

In The Matter of the Arbitration Between)
)
Illinois Fraternal Order of Police Labor Council)
)
and)
)
City of Macomb)
)
Interest Arbitration)
)
ILRB No. S-MA-01-161)

OPINION AND AWARD

The hearing in the above captioned matter was held on April 24, 2002, in Macomb, Illinois, before Martin H. Malin, serving as the sole impartial arbitrator by selection of the parties. The Union was represented by Ms. Becky Drago, its legal assistant. The Employer was represented by Mr. James Spizzo, its attorney. The hearing was held pursuant to Section 14 of the Illinois Public Labor Relations Act. The parties agreed to waive their delegates to the arbitration panel and stipulated that they would be bound by my award as sole arbitrator. The parties also waived the IPLRA's requirement that the hearing commence within fifteen days following the arbitrator's appointment.

At the hearing, both parties were afforded full opportunity to call, examine and cross-examine witnesses, introduce documentary evidence and present arguments. A verbatim record of the hearing was maintained and a transcript was produced. Both parties filed post-hearing briefs.

The Issues

The parties stipulated that the following issues are before me for resolution:

1. What amount of longevity pay shall be provided to bargaining unit members?
2. What language should the Collective Bargaining Agreement contain in article 6, concerning Residency?

The parties stipulated that Issue 1 is an economic issue, and that Issues 2 and 3 are non-economic issues.

The Statutory Factors

Section 14(h) of the IPLRA provides for the arbitrator to base his findings on the following factors, as applicable:

- (1) The lawful authority of the parties.
- (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 with other employers generally:
 - (A) In public employment in comparable communities.
 - (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, 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.

Background

The bargaining unit consists of fifteen police officers and three sergeants in the City of Macomb. The City and the Illinois Fraternal Order of Police Labor Council have bargained collectively since 1986, with the first Agreement becoming effective in 1987, and have negotiated five prior Agreements and one wage re-opener. The most recent collective bargaining agreement had a term from May 1, 1998 through April 30, 2001.

Macomb is located in west central Illinois, a primarily rural and agrarian part of the State. Macomb is the county seat of McDonough County and is not located near any major urban areas. The 2000 census placed its population at 18,558, of which approximately 8,000 are students who attend Western Illinois University. Macomb employs 106 persons. The City has collective bargaining agreements with the International Association of Firefighters (IAFF), which represents the City's fire suppression employees, and the International Brotherhood of Teamsters (IBT), which represents the City's road and maintenance employees.

In negotiations for the 1995-1998 contract the parties incorporated the residency requirement into the contract after the Union withdrew its proposal to exempt employees with 20 years of service from the residency requirement. Prior to this incorporation of residency into the contract the City dictated the residency requirement by ordinance. On January 1, 1998, the residency amendment to the Illinois Public Labor Relations Act (IPLRA) went into effect, mandating that the parties negotiate over the issue of residency. During the negotiations for the current Agreement, which reopened on April 30, 1998, the Union proposed a blanket elimination of the residency requirement. The City maintained its position that the residency requirement in the contract should not be changed. The Union modified its proposal by providing that probationary officers not be required to establish residency until the completion of the probationary period and limiting residency to McDonough and surrounding counties. The parties resolved the residency issue by permitting probationary employees to become residents of the City after successfully completing their probationary period, and leaving the residency requirement untouched for all other employees. The residency issue was tied to negotiations over the length of the probationary period, which ultimately was extended from twelve to eighteen months.

