipality in the suburbs immediately south of Chicago. It employs approximately 136 full-time employees in six departments: police, fire, public works, buildings, recreation, and administration. Those employed in the administration, recreation, and buildings departments are not unionized while fire department employees are represented by a local of the International Association of Fire Fighters and the public works and civilian police department employees are represented by a local of the American Federation of State, County, and Municipal Employees.

The Employer's police department consists of thirty-five full-time police officers (including sergeants, corporals, detectives, and school liaisons), one Deputy Chief, a Chief. In addition, the department employs 911 telecommunications operators who are represented by the Union in a separate bargaining unit that is not the subject of this arbitration.

The bargaining unit involved in this matter, consisting of all full-time sworn police officers below the rank of Deputy Chief, was originally represented by the Union herein. The record disclosed that at some point the employees chose to be represented by a local of the International Brotherhood of Teamsters and then, in 1996, replaced the Teamsters local with the Union herein. Thus, there were two collective bargaining agreements between the Employer and the Union between 1987 and 1989 and two agreements between the Employer and the Teamsters local between 1990 and 1996. The most current agreement, between the Employer and the Union herein, covered the period May 1, 1996 through April 30, 1999. Thus, the contract at issue herein will be the product of the parties' first negotiations since the 1997 amendments to the Illinois Public Relations Act (IPLRA) that included residency among the subjects that could be arbitrated in interest arbitration¹.

The Employer has adopted Division 1 of Article 10 of the Illinois Municipal Code, 65 ILCS 5/10-1-1 *et seq.*, providing for a civil service commission which adopted various rules and regulations governing employment. Among the rules and regulations adopted is one, adopted since at least 1950 and which has remained unchanged, that requires that members of the classified service, including police officers, reside within the city limits.

THE ISSUE OF ARBITRABILITY

The Employer argues that the issue of residency is not arbitrable in this proceeding because the Employer adopted the residency requirement through its civil service commission which was created under the Illinois Municipal Code. Thus, that power cannot be bargained away either through bilateral collective bargaining or interest arbitration. The Union on the other hand contends that when the General Assembly amended the Illinois Public Relations Act to include residency within the scope of wages, hours, and terms and conditions of employment that could be arbitrated it decreed that residency arbitrable, notwithstanding the adoption of a residency requirement by way of a statutorily created civil service commission. Thus, the Union contends that the cases cited by the Employer to support its argument are distinguishable.

Initially, it cannot be ignored that in 1997 the General Assembly clearly and unequivocally declared that residency could be the subject of an interest arbitration². Accordingly, the Legislature's explicit inclusion of residency as an arbitrable subject cannot be regarded as a meaningless legislative act. Secondly, the legislature had already declared in Section 15 of the Public Relations Act that the provisions of the Act were to prevail in the event that there might be a conflict between the Act and "...any other law, relating to wages, hours and conditions of employment and employment regulations..." In fact this latter provision, *inter alia*, led the Illinois Supreme Court to

¹ The record reflects however that in the initial bargaining between the parties in 1986 the matter of permitting police officers to live outside the city limits was raised and discussed, but that the residency requirement remained unchanged.

² "In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment (which may include residency requirements...)" See, 5 ILCS 315/14(i).

reject an employer's argument that review of discipline under a contractual grievance procedure was not a mandatory subject of bargaining because of the fact that the employer's civil service procedure enabled employees to contest discipline. See, *City of Decatur v. AFSCME, Local 268*, 122 Ill.2d 353, 119 Ill.Dec. 360, 522 N.E.2d 1219 (1988). Therefore, the Legislature's determination of arbitrability and the supremacy of the IPLRA as recognized in *City of Decatur, supra*, compel me to conclude that the issue of residency is properly before me.

