

**ILLINOIS LABOR RELATIONS BOARD  
INTEREST ARBITRATION  
LISA SALKOVITZ KOHN,  
ARBITRATOR**

**City of Pontiac,  
Employer,**

**and**

**Illinois Fraternal Order of Police  
Labor Council,  
Union.**

**Case No. S-MA-01-131**

Hearing Held: September 10, 2002

Hearing Closed: December 2, 2002

Appearances:

For the City: James Baird, Seyfarth Shaw  
Alan M. Schrock, City Attorney

For the Union: Gene Bailey, FOP

**ARBITRATION AWARD**

## **I. INTRODUCTION**

This is a impasse arbitration held pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *et seq.*, subject to certain agreed-upon modifications set forth in their Ground Rules and Stipulations, Joint Exhibit 1. The parties selected the undersigned Arbitrator to serve as the sole member of the arbitration panel in this matter, waiving their respective rights to appoint an Employer and Union delegate to the panel.

Jt. Ex. 1, ¶ 1. The parties have stipulated that there are no procedural matters at issue, and that the Arbitration Panel has jurisdiction and authority to rule on the mandatory subjects of bargaining submitted to it as authorized by the Act. *Id.* At the hearing, held September 10, 2002, both parties were given the opportunity to present such evidence and argument as they desired, including an examination and cross-examination of all witnesses. The parties have directed that their tentative agreements on other matters, as set forth in Joint Exhibit 4, shall be incorporated into the Arbitration Panel's award in this matter. Jt. Ex. 1, ¶ 9(d).

## **II. ISSUES**

The parties submitted a single issue to the Arbitrator for determination, residency. The parties have agreed that the issue is a non-economic issue. Jt. Ex. 1, ¶ 6.

## **III. FINAL OFFERS**

The parties' final offers on the residency issue are:

**The City's Final Offer:** The City proposes to retain the language of Article XXI, Residency, of the parties' Agreement, effective April 1, 1998 through March 31, 2001, which is:

Bargaining unit members shall reside within the corporate limits of the City or within a two (2) mile radius of the intersection of Main and Howard Streets in the City, which ever shall be greater. For all newly hired employees, such residency shall be established within three (3) months after their date of hire.

**The Union's Final Offer:** The Union proposes to modify the language to expand the residency area:

Bargaining unit members shall reside within the corporate limits of the City or within a ~~two (2) mile radius of the intersection of Main and Howard Streets in the City, which ever shall be greater~~ the boundaries of Livingston County. For all newly hired employees, such residency shall be established within three (3) months after their date of hire.

#### **IV. STATUTORY FRAMEWORK**

Section 14(h) of the Act, 5 ILCS 315/14(h), provides that:

[T]he arbitration panel shall base its findings, opinions, and order upon the following factors, as applicable:

- (1) The lawful authority of the employer;
- (2) Stipulations of the parties;
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (A) In public employment in comparable communities;

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(B) In private employment in comparable communities:

- (5) The average consumer prices for goods and services commonly known as the cost of living;
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, and the continuity and stability of employment and all other benefits received;
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

In the discussion that follows, the factors most determinative of the outcome of this Interest Arbitration are highlighted. However, all the statutory factors, including all of the parties' stipulations, have been considered in reaching this decision and Award.<sup>1</sup>

## **V. FACTUAL BACKGROUND**

### **Introduction**

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<sup>1</sup>In particular, while Section 14(h) of the Act requires the Arbitrator to consider the lawful authority of the Employer (subsection 1), the cost of living (subsection 5), the employees' overall compensation, stability of employment and other benefits received (subsection 6), and any changes of relevant circumstances during the pendency of the arbitration (subsection 7), none of these factors favor one party's offer over the other here. There is no question that the Employer has the authority to enter into either provision proposed. The parties have stipulated that this issue is non-economic in nature, and neither party has offered any evidence as to the cost of living in the relevant geographic area. Other than the cost of housing and taxes in the various communities considered, the cost of living does not provide a distinction between the parties' offers. Finally, the parties have not notified the arbitrator of any changes in relevant circumstances during the pendency of this

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Pontiac is the county seat of Livingston County, the fourth largest county in Illinois. Located roughly in the center of the county, Pontiac had a population of 11,864 in 2000. Although Interstate 55 runs through Livingston County, the County is largely rural. Most of the County is approximately 38 miles wide from east to west, and 20 miles wide from north to south, with the addition of a strip approximately 10 miles by 18 miles on the southern end of the county. Thus, Livingston County includes approximately 940 square miles.

