

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

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

Village of Cahokia	)	
	)	
and	)	Case No. S-MA-00-215
	)	
Illinois Fraternal Order of Police,	)	
Labor Council	)	

**INTEREST ARBITRATION OPINION AND AWARD**

An interest arbitration hearing was held on August 26, 2002 in Cahokia, Illinois before Arbitrator Robert Perkovich, having been jointly selected by the parties, Village of Cahokia (“Employer”) and Illinois Fraternal Order of Police Labor Council (“Union”). The Employer was represented by its counsel, Ivan Schraeder. The Employer presented its evidence in narrative fashion and proffered as B. Pauline Nixon, Henry Phillips, Jr. and Kenneth Spisak III as witnesses. The Union was represented by its counsel, Thomas Sonneborn. It too presented its evidence in narrative fashion and proffered Denita Reed as its only witness. The parties filed timely post-hearing briefs that were received on November 3 and 21, 2002.

**ISSUE PRESENTED**

The issue presented for resolution is which of the parties’ competing final offer should be chosen on the issue of residency.

**THE PARTIES’ FINAL OFFERS**

The Union proposes that within six months of their probationary period bargaining unit employees must live within a fifteen mile radius of a designated intersection within the Village limits, excluding Madison County, Illinois and only within the State of Illinois. The Union further proposes that any such employee who chooses to live within that geographic area, but outside the Village limits, may not participate in the Employer’s take-home vehicle program nor receive free membership in the Employer’s recreation facilities.

The Employer on the other hand proposes that bargaining unit employees must live within the Village limits.

## BACKGROUND

Since at least 1963 the Employer has required that all of its employees live in the Village limits as a condition of employment. Employees who are not represented by a labor union are so required by the Employer's personnel code. With regard to the only other bargaining unit with whom the Employer has a collective bargaining agreement, a unit consisting of operators, apprentice operators, leadmen, electricians, operator foremen, and electrician foremen represented by a local union of the International Union of Operating Engineers, that same requirement is imposed in the agreement negotiated between that union and the Employer. Similarly, collective bargaining agreements negotiated with the Union and the labor union representing this bargaining unit in the past, contained residency provisions. However, those provisions declared a "preference" that bargaining unit employees live in the Village. Finally, once hired bargaining unit employees must take an oath of office that includes an obligation to reside within the Village limits.

When the parties commenced negotiations for the 1999-2001 collective bargaining agreement, they did so for the first time since the Illinois General Assembly amended the Illinois Public Labor Relations Act to provide that residency was a mandatory subject of bargaining. In doing so the Union sought to relax the residency requirement but the Employer objected. Ultimately, the parties again agreed to the existing language regarding residency, but also agreed that in the third year of the agreement, 2000-2001, either party could reopen negotiations on the subject<sup>1</sup>.

Pursuant to the terms of the reopener, the Union sought to negotiate residency and the parties bargained over the matter. However, the negotiations continued over time without resolution such that the parties were facing negotiations for the successor contract, at issue herein, and the Union decided to address the subject in those negotiations. Those negotiations led to discrete concerns on the part of the Employer with regard to relaxing residency. More specifically, the Employer was concerned about response time and the relationship between relaxed residency requirements and the fact that bargaining unit employees could take Department vehicles home with them and use the Employer's recreation facilities without charge. Thus, the Union offered to exclude Madison County, Illinois and any geographic area outside the State of Illinois, areas of dense traffic concentrations, to address concerns about response time. It further agreed that any bargaining unit employee taking advantage of the relaxed residency such that he or she would live outside the Village limits could not participate in the take-home vehicle program or use recreation facilities without charge. The Employer's bargaining team, consisting of the new Mayor, the Chief of Police, and the Village Attorney, agreed with those terms and a relaxation of the residency limit to a fifteen mile radius from a designated point in the Village as part of a comprehensive tentative agreement. Moreover, the Employer's bargaining team polled the Village Board of Trustees and

---

<sup>1</sup> The record also reflects that the genesis of the reopener was a verbal agreement between the Union and the Mayor at the time, Mayor King, that in that year he would be willing to entertain relaxing the residency requirement because it would be the last year of this term in office and he would not be seeking re-election.

determined that all members of the Board but one would support the agreement, with or without reservations.

Subsequently, a number of the Trustees who originally said that they would support the tentative agreement with reservations reconsidered their stance after approximately 200 residents attended two public meetings and expressed their disapproval of any relaxation of residency. Thus, the Village Board then voted to reject the tentative agreement and the parties proceeded to arbitration.