The cases cited by the Employer are easily distinguishable and do not compel me to conclude otherwise. First, *Harvey Firefighters' Association v. City of Harvey*, 75 Ill.2d 358, 389 N.E.2d 151, 21 Ill.Dec. 339 (1979) pre-dated the passage of the Illinois Public Relations Act and the residency amendment noted above. The second case cited by the Employer, *City of Markham v. State and Municipal Teamsters, Chauffeurs and Helpers, Local 726*, 299 Ill.App.3d 615, 701 N.E.2d 153, is similarly distinguishable. There, the court determined, distinguishing *City of Decatur*, that the subject of the arbitrability of police office discipline was not a mandatory subject of bargaining under Section 7 of the IPLRA because Section 7 excludes from the scope of bargaining wages, hours, and terms of conditions "not specifically provided for" in other laws. Therefore, because police officer discipline was specifically provided for in the Illinois Municipal Code, the subject was not arbitrable because it was not a mandatory subject of bargaining under the IPLRA. In the instant case however, the subject of residency is not specifically provided for in the Illinois Municipal Code nor any other law. Thus, it is not excluded from the scope of mandatory bargaining.

THE PARTIES' FINAL OFFERS

The Employer has proposed the status quo on the issue of residency i.e., that the police officers represented in the bargaining unit involved herein be required to live in the city limits.

The Union on the other hand proposes that those same employees be permitted to live within 15 miles of the jurisdictional boundaries of the city so long as they remain residents of the state of Illinois.

DISCUSSION

The threshold question that I must face in choosing between the parties' two competing final offers is the Employer's argument that the changes to residency that the Union seeks are a "breakthrough" because they consist of changes to a long-held condition of employment, because that policy is "...clearly reflective of the...expectations concerning residency (known to employees) when they applied for jobs," and because the record contains no evidence that the status quo needs to be changed.

I begin first with the issue whether or not the Union's proposed changes to the existing residency requirements can be characterized as a breakthrough and therefore

placing the burden of proof on the Union. This issue has now been the subject of several interest arbitration awards. In *City of Lincoln*, S-MA-99-140 (November 12, 2000) I decided, in accordance with the holding of Arbitrator McAlpin in *City of Nashville*, S-MA-97-141 (1999), that when a matter is first before the parties after a history of tacit approval, rather than bilateral agreement, there is no status quo such that the issue can be characterized as a breakthrough. Thus, the concomitant burden of proof cannot be assessed. Rather, as I held in *City of Lincoln*, *supra* at 3, "...when the parties faced the issue before it became a mandatory subject of bargaining and, ultimately, arbitrable, the issue was not shaped by the bilateral efforts and expectations of the parties...(t)hus, they did not create a base from which to consider subsequent bargaining." In addition, although the Employer is correct that the status quo comports with employees' expectations when hired, for the same reasons as those explicated in *City of Lincoln* and *City of Nashville*, *supra*, those expectations are now more properly scrutinized in light of legislative changes that provide the employees herein with rights they once did not have.

Moreover, I do not completely agree with the Employer that the record is devoid of evidence that a change to the status quo might be in order. Rather, the Union proffered some record evidence as to disparities in the application of the residency requirement both within the police department and between police officers and employees in other departments, turnover within the department due to the residency requirement, and police officer safety related to their continued residency in the city limits.

I therefore turn to the factors which must be used in order to choose between the two competing final offers. On this point the parties rely on internal and external comparables and the interests and welfare of the public³.

With regard to internal comparables, the Employer argues that because the AFSCME and Firefighter bargaining units are subject to the same residency requirement that it proposes herein I should choose its final offer over that of the Union. The Union on the other hand urges me to reject internal comparables because those agreements were either not the product of a bilateral exchange since the General Assembly amended the Act, because one cannot know the bargaining exchange that led to those agreements, because the internal comparables are inconsistent, because the bargaining history that led to those agreements is not long enough to be afforded adequate weight, and/or because of the "unique role" that police officers play.

Upon consideration I agree with the Union only with regard to the inadequate passage of time leading to the bilateral agreements with other bargaining units on the issue of residency and the fact that the internal comparables are somewhat inconsistent⁴.

³ The Employer also contends that because employees know when they apply for positions with its police department they can choose to avoid this burden by simply working elsewhere. Although factually correct, I reject that argument because it ignores, as Arbitrator Berman declared in *Town of Cicero and International Association of Fire Fighters, Local 717*, S-MA-98-230 (1999), the basic right, enjoyed by most U.S. residents, to choose where to live and because that right has been demonstrably exercised by many individuals. (See e.g., *City of Lincoln*, *supra* at 5-6 and sources cited therein.)