The City has collective bargaining agreements with three units of employees in the Police, Fire and Public Works Departments. The Union was certified as the representative of the City's police officers in 1986, the Fire Department employees were organized in 1991, and the Public Works Department employees were organized in 1999. This is the first time the City has proceeded to interest arbitration with any union.

At present, the Police Department consists of nineteen officers in the bargaining unit, and two majors and the Chief of Police. Of the nineteen officers, eight were hired during the pendency of the 1998 - 2001 collective bargaining agreement, the last agreement before the negotiations that resulted in the impasse here.

**Statutory and Bargaining History of the Residency Requirement**

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arbitration.

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Prior to 1997, Section 14(i) of the Act excluded from interest arbitration the issue of residency for police officers. The parties' first contract, effective from January 5, 1987 through March 31, 1990, contained no limitation on residency. However, even though the issue was then a permissive subject of bargaining, the parties agreed on a residency requirement beginning with their 1990 agreement. The same clause appeared in their subsequent contracts, negotiated in 1993 and 1995.

In 1997, the Act was amended to permit interest arbitration of the residency issue for police officers and fire fighters by all Illinois municipalities with population under 1,000,000. In the negotiations for their 1998 contract, their first negotiations after the amendment, the Union first proposed to extend the residency area to Livingston County. Eventually the Union withdrew the proposal. According to a letter written by the City's chief negotiator after the close of bargaining, the City agreed to a new provision granting employees the choice of forum for review of serious discipline, an extra ½ % in wages in the second and third years, and the modification of the impact bargaining language, all as *quid pro quos* for the Union's withdrawal of the residency proposal. The Union denies that the City gave any *quid pro quo* given for its withdrawal of the demand. The result of the 1998 negotiations was that the two-mile residency limit was retained as it had appeared in the parties' contracts since 1990.

The parties entered into negotiations for a new agreement in January 2001. The Union made its proposal to modify the residency requirement at the outset of bargaining. After several months of negotiation, the two issues left unresolved were wages and

residency. Both parties had taken firm but not immutable positions on residency – the issue was important to each side. At that point, the Union made two proposals – one, with higher wages and no change in residency requirements; the other, with lower wages and the expanded residency region. Eventually the parties settled on wages at a level much closer to the Union’s lower proposal than its higher one, but they were unable to agree on residency, and proceeded to this arbitration.

**Comparability:**

“External comparability” is one statutory factor that arbitrators must consider in resolving bargaining impasses. In this case, the parties have stipulated on a one-time, non-precedential basis that for the purposes of resolving this dispute, the communities deemed comparable are Bloomington, Bourbonnais, Bradley, Coal City, Dwight, Eureka, Kankakee, LaSalle, Manteno, Marseilles, Mendota, Morris, Normal, Ottawa, Paxton, Peru, and Streator, Illinois. Jt. Ex. 1, ¶ 6; Jt. Ex. 5. The parties have explained their selection as follows, id.:

The parties agree that these communities reflect a broad survey of communities in Livingston County or a county touching Livingston County that have a population in excess of 4,000. For the purposes of this proceeding and considering the unique nature of disputes over residency requirements and the geographic location of Pontiac, the parties have agreed that this approach, rather than the selection of a more limited set of comparables pursuant to a more traditional analysis based on such factors as similarity in size, financial resources, and operations, would be more likely to yield data indicative of residency trends.