### EXTERNAL COMPARABLES

The Employer did not offer any external comparables opting instead to rely on the internal comparables described above. The Union on the other hand offered as external comparables the communities of Collinsville, Edwardsville, Fairview Heights, and O'Fallon, all of which are within a 25 mile radius of the Employer. With respect to population, the external comparables fall within a range of 15,034 to 24,707. The Employer's population is 16,391. The range of the crime index for the proffered comparables is between 482 and 1234, with index crimes per officer between 12 and 33 and index crimes per 1000 residents at 21 to 81. The Employer's crime index is 1194 and its index crimes per officer is 33 and index crimes per 1000 residents at 71. Finally, the department size among the comparables is between 33 and 41 officers with the Employer utilizing 36.

In light of the foregoing I find that the Employer compares favorably with the Union's proffered external comparables and will consider Fairview Heights, Collinsville, Edwardsville, and O'Fallon as the external comparables to be utilized in deciding between the parties respective final offers.

### OTHER FACTORS

#### a. Turnover

The record reflects that in police department of approximately 36 officers, 20 have left the department for employment elsewhere, with fifteen of those people securing employment in law enforcement in other communities or with other entities in the past eight years. Although there is no record evidence as to why these officers left, Union counsel asserted in his narrative presentation that "...virtually every person (left) over residency." (Tr. 20, 21)

#### b. Officer Safety

The record shows that over time police officers have been the subject of various criminal activity. For example, the Union placed into evidence police records showing six instances of vandalism or other damage to the personal property or homes of police officers, eight instances of a threat of bodily harm to the officer, and four instances of a threat of bodily harm to a member of an officer's family.

### c. The Cahokia School System

The record shows that of Cahokia's seventh grade students 86% performed below state standards and that they rank 1107<sup>th</sup> of 1162 in science, 1046<sup>th</sup> of 1162 in social studies and 1007<sup>th</sup> of 1145 in math. It's eleventh grade students ranked 530<sup>th</sup> of 577 in math, 524<sup>th</sup> in reading, 542<sup>nd</sup> in writing, 523<sup>rd</sup> in science and 528<sup>th</sup> in social studies. Finally, under the Illinois Goal Assessment Program the Cahokia school district ranked in the bottom 2% of all school districts in the state. Cahokia also has a charter school and various private schools.

### d. Interests and Welfare of the Public

As noted above, once the issue of police residency became known, two public meetings were conducted at which attendance reached unprecedented levels. At those meetings the consensus of those members of the community expressing a view was clearly against relaxing residency for police officers<sup>2</sup>. In addition, during the time between the Employer's rejection of the tentative agreement and the arbitration hearing petitions were circulated among "concerned residents of Cahokia"<sup>3</sup> asking them to sign if they "...support a residency requirement for all Village employees including police officers." Those who circulated the petitions were recruited from among those who expressed opposition to relaxing residence. The record reflects that approximately 425 persons signed the petitions and that there are approximately 10,000 adults among the Employer's population. However, the proponents of the petitions could not ascertain whether those who signed were over the age of 18 or were in fact residents of the Village.

In addition two residents testified. The first, a local pastor, opined that having police living in the Village gave an opportunity to dispel racial tensions, that living in the community was "about the investment and the interest of this community..," and that resident policemen "...make this a safe community and gives this community a spirit of peace..."<sup>4</sup> The second, a long time resident of the Village, explained that she feels "safe and secure with them in our Village" and that one is "...going to care...going to work and...going to do the best that (one) can where your family is and where you reside and where you make your home"<sup>5</sup>.

---

<sup>2</sup> An attendee at the meeting explained that "...this issue (residency) is that perception is reality and if people perceive that they are not safe, then they want to move..." and that "...residents feel that a police vehicle sitting down the road from them makes a safe neighborhood." He conceded however "that may be a wrong assumption by most people,..." and that he "can't measure whether or not that actually is stopping crime..."

<sup>3</sup> The appellation indicated on the petitions.

<sup>4</sup> He conceded however that he could not distinguish between those officers who want to join in and invest in the interest of the community and those who might want to live outside the Village limits.

<sup>5</sup> She conceded however that she has no way of knowing how police service might be affected if officers were permitted to live outside of the Village limits.