The current negotiations for a successor contract began on February 20, 2001. At the February 20th negotiating session the Union proposed that non-probationary employees be allowed to reside within 20 miles of the City's limits and that new employees be given six months after completion of their probationary period to move within the 20 mile limit. The City was not receptive to this proposal, but discussion about the proposal occurred. At the June 21st negotiating session the City offered a package settlement proposal that included a status quo on the residency issue. The Union refused to accept status quo on residency, and the parties agreed they should seek mediation to resolve their differences. At the January 30, 2002, negotiating session the City proposed that employees with 15 years seniority could reside in a radius no

greater than from the courthouse to the Springview Hills subdivision and within the Macomb School District. As a *quid pro quo* for this relaxed residency requirement the City proposed a cap on employee dependent health insurance premiums paid by the City at the current payment level, and no longevity increase for the employees. The Union counter proposed that employees with five years seniority be allowed to live within a 12-mile radius of the courthouse, within the county but without regard to school districts, rejected the City's proposed *quid pro quo* for residency that required a cap on the City's premium costs for dependent coverage and a freeze on longevity pay, and demanded the same longevity increase as the IAFF had received. The City then withdrew its proposal. The parties went to mediation on July 12, 2001 and again in January 2002. Unable to reach an agreement, the parties sought interest arbitration.

At the arbitration hearing, the parties stipulated that the following communities are comparable to Macomb: Canton, Dixon, Kewanee, Lincoln, Sterling, Streator, and Taylorville. The parties, as part of an original stipulation, agreed that Centralia and Edwardsville were comparable communities. However, on April 22, 2002, two days prior to the arbitration hearing, the Employer withdrew from the stipulation and sought to exclude Centralia and Edwardsville as comparable communities. The Union offered six additional communities as comparables: LaSalle, Morton, Ottawa, Peru, Rock Falls, and Washington. The Employer disputed the comparability of these six communities to Macomb.

With this background, I turn to the specific issues in dispute. Normally I would address the economic issue prior to the non-economic issues. However, in this case it is clear that the non-economic issue of residency is the driving force that brought the parties to interest arbitration. Accordingly, I first address the non-economic issue of residency, then the economic issue of longevity pay, and finally the non-economic issue of the Entire Agreement language.

Non-Economic Issue: Residency

Employer's Final Offer:

The Employer proposes to maintain the language of the 1998 through 2001 Agreement, and to establish a new subsection in Article 31, General Provisions. That Agreement provides (the language concerning Residency is in **bold**):

Article 6 Probation Period

All new members of the Police Department covered by this Agreement shall serve a probationary period of eighteen months (18) months. During the probationary period new members shall have no seniority rights under this Agreement and may be terminated without recourse to the grievance procedure, but shall be subject to all other provisions of this Agreement. Upon successful completion of the probationary period, the original starting date will be the Seniority date for each employee. All new members of the Police

Department must be certified for basic police training during the first six months of employment. Any additional training period required for certification shall be added to and be a part of the probation period. **Upon successful completion of the probationary period, the officer shall have sixty (60) days to reside within the City of Macomb.**

The new subsection in Article 31 proposed by the Employer is as follows:

Section 31.5 Residency

The Union agrees to defer the issue of residency subject to the following conditions:

1. In the event that the city negotiates contractual modifications to the residency requirement with the Macomb Firefighters, IAFF bargaining unit, then the FOP may immediately demand that bargaining be reopened to negotiate changes to the residency requirement of members covered by this Agreement.
2. Such deferral shall be without prejudice to the Union's right to renew its residency proposal in the negotiations as to the successor contract.

Union's Final Offer:

The Union proposes to delete the existing words "Upon successful completion of the probationary period, the officer shall have sixty (60) days to reside within the City of Macomb." It also proposes to add the following language: "Employees with at least five years of service with the Police Department shall be permitted to reside within twelve miles from the City Hall of the City of Macomb provided however, that no employee shall be permitted to reside outside of McDonough County."

Union's Position

The Union vigorously argues that police officers serving in Macomb should be allowed to select where they live and raise their families. The Union maintains that the right of police officers to choose where they want to live is weighed against the public safety factor of having police officers live within the City. The Union argues that a requirement that police officers reside in the City produces no real increase in public safety, only a perception of increased safety. Therefore, since the presence of off-duty police officers does little to promote public safety, at the very least, the residency requirement in the current contract should be relaxed to allow police officers to live within a 12-mile radius of Macomb's City Hall.