The parties’ approach is well taken. As their dispute here demonstrates, analyzing residency requirements touches on how an employee decides where and how to live and

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outside of working time, as well as operational concerns about the importance of having a police force familiar with and familiar to the community, and the practical need to have officers who can respond quickly in emergencies. A set of communities that combines geographic proximity and roughly similar population is more likely to reflect a range of approaches and circumstances relevant to proposals on residency restrictions than would a set chosen solely because of the operational and financial characteristics normally deemed relevant to economic issues.

The parties have also agreed on the “source documents” listing the residency requirements of the comparable communities. Jt. Ex. 6. The record indicates the following:

<u>Communit</u> <u>y</u>	<u>County</u>	<u>CBA</u>	<u>2000 pop.</u>	<u>Residency Requirement</u>
Dwight	Livingston	No	4,363	Within 1.5 mi of Village limits
Paxton	Ford	No	4,525	Nothing written; verbal agt. that new employees will reside within City
Marseilles	LaSalle	No*	4,655	Within 2 mi. of City limits (ordinance)
Coal City	Grundy	No	4,797	Within Fire Protection District and Grundy County
Eureka	Woodford	No	4,871	Nothing written; within 1.5 mi. of City limits
Manteno	Kankakee	Yes	6,414	Within 10 mi. of Village limits
Mendota	LaSalle	Yes	7,272	Within 17 mi. of City limits in LaSalle County
LaSalle	LaSalle	Yes	9,796	Within 1.5 mi. of City limits if willing to annex; Me-too clause
Peru	LaSalle	Yes* *	9,835	Within City limits, by ordinance
<b>Pontiac</b>	Livingston	<b>Yes</b>	<b>11,864</b>	<b>Within City limits or within 2 mi. of downtown, whichever is greater</b>
Morris	Grundy	Yes* *	11,928	Within City limits, by ordinance
Bradley	Kankakee	Yes* *	12,784	Within City limits, by ordinance
Streator	LaSalle	Yes	14,190	“Within the immediately adjacent residentially platted property” of the City

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<u>Community</u>	<u>County</u>	<u>CBA</u>	<u>2000 pop.</u>	<u>Residency Requirement</u>
Bourbonnais	Kankakee	Yes	15,246	Within city or in unincorporated area within 10 mi. of limits
Ottawa	LaSalle	Yes	18,307	Within 5 mi of city, up to a limit of the greater of 30% or 10 officers outside the City (by settlement while in arbitration)
Kankakee	Kankakee	Yes	27,491	Kankakee, Bourbonnais and Bradley (pursuant to arbitration decision)
Normal	McLean	Yes	45,386	Normal, Bloomington, or within 15 mi. of downtown
Bloomington	McLean	Yes* *	64,808	None

\* At the time of the hearing, Marseilles and its officers were in negotiations for their first contract.

\*\* The collective bargaining agreement is silent as to residency.

Thus, police must live within municipal boundaries in four of the comparable communities. This includes three where the police are represented by unions, but in those communities, the collective bargaining agreements do not address residency. Five of the comparable communities (Dwight, Marseilles, Eureka, LaSalle, Ottawa), including three with police collective bargaining agreements, have limits roughly comparable to the 2 mile limit in the current agreement. Six communities (Coal City, Manteno, Mendota, Bourbonnais, Kankakee, Normal, and Bloomington) have limits more expansive than the City's; one of these, Bloomington, has no residency restriction at all. All six with looser restrictions have collective bargaining agreements covering their police officers.

This record demonstrates that communities with and without police unions have found a range of solutions to the problem of balancing employees' interest in freedom of choice of residence with employers' concerns about the cost, efficiency and effectiveness of operations. However, it is notable that in the nine communities with collective bargaining agreements that address residency, most have residency requirements less

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restrictive than Pontiac's. Thus, in the comparable communities where employees have had effective input through collective bargaining on a now-mandatory subject of bargaining, the solutions agreed upon have tended to be less restrictive than the City's proposal to retain the current clause.