## DISCUSSION

The Employer first takes the position that the Union seeks to change the status quo by way of its final offer and therefore bears the burden, and a heavy one at that, before it can prevail. The Union disagrees and argues that the current residency requirement was not the product of bilateral bargaining and that moreover, since the parties began to bargain over residency the Union has consistently sought, and the Employer informally agreed, to relax the residency requirement. The Employer then argues that external comparables should not be used and that the internal comparables compel that police officers must live within the Village limits as a condition of employment. The Union on the other hand relies exclusively on external comparables that favor its final offer. The Union then points to various other factors such as turnover, office safety, and the condition of local schools to justify its final offer on the matter of residency. Needless to say, the Employer has a decidedly different view on each of those points. Finally, the Employer contends that the interests and welfare of the public warrant that police officers reside within the Village limits while the Union disagrees.

The threshold question is of course to determine the quantum of proof and on whom it rests to determine whether the Employer's police officers can continue to be required to live within the Village limits. This of course is not the first time that I or any other arbitrator has faced this issue and the clear arbitral precedent is that a unilaterally imposed requirement, and not the product of bilateral negotiations, does not constitute a status quo such that a party seeking a change bears a heavy burden of proof. See e.g.s., *Calumet City*, S-MA-99-128 (Briggs, 2000); *City of Lincoln*, S-MA-99-140 (Perkovich, 2000); *City of Nashville*, S-MA-97-141 (McAlpin, 1999).

Here however, the Employer relies on the fact that although it imposed the extant residency requirement, once the law was amended and the parties were obligated to bargain on the subject the parties agreed to refrain from relaxing the residency requirement. Thus, it has *now* risen to the level of a status quo such that the Union bears a heavy burden of proof in this proceeding. The Union on the other hand argues that although the parties have in fact bargained over the subject, that bargaining has been dominated by attempts to change residency *and* an informal agreement to relax residency, embodied in an agreement to reopen negotiations to implement that informal agreement.

In my view the Union portrays the more accurate view of the parties' negotiations for the purpose of determining whether there is a status quo such that the Union bears a heavy burden of proof. The record clearly shows that in the parties' first attempt to bargain the subject of residency, and to do so as contemplated by the Illinois Public Relations Act, there was an informal agreement to relax residency in the third year of their collective bargaining agreement by way of a reopener clause limited to that subject. Moreover, even in their language preserving residency until that time they only agreed to a "preference" that bargaining unit employees live within the Village limits. Thus, I find

that there is no status quo such that the Union bears the burden of proof on the issue and that the burden is higher than it might be in other circumstances.

This same bargaining history also colors my choice between internal and external comparables. As noted above, the Employer takes no position on whether the Union's proposed comparable communities are appropriate, but rather argues that only internal comparables should be used. However, in all employee categories but one, the Operating Engineers unit, residency was not agreed upon through collective bargaining, but rather imposed by the Employer by way of its personnel rules. Thus, in order to assess what the outcome may have been on the issue of residency had the parties agreed and avoided arbitration, it appears, at least on the issue of what comparability analysis should be used, that external comparables are more reliable than internal. On this issue, as pointed out by the Union, the external comparables clearly favor its final offer over that of the Employer.

The Union next relies on the fact that over the past eight years approximately 20 police officers in department consisting of 36 have left the department and that the local school district consistently rates among the lowest in the state of Illinois. The Employer on the other hand argues that the Union has failed to establish how many, if any, of the officers who have left did so due to the residency requirement and how many, if any, of bargaining unit employees have children of school age or an age at which they will soon be faced with the choice between local public or private schools. On this issue I am compelled to agree with the Employer. Thus, although the evidence on turnover and the condition of local public schools is relevant, its probative value is compromised by the state of the record.

On the issue of officer safety, the record is replete with examples of police officers and their families who have been the subject of real or threatened violence and property damage due to their work as police officers. This factor has of course been relied upon by other arbitrators, including myself, in deciding between final offers relating to residency, see e.g., *City of Blue Island*, S-MA-00-0138 (Perkovich, 2001); *City of Kankakee*, S-MA-99-137 (LeRoy, 1999); *Calumet City*, *supra.*, and in some cases has been persuasive. In the instant case there is provided sufficient evidence of threats and occurrences of property damage and physical injury such that, as stated by Arbitrator Briggs in his *Calumet City* opinion, "...police officers have valid safety concerns related to their families living near those persons whom they arrest and incarcerate... (and that) (i)t is simply not reasonable to enhance through a residency requirement (the) opportunity to engage in reprisal against the arresting officers and their families."