In support of this position the Union offered a *quid pro quo* to the City in negotiations: it offered to forego the longevity increase that had been granted to the IAFF. The City's response, in the last session of negotiations, was to offer a slightly relaxed residency requirement, but in return the City sought to permanently cap its contributions for health insurance premiums for

dependents. The Union responded by proposing an increase in the years of service requirement and a reduction from a 20-mile radius to a 12-mile radius. The City, after rejecting the Union's offer, withdrew its proposal. The final proposal advanced by the City at the arbitration hearing, offers no relaxation in the residency requirement, but rather ties the Union to the outcome of the IAFF's negotiations on residency.

The Union urges that the most important factor to consider in deciding which final offer on the issue of residency to accept is external comparability. In determining which communities are comparable to Macomb, the Union adopted certain criteria that it applied to potential comparable communities. The Union's search began with communities that had populations of plus or minus 50 percent of that of Macomb. After determining fifteen communities fell within the population range, the Union examined demographic and financial statistics, including: Total Salaries Paid, Total Number of Municipal Employees, Total General Governmental Revenue, Property Tax as a Percentage of the Total General Governmental Revenue, Sales Tax as a Percentage of the Total General Governmental Revenue, Total General Fund Revenue, Property Tax as a Percentage of Total General Fund Revenue, Sales Tax as a Percentage of Total General Fund Revenue, Sales Tax Revenue, Public Safety Expenditures, Number of Full Time Sworn Officers, and Distance from Macomb.

Using these twelve points, the Union contends that fifteen communities are comparable to Macomb. The Union points out that the communities the City disputed as comparables had the following number of favorable comparisons: LaSalle – 9 out of 12; Morton – 11 out of 12; Ottawa – 9 out of 12; Peru – 9 out of 12; Rock Falls – 10 out of 12; and Washington – 9 out of 12. The Union found that the communities that the City had stipulated were comparable had the following number of favorable comparisons: Canton – 10 out of 12; Centralia – 9 out of 12; Dixon – 9 out of 12; Edwardsville – 9 out of 12; Kewanee – 11 out of 12; Lincoln – 10 out of 12; Sterling – 9 out of 12; Streator – 10 out of 12; Taylorville – 11 out of 12. Based on this information, the Union contends that its proposed list of communities, including those that the City disputes, provides the arbitrator with communities that have characteristics sufficiently similar to Macomb as to be adopted as comparable in this arbitration.

The Union argues that the City initially stipulated that Centralia and Edwardsville are comparable communities. The City attempted to eliminate these two communities from the stipulated list of comparables, in the Union's view, solely because the City realized that these jurisdictions support the Union's position on residency. The Union urges that I not allow the City to withdraw from the stipulation.

The Union maintains that a review of the external comparables supports its position on residency. The communities where residency is included in a collective bargaining agreement reflect the following: Canton – within a 10 mile radius of the city; Centralia – within 12 miles of the center of Calumet & Poplar Streets; Edwardsville – anywhere in Madison County; LaSalle – within the city or within 1-1/2 mile jurisdictional limits provided the employee is willing to have

the property annexed; Lincoln – within 10 miles of the city limits; Morton – within 5 miles of the Village within the cities of Creve Coeur, Deer Creek, East Peoria, Washington, and Tremont; Ottawa – within 5 miles of the city, provided no more than 10 bargaining unit members or 30 percent of the entire department (whichever is higher) may reside outside the city; Rock Falls – if reside outside city must respond to callback within 30 minutes; Streator – within the immediately adjacent residential plotted property of the city; and Taylorville – employees hired after July 1997 are required to live in the city, employees living outside the city not required to move in. The communities where residency is governed by ordinance rather than by a collective bargaining agreement, the reflect the following: Dixon – within 5 miles of the city limits; Kewanee – must live within the city limits; Peru – must live within the city limits; Sterling – must live within a reasonable distance and respond within 30 minutes if called. Of the nine stipulated comparables seven, or approximately 78 percent, have relaxed residency, while 80 percent of the Union’s proposed comparable communities have relaxed residency. Based on the residency requirements of the comparable communities, the Union argues, that I award the Union’s final offer on the residency issue.