With respect to "internal comparability," the City asserts that historically, it has attempted to provide the same benefits and apply the same rules to all its employees. The current residency requirement has been in the police officers' contract since 1990, and also has been included in every contract for fire fighters and public works employees. The requirement, although originally less than clearly written, also has applied to all non-union employees for many years, although it was not codified until 2000.<sup>2</sup>

In their most recent negotiations, in 1999, the fire fighters proposed to expand their residency area to the fire protection district, but the proposal was subsequently withdrawn and the City and the Fire Fighters agreed to retain the two-mile limit. In their latest negotiations, in 2002, the City agreed with the Teamsters representing various public works employees to retain the current requirement. However, the City also agreed that any change made to the residency clause of the police officers' contract as a result of this arbitration would be incorporated into their agreement. Thus, while the City has previously maintained a uniform residency policy for all employees, its agreement with the Teamsters indicates that it will deviate from uniformity even further, if it is broken by this arbitration.

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<sup>2</sup>At the time, the City exempted employees already living outside the City but provided that they would be required to move into the residency area when they next moved.

No such agreement exists with the fire fighters. This suggests that the City itself considers complete internal uniformity to be a less critical requirement than past history might suggest.

### **The Interest and Welfare of the Public**

The Union contends that “[t]urnover in the City police department is at an epidemic level.” Union Brief, p. 7. Since the beginning of the last Agreement, 10 officers have left the department, a turnover rate of over 52.6 per cent in three years. While there is no direct evidence that the City’s residency requirement was a factor in these departures, the Union contends that the City could provide an improved workplace and thereby reduce turnover, which would serve the interest and welfare of the public, if officers had more freedom to live and raise a family beyond the current limits.

The City objects that there is no evidence that changing the residency requirement would alter the turnover pattern. Three of the officers left to work in the Bloomington Police Department which not only has no residency restriction, but also pays substantially higher wages than the City. One of those officers continues to live in Pontiac. Another officer now works for the Illinois State Police, which has a regional headquarters nearby. Three officers left the profession entirely, but they all continue to live in Pontiac, even though no longer subject to the City residency requirement. Two officers failed to pass probation, so the residency requirement had no impact on their departure. One went to work for the Pekin Police Department, and moved there to meet that department’s

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residency requirement. The current residency of the last, who went to work for the Leroy Police Department, does not appear in the record. The parties agree that the turnover in the City's Police Department is consistent with the officer retention problems experienced by many small police departments in Illinois.

The City contends that to weaken the current residency requirement would impact the Police Department's effectiveness and efficiency adversely. When detectives are called back to duty, they are paid from the time that they are called, so that the farther they live from the City, the higher the Police Department's costs will be. The added distance also impairs the Department's ability to respond swiftly to accidents, natural disasters, crimes, or other threats to public safety such as the 1979 riot at the Pontiac Correctional Center, where the Department assisted Illinois State Police both in quelling the disturbance and securing the area. The City also cites asserts that having a police force whose officers are members of the community that they serve results in increased public confidence in the Department, increased public awareness of the police presence in their community, increased public willingness to assist the police in preventing and fighting crime and to vote for the taxes necessary to support police operations, increased police knowledge and awareness of the community, increased opportunity for police to observe, discourage or prevent questionable activity, increased visibility of the police (and their vehicles, if they are required to take them home). The City further asserts that crime is reduced when police live in the community, and concludes that the social, emotional, economic and political advantages to the public, as well as the impact on the department's

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efficiency and effectiveness all favor the existing residency requirement.

The Union responds that the City has presented only witnesses' opinions and assumptions that the efficiency and operations of the Police Department are enhanced by the existing residency requirement, without any supporting data. Although the City promotes officers' off-duty contact with the public, officers are not paid for such 24-hour service. The Union also contends that the amendment of the Act to permit interest arbitration of residency issues demonstrates the opinion of the Illinois General Assembly that residency provisions set by negotiated agreement or arbitration would not hamper the efficiency and effectiveness of municipal police departments.