⁴ On the Union's other arguments, the nature of the bargaining between the Employer and the IAFF and AFSCME and the "unique role" of police officers I am sufficiently troubled by these arguments to refrain

On these two points, it is clear that the bargaining between the Employer and its other unionized units on the issue of residency is of short duration. Thus, as I held in *City of Waterloo*, S-MA-97-198 (1999), it does not bear a strong and fixed history such that it can be relied to replicate what these parties might have bilaterally adopted. Moreover, the record reflects that in bargaining with this same Union for the telecommunicator unit, a group of employees working with the employees in the unit herein, the Employer agreed to relaxed residency. Thus, a clear and convincing pattern of internal comparability has not been made.

On the issue of external comparability, the case is clearly made in favor of the Union's final offer⁵. On this point the Employer made no objection to the use of thirteen municipalities as external comparables. The record reflects that of those thirteen six have no residency requirement and that five have defined distances or other boundaries that differ from the jurisdictional limits of the employer. Moreover, of the remaining comparables the residency requirement was imposed via city ordinance and not by way of collective bargaining. Thus, the external comparables weigh heavily in favor of the Union's final offer.

The last factor upon which the parties rely in choosing between the competing final offers is that of the interests and welfare of the public.

On this point I note that the record contains no evidence that one might characterize as operational in nature. For example, there is no evidence as to response time or economic factors. Rather, the Employer argues that police officers should be required to live within the city limits because they are involved in school and community programs, because they interact generally with the community, and because by living in the city the citizens will be safer. The Union replies that of those arguments all but the last is not really evidence of the interests and welfare of the public, but rather are "imponderables" and speculative. With regard to the last point, the Union argues that the safety of citizens can best be achieved by hiring the necessary number of police officers to ensure public safety and that public safety is also enhanced by the presence of police officers whose psychological well-being can be ensured by allowing them live under more relaxed residency restrictions.

from relying on them. With regard to the first point, to scrutinize why other bargaining units chose to agree to certain items would necessarily require that I weigh the wisdom of the bargains that they struck and measure that point against the unwillingness of the union before me to do the same. I question whether that would be a particularly enlightening or helpful endeavor because, although relevant, it could lead to an arbitrator's qualitative assessment of choices made in bargaining. On the second point, although I agree that there are factors which make the role of police officers unique, to rely on that argument in weighing internal comparables would again lead to a slippery slope. This is true, especially when the issue is something other than wages, an issue on which, unlike benefits, distinctions can be legitimately made in light of disparate working conditions. Rather, it appears to me that the value of using internal comparables is to ensure whether employment practices that do not relate to the nature of an employees' work should be uniform and not discriminatory. Therefore, before relying on these arguments, and because I can easily choose between the final offers on other grounds, I save these issues for another day.

⁵ The Employer appears to argue that internal comparability should be given more weight than external comparability. I find it unnecessary to resolve this issue in light of my findings regarding the weight to be afforded internal comparability in the first place.

Instead of attempting to resolve "imponderables" or determining just what might lead to the psychological well-being of police officers, I instead choose to look more closely at the record examples cited by the parties to buttress their arguments. For example, there is no record evidence, nor can I determine any on my own independent consideration, why permitting police officers to live anywhere within fifteen miles of the Employer's city limits will impair or negatively impact the role of police officers in school and community programs. Similarly, there is no record evidence of the impact of such an employment condition on the relationship generally between police officers and the community. On the other hand, there is some record evidence as to disparities in the application of the residency requirement, the impact on police turnover, and police safety. Thus, in weighing the legitimate needs of the Employer against those of police officers for personal safety, see e.g., *City of Kankakee* (citation unavailable), and the basic right of individuals to live where they choose, see e.g., *Town of Cicero, supra.*, I find that the balance must be struck in favor of the Union's final offer.

AWARD

In light of the foregoing I find that the Union's final offer on residency must be chosen and I do so. Therefore, it is hereby ordered that:

1. The parties tentative agreements are to be incorporated into their final final collective bargaining agreement.
2. The parties' collective bargaining agreement is to provide on the subject of of residency that bargaining unit employees may live within fifteen miles of the jurisdictional boundaries of the city so long as they reside within the State of Illinois.

DATED:

January 15, 2004


Robert Perkovich, Arbitrator