There remains then the final issue of the interests and welfare of the community. On this point the Employer relies upon the testimony of various individuals including a local resident, local pastor, a Village trustee, and the appearance of residents and the signature petitions favoring residency. The Union on the other hand attacks the reliability of the petitions and portrays the concerns of the witnesses as insufficient to hold "...police hostage to a residency rule that finds its origins in the foundations of the 19<sup>th</sup> century patronage systems that ruled our cities and villages."

On the first point, the reliability of the petitions and the public assertions at Village Board meetings, I agree with the Union. The record shows that approximately 400 of approximately 10,000 adults in the Village signed the petition. This is a less than representative sample upon which to rely. Moreover, as to whether elected officials are compelled to follow what was, or might be, a groundswell of public opinion against relaxing residency, any view misapprehends the essential nature of democracy on the United States. Unlike the view espoused at the hearing, our democracy is not a representative democracy, commonly referred to as “Jacksonian” democracy, where elected officials vote and determine public policy as dictated by the populace. Rather, our form of government is actually a republican democracy, commonly referred to as “Jeffersonian” democracy, where elected officials are to be sensitive to and accommodating to the views of the public, but are not *obligated* to determine public policy in accordance with those views.

The question therefore becomes whether a residency requirement that police officers live within the Village limits will in fact enhance the interests and welfare of the public. On this point it is useful to remember the genesis of police residency requirements as that of the use of public employment as a reward for past political service. (See, Brian R. Johnson, Greg L. Warchol, and Vic W. Bumphus, *Police Residential Requirements: An Exploratory Analysis*, Journal of Collective Negotiations in the Public Sector, Winter, 1997, pages 43-64) Moreover, the hold of residency requirements for that purpose ebbed over time due to the anti-corruption movement of the Progressive era of the 1920's. (Johnson, et al, *supra* at 45.) Thus, most proponents of residency requirements now rely on arguments such as the reduction of local unemployment, achieving ethnic and racial balance, the establishment of public confidence and safety, and benefit to the local economy and tax base. (See e.g., *The Constitutionality of Continuing Residency Requirements for Local Government Employees*, Charles Rhyne, William S. Rhyne, and Stephen Elmendorf, National Institute of Municipal Law Officers Journal, (1977), page 1.) However, some commentators have opined that such views are “artificial and contrived” in light of the “erratic borders of modern cities and governmental units.” (See, *The Constitutionality of Continuing Residency Requirements for Local Government Employees, A Second Look*, S. Myers, California Western law Review, 24, 27. Fall, 1986).

In my view, the testimony of the Employer's witnesses falls squarely within the analysis set forth above. For example, two of those witnesses testified that the fact that police live in the community makes it safer and that if police officers live in the community they will work the best that they can. However, the third witness for the Employer conceded “that may be a wrong assumption by most people...” and that he could not measure “whether or not that actually is stopping crime...”<sup>6</sup>

---

<sup>6</sup> Indeed, to the extent that there is any objective evidence on this point, a review of the crime index for the Employer and the fact that police officers themselves have been the victims of crime might lead one to believe the converse.

I do not mean for a moment to declare that the perceptions and fears of a local populace are irrelevant to the issue of residency nor that elected officials should ignore those concerns. However, when those perceptions and fears meet the objective evidence of comparability, turnover, and officer safety something must give way and, in arbitration, that is either the position of the Employer or that of the Union<sup>7</sup>. In that case therefore, to avoid that Hobson's choice the parties can do only one thing, bargain a mutually agreeable solution and to exact from each other the necessary *quid pro quo*<sup>8</sup>. In this matter, the parties came close. The Employer expressed various reservations about relaxing residency and the Union moderated its demands and expressly agreed to other limitations designed to meet the Employer's reservations. Sadly, that choice did not carry the day and the parties have left to me to make the choice for them. I do so for the reasons set forth above and therefore adopt the Union's final offer.

#### AWARD

1. The Union's final offer on the subject of residency is hereby adopted.
2. The parties' tentative agreements are hereby adopted.

**DATED:** \_\_\_\_\_

\_\_\_\_\_  
**Robert Perkovich**

---

<sup>7</sup> I am mindful of course that the issue of residency is non-economic and therefore I as the arbitrator can choose another option. The reality in this case however, and in most cases of this type, is that the choice is really between the two final offers proposed. In fact, in the instant matter neither party provided any record evidence that might lead to an enlightened third option.

<sup>8</sup> In fact, in doing so a public official might very well be able to accommodate the concerns of the populace on this issue as well as other subjects of bargaining on which the public has a view.