I cannot find on this record that the Union's proposed residency clause would reduce the turnover that the Department has experienced. That turnover appears to reflect the proximity of an alternate employer (Bloomington) with a higher pay scale, as well as other factors unrelated to the residency limit. On the other hand, while the City has presented logical reasons to expect that a two-mile residency limit benefits the public and promotes departmental effectiveness and efficiency, the "evidence" (other than increased wages for detectives' response time) is largely intangible. To be sure, modern "community policing" principles reflect an expectation that consistent police contact and presence in the community enhances police department effectiveness. However, the City has not demonstrated that the particular residency limit here, a two-mile limit, is essential to achieve either operational efficiency and effectiveness, or public safety, confidence and satisfaction or that a wider residency area would degrade the department's ability to serve

the public efficiently and well. The fact that so many comparable communities have been willing to adopt less stringent requirements than the City's suggests that it would not.

### **Other factors relevant to the negotiation of residency requirements**

The parties have discussed a number of factors that employees may consider in deciding where they want to live: the availability, cost and value of housing, local taxes, schools and other amenities. The Union does not dispute that a wide range of housing for purchase or rental is readily available in Pontiac. The residency region extends beyond the City's limits for all but a small portion of the City's boundary, but at present, only one member of the bargaining unit lives outside the City within the permitted region. In addition, the Livingston County Housing Authority has offered police officers rent-free housing in County housing developments. Three officers have accepted this offer and live in three different developments. The Union's proposal is not motivated by a lack of suitable housing within the current residency region.

The current residency region offers three elementary schools, one middle school and one high school. The residency area proposed by the Union, Livingston County, offers eighteen elementary, middle and junior high schools and four high schools. The schools vary dramatically in size, some offer a pre-K program while others do not, and there are a variety of groupings within the kindergarten through eighth grade range. However, the Union does not disparage Pontiac's schools. According to the Union, its proposal is not motivated by dissatisfaction with Pontiac's schools, but by the officers'

dissatisfaction with their lack of choice.

The record demonstrates that tax rates vary throughout the County, and that tax rates in Pontiac are neither oppressive nor out of line with the region. Again, the officers do not object to the rates in Pontiac, but to their inability to choose where to live based on considerations such as taxes.

## **VI. ANALYSIS AND CONCLUSIONS**

As the City observes, interest arbitration is generally a conservative process. In order to avoid usurping the collective bargaining process, interest arbitrators generally attempt to approximate what reasonable and sophisticated bargainers sitting in the parties' circumstances would or should have agreed to through negotiations. See, *City of Arlington Heights*, No. S-MA-88-89 (1991)(Briggs, Arb.); *Will County Board*, No. S-MA-88-9 (1988) (Nathan, Arb.) Arbitration should not become an attractive substitute for collective bargaining – the outcome of an interest arbitration should not be so far from the expected outcome of rational bargaining that the parties cease to negotiate effectively, and instead prematurely seek recourse from the arbitration process.

The City contends that the Union bears a especially heavy burden here, because it seeks to change a residency rule that has been in effect for over 20 years.<sup>3</sup> Such a “breakthrough” should not be awarded in the absence of substantial and compelling

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<sup>3</sup>While the City may have had a two-mile residency limit for 24 years old, as one witness testified, it has been in the parties' contract only 22 years. The two-year discrepancy is immaterial here.

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justification, the City asserts, citing Arbitrator Malin's decision in *Village of Maywood*, No. S-MA-95-167 (1996) (Union had not met its "heavy burden" to justify changing 20-year-old contractual residency requirement). See also, *Village of Westchester*, No. S-MA-90-197 (1991) (Briggs, Arb.) (party wishing to depart from a previously bargained *status quo* must present "a compelling reason to do so").

It is true that interest arbitrators are unwilling to modify a *status quo*. Indeed, the classic explanation is that:

In changing the benefit balance or in altering a previously negotiated labor relations scheme, the neutral must consider the factors which went into that previously agreed to contract. The parties may have traded dearly to secure the benefit now being challenged. It may have been part of a larger bargain or an integral portion of an overall settlement scheme. The arbitrator must examine how the old system operated, whether there were administrative problems, whether inequities were created, or unforeseen dilemmas. 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.