The Union contends that even though it agreed to the inclusion of the residency requirement in the 1995-1998 Agreement, and agreed to leave the residency requirement unchanged in 1998-2001 Agreement, those negotiations should not be pose “an extra hurdle for the Union to jump over in order to obtain a relaxation of residency” (U. Brief at 39). The Union maintains that the presence of a sufficient *quid pro quo* that enabled the parties to resolve the 1998 negotiations should not limit it from seeking changes that it was not able to obtain during the last negotiations. The legislature’s amendment of the IPLRA enabling the Union to negotiate and arbitrate residency became effective only four months before negotiations began, and, because of the newness of the amendment, the offers of settlement from the City simply outweighed the risks of arbitrating the residency issue at that time. Because the residency requirement was not negotiated into the Agreement until 1998, the Union contends that there is no status quo regarding residency, which would require the Union to meet the special burden generally imposed on a party seeking a “breakthrough” item. However, even if the arbitrator were to find that the residency requirement is the status quo, the Union has more than amply met the test to permit a breakthrough on the issue.

The Union also argues that the City came to the bargaining table unwilling to bend on the residency issue. During negotiations the Union made several proposals in an attempt to obtain a relaxation of the residency requirement: a \$500.00 payment to the City if an employee moved from within the City limits; the withdrawal of proposals; and a freeze in longevity pay. However, the City rebuffed every proposal, and, at the last negotiating session, proposed unwarranted concessions on health insurance. The Union also contends that the City did not articulate what it wanted as a *quid pro quo* for an agreement to relax the residency requirement. Therefore, in the absence of a discernible *quid pro quo* acceptable to the City, the Union should not be held to the *quid pro quo* requirement.

Finally, the Union argues that in the City, neither Western Illinois University nor the McDonough County Sheriff's Department requires their police officers to reside within Macomb; there is no guarantee that the police officers will financially support the City even if they live within the City limits; there is no evidence that the police officers will respond more quickly to a call if they live within the City limits; living in a neighborhood is no guarantee of community spirit, community involvement, or community interaction; and, even though the police officers knew of the residency requirement when they took the job, many items have changed since officers were hired and residency should be treated no differently.

The Union argues that its final offer is supported by the evidence, including the external comparables, and is more reasonable than the City's final offer. Therefore the arbitrator should accept the Union's final offer.

Employer's Position:

The City contends that its final offer on the residency issue provides the employees with a settlement completely consistent with the internal comparables provided by the IAFF, and all other union and non-union City employees. It is a continuation of the sixteen years of bargaining history between the parties, and the bargaining unit employees remain competitive with both the external comparables stipulated to by the parties as well as the external comparables proposed by the Union and disputed by the City.

The City argues that internal comparability is one of the most important factors in analyzing a final offer. The internal comparables concerning residency show that each of the three unions have twice bargained the issue since passage of the 1997 amendment designating residency as a mandatory subject of bargaining, and all the unions have agreed to maintain the status quo: in-town residency. The City has maintained the status quo since 1977, and the residency requirement is codified in a City ordinance, as well as in each of the City's three collective bargaining agreements.

To determine appropriate external comparable communities the City used fourteen criteria, with a plus or minus 25 percent deviation. The fourteen criteria used by the City are: Distance from Macomb; Population; Metro/Non-Metro; Per Capita Income; Equalized Assessed Valuation: Total and Per Capita; Sales Tax: Total and Per Capita; Budget: Total and Per Capita; General and Specific Revenue: Total and Per Capita; Full Time Employees; and Number of Sworn Police Officers. Using these criteria, the City proposed Canton, Dixon, Kewanee, Lincoln, Sterling, Streator, and Taylorville as comparable communities. All are downstate locales, within or very near a 100 mile geographic radius from Macomb. All are non-metropolitan, similar in size, with similar police departments and approximately the same financial resources. Therefore, the City argues that only its proposed seven comparable communities, which the Union has agreed to, should be used by the arbitrator as external comparables.