*Will County Board, supra*, at 51-52; quoted in *City of Burbank*, No. S-MA-97-56, at 13 (1998) (Goldstein, Arb.) However, "the factors that went into [the] previously agreed to contract" in this case demonstrate that the two-mile limit is something other than a 22 - year-old *status quo*. Until the 1998 contract, the issue was merely a permissive subject of bargaining. Although the City suggests that this is irrelevant, the fact remains that the balance of power in negotiating over this subject favored the City as long as the bargaining was permissive: As long as a clause remains in the contract, it can be enforced by either party, but a union always runs the risk that the employer will choose to remove a permissive topic from the contract altogether. Under these circumstances, it cannot be

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assumed that the *status quo* has been established or maintained with the freedom of negotiation (nor threat of interest arbitration) ordinarily available to the parties when bargaining over mandatory subjects. Compare *City of Blue Island*, No. S-MA-00-0138 (2001) (Perkovich, Arb.)(no *status quo* where requirement had been matter of tacit acceptance rather than bilateral agreement) The burden of the party seeking to alter such a *status quo* should be commensurate with the degree to which it has survived the crucible of mandatory negotiations, as well as the length of time that it has served the parties.

In this case, the parties first engaged in negotiations on the two-mile limit in mandatory collective bargaining in 1998. According to the City, expanding the two-mile limit would deprive it of the benefit of a bargain that it paid for in 1998: Relying on a letter written by its chief negotiator after the close of negotiations, the City contends that the agreement to retain the two-mile limit was the result of an exchange whereby the City added ½ % in wages in each of two years, agreed to employees' choice of forum for certain discipline challenges, and modified impact bargaining language, all in order to gain the Union's relinquishment of a demand to alter the residency requirement. The Union denies that these terms were linked in a *quid pro quo* exchange.

This limited evidence of the 1998 negotiations does not permit the conclusion that there was an explicit *quid pro quo* agreement. The nexus of a *quid pro quo* should be established during the negotiations themselves, rather than by post-bargaining explanations; otherwise, given the usual give and take of offers, demands, modifications, acceptances, rejections in contract negotiations, any concession offered by one side could

later be cast as a *quid pro quo* for any demand relinquished or softened by the other. There is no evidence that this exchange was discussed as such during bargaining. The City has failed to prove that the 1998 retention of the residency clause was the product of an explicit *quid pro quo* exchange. Thus the Union's burden here should be no more onerous than the usual requirement of demonstrating that its offer is more reasonable than the City's.

The two-mile limit has a 22-year track record in operation, even though it has been tested only once before in mandatory bargaining. The arbitrator can and should consider the requirement's entire history to see how it has functioned. The City's officers have lived with the requirement for 22 years without major problems, as far as this record indicates. As noted above, the residency restriction does not appear to be responsible for the department's turnover rate. While the advantages may not be as great as the City and its witnesses have argued, it cannot be denied that day-to-day contact with police officers as neighbors and off-duty participants in local City life may enhance the public's sense of security and satisfaction with police services, particularly in a smaller community. It also appears that the two-mile limit minimizes the response time of officers called back to duty in an emergency.

Thus, while the City has not proved that the two-mile limit is essential to departmental efficiency and effectiveness, or the public interest and welfare, the City has described many ways that the limit has supported those goals. On the other hand, the City has not demonstrated that an officer must live within the two-mile limit in order to gain the

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knowledge of the community's roads, services, and activities necessary to serve the community efficiently and well. An officer can achieve that knowledge by dedication and attention to his or her duties, no matter what community the officer calls "home."

However, the City's residency requirement is more stringent than the restrictions in the most of the other comparable communities where the topic has been the subject of bargaining. Among the "internal comparables," the City has agreed to extend the result of this arbitration to public works employees. Thus both the external and internal comparables suggest that the City could accomplish its goals with a less stringent residency requirement, and that it does not deem internal consistency a necessity.

The City cannot refute that the officers desire greater freedom to choose where they live; that is a philosophical as well as practical concern. The Union has demonstrated that a far greater variety of schools, locations, amenities and taxing bodies would be available to the officers were the residency region expanded.

All that having been said, I cannot find the Union's offer the more reasonable offer at this time. Although the City has failed to demonstrate that the current restriction is absolutely essential to its operations, the Union has failed to demonstrate that the two-mile limit is unreasonable, or that its proposed solution is more reasonable than the *status quo*. There is no evidence that housing choices in the City are lacking or inappropriate (*cf.*, *City of Kankakee*, No. S-MA-99-137 (2000) (LeRoy, Arb.)), that its schools are inadequate to serve the needs of employees' children, (*cf.* *Town of Cicero*, No. S-MA-98-230 (1999) (Berman, Arb.)), that officers living in the City are victimized or intimidated (*cf.* *City of*

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*Kankakee and Town of Cicero*), or that the community is otherwise undesirable or dangerous for the officers or their families. In contrast, the Union's proposal, a county-wide residency option, would permit employees to live as much as a thirty-mile from downtown Pontiac. Although witnesses differed over the driving times to Pontiac from various other communities in Livingston County, the physical distances and layout of the roads by themselves demonstrate that the dispersion of officers throughout a County of roughly 940 square miles, in a rural area with few major highways, could interfere with employees' ability to respond to emergency call-backs promptly. It would be ill-advised for an interest arbitrator to impose on the parties a county-wide residency region without further evidence that it would not hamper the effectiveness of the City's Police Department.

Under the Act, an interest arbitrator is not restricted to accepting one of the final offers on a non-economic issue; the arbitrator has the authority to craft a compromise award. Such creativity might be warranted here: the City's stated interests do not require precisely the existing residency restriction, and the Union has articulated reasonable bases for making some alteration. However, the parties have provided little guidance upon which to craft a solution. The City opposes any compromise, and the Union has failed to offer sufficient guideposts for me to fashion any other less restrictive clause. The officers do not seek to move into a particular school district or districts, and do not seek to live within the jurisdiction of any particular taxing agency or agencies. As their advocate candidly stated, the opinions of the bargaining unit members may differ on these points.

Thus, there is no basis for me to conclude that a five-, ten-, fifteen- or twenty-mile

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radius would satisfy the employees' desire for increased choice. To set an arbitrary radius or other limit under these circumstances runs the risk of being either too strict or overgenerous, presaging another round of impasse and arbitration.<sup>4</sup>

The wisdom of restraint is further demonstrated by the fact that this is the second time that Union has attempted unsuccessfully to expand the residency restrict to incorporate the entire County. The City objects that by modifying the two-mile limit, the arbitrator would grant the Union something it was unable to achieve in negotiations. The same concerns that motivate interest arbitrators to respect the parties' *status quo* also have led them to avoid granting what could not be obtained at the bargaining table:

The parties should not be able to obtain in interest arbitration any result which they could not get in a traditional collective bargaining situation. Otherwise, the entire point of the collective bargaining process would be destroyed and the parties would rely upon interest arbitration rather than pursue it as a course of last resort.

*City of Burbank, supra*, at 11.

Lacking sufficient data to "safely" fashion a compromise award, and in light of the

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<sup>4</sup>The solution adopted by the parties in Ottawa was to expand the residency area, but cap the number of "non-resident" officers. Even if such a provision could be adapted to a small department, the record contains insufficient evidence about workload and staffing requirements for me to determine what cap would be appropriate here.

preference for solutions crafted by the parties themselves at the bargaining table, I believe that I do less damage to the parties' current and future bargaining relationship by adopting the City's final offer, the current residency requirement. Based on the factors listed in Section 14(h) and other factors traditionally considered, such as the bargaining history of the disputed clause, and the principles addressed above, I therefore issue the following award:

**A W A R D**

The City's proposal for Article XXI is adopted and together with the parties' tentative agreements set forth in Joint Exhibit 4 shall become part of the parties' collective bargaining agreement effective April 1, 2002 through March 31, 2004.

Respectfully submitted,

Lisa Salkovitz Kohn  
Arbitrator

Dated: January 29, 2002