The City argues that it had strong reasons for withdrawing from the stipulation that Centralia and Edwardsville are comparable to Macomb. The City maintains that, whereas Macomb is a geographically isolated rural municipality, Edwardsville is part of the greater St. Louis metropolitan area. Centralia, the City urges, is too far away from Macomb to be considered comparable.

The City argues that the eight other communities in dispute are inappropriate as comparables. The City points out that Edwardsville, Morton, and Washington are part of substantial metropolitan economies that are completely different from Macomb, and are different from the seven communities that the parties agree are comparable. The City contends that because Centralia is located 231 miles from Macomb, it is too remote to be included as a comparable. LaSalle, Ottawa, Peru, and Rock Falls in the City's view, share insufficient common ground with Macomb to warrant inclusion as comparables. The City also argues that the Union proposed a 50 percent range of deviation merely to justify its eight additional proposed comparables.

The City points out that of the seven communities it proposes as comparables, four – Kewanee, Streator, Taylorville, and Macomb – require employees to reside within city limits; three – Canton, Dixon, and Lincoln – require residency within ten miles; and only one – Sterling – maintains a residency rule similar to the Union's proposal. Of the sixteen Union proposed comparables, six – Kewanee, Macomb, Peru, Rock Falls, Streator, and Taylorville – require in-town residency; four – Dixon, LaSalle, Morton, and Ottawa – permit residency within five miles of town; and four – Centralia, Edwardsville, Sterling, and Washington – allow an employee to reside more than ten miles out of town. Based on this mixed bag of residency requirements, the City urges that the external comparables fail to support a change in the status quo.

The City contends that the parties fully bargained the residency issue during the course of the 1998 negotiations, after having agreed to include the residency requirements in the contract during the 1995 negotiations. In the 1998 negotiations, seven months after the change in the IPLRA that made residency a mandatory subject for bargaining, the Union proposed the deletion of the residency requirement and the City declined to accept this proposal. The parties agreed to a modest change in the residency requirement: new hires would be required to live within the City limits no later than sixty days following successful completion of the probation period. By agreeing in 1998 to maintain the status quo on residency, with a minor change affecting probationary employees, the residency issue became a "breakthrough" item for purposes of future bargaining.

The City argues that the Union is required to offer substantial justification to be entitled to a "breakthrough" award on the issue of residency, and the Union has failed to establish such justification. The Union does not claim that the in-town residency rule has created a hardship for its members, nor does the Union offer evidence of safety risks or harm to employees and their

families. Further, the Union does not allege that the City's residency policy is unfairly or inconsistently administered.

The City contends that it offered a meaningful proposal on the issue of residency in negotiations: in exchange for a cap on dependent health insurance premium costs and deferral of the longevity increase, the City would accept a breakthrough on residency. The Union failed to accept the offer or counter-propose a meaningful *quid pro quo*.

The City maintains that the Union offers no persuasive reason to alter the status quo. The only reasons posited by the Union in support of its residency proposal are that the employees should have the right to choose where they live and the property taxes are lower outside the City limits. The City argues that these reasons are insufficient for an award of a breakthrough on residency.

In support of maintaining the status quo, the City presented testimony from Macomb's Mayor that by living within the City limits the police officers gain a better connection and feel for the community and having police officers reside in-town makes it more likely that emergency help will be expeditiously provided. Therefore, in-town residency enhances public safety.

The City also contends that, when all relevant factors are considered, the cost of living outside Macomb is higher than it is within Macomb. Furthermore, the potential movement of each employee and his family out of town would adversely affect the City's finances by an annual \$590 revenue loss. According to the City, the record reveals that an adequate and fairly priced supply of available housing exists in town, and Macomb's schools provide a quality education that is competitive with, if not better than, the neighboring school districts. Therefore, the City concludes that I should award the status quo with respect to residency.

Discussion

The arbitrator has considered his notes and the transcript of the hearing, the exhibits, the parties' briefs and arguments and all authority relied on therein. As I have stated elsewhere,¹ interest arbitration represents the breakdown of the parties' collective bargaining process. The arbitrator's function is to determine what contract terms the parties most likely would have agreed to if the collective bargaining process had not broken down. The weight to be given each factor listed in Section 14(h) is to be assessed in light of its value in making such a determination. Clearly, some of the factors have more significance than others in a specific case. Accordingly, I turn to the statutory factors detailed in Section 14(h).

Several of the § 14(h) factors require little, if any, discussion. Both parties' offers fall within the lawful authority of the City. The parties have stipulated to the framing of the issues

¹Malin, *Public Employees' Right to Strike: Law and Reality*, 26 U. MICH. J. L. REF. 313, 333 (1993).

presented and their characterization as economic or non-economic and I shall proceed in accordance with that stipulation. The parties also have stipulated that all other terms to which they have tentatively agreed be incorporated by reference in the award and I shall do so. The other significant stipulation is to certain communities that are comparable to Macomb. I shall discuss that stipulation in my discussion of the external comparables. The average consumer prices and the overall compensation received by the employees are not particularly relevant to the determination of the non-economic issue of residency. Neither party has suggested that there have been any changes in the relevant factors during the pendency of these proceedings. Thus, I shall focus my consideration on the interests and welfare of the public, external comparables, and other factors normally or traditionally taken into consideration.

The Interests and Welfare of the Public. The City feels very strongly that those who earn their money from the City should live in the City, and contends that there would be financial loss to the City if the police officers live outside the City limits. The City further argues that having the police officers reside within the City provides greater public safety since the officers are available to serve and protect twenty-four hours a day, and are more involved in the community. The City's arguments are speculative in nature. The City presented anecdotal evidence (primarily testimony from the Mayor) which, with all due respect, does not establish that police officers required to live in the City are more involved in the community than they would be if they lived outside the City limits. Nor is there any evidence that if the police officers lived outside the City limits they would spend less money in Macomb than they currently spend. Furthermore, there is no evidence that Macomb has a declining financial base, which could be an economic reason to require the officers to reside in the City (see *Maywood Firefighters, SEIU Local 1 and Village of Maywood*, ISLRB No. S-MA-95-167 (Malin 1996), where I found that, the firefighters, who were among the higher earning residents, were required to reside within the city limits partly because the loss of their income would have a detrimental effect on the community). The City estimates a revenue loss of \$590 per year for each employee and family who move outside the City. The estimate, however, is speculative. For example, the City includes in the revenue loss \$247.63, representing the property tax on a \$75,000 house, but there is no reason to believe that the relocating officer's home would fall off the tax rolls. More likely, it would be purchased by another person and remain on the tax rolls. Furthermore, as the Union argues, not every employee owns a home, only 5 percent of actual property taxes go to the City, and employees are not required to spend their money in the City regardless of where they live.

The Union argues forcefully that police officers should be allowed to live wherever they choose, citing the Sheriff's Department and University's residency policies for their officers. However, the Union presents no evidence of the police officers' compelling desire to move outside the City limits. The evidence presented shows that there is affordable housing inside and outside Macomb's city limits. Further, although property taxes are higher in the Macomb School District, officers relocating outside the City will incur additional expenses, such as higher commuting expenses and higher fire insurance premiums, that will go a long way to, if not completely, offsetting the property tax savings. Thus, there is no appreciable difference in the

cost-of-living between Macomb and the outlying areas, and the Macomb School District compares favorably with the other school districts that would be available to the police officers if the residence requirement was relaxed.

After a detailed review of the positions of the parties, it is clear to me that the heart of this dispute is really over philosophy. The Union's ardently held philosophy is that the police officers' have a right to autonomy when it comes to where they and their families choose to live. The City's philosophy is that the officers' civic and financial responsibility to the City where they work requires they live within the City limit. These philosophies are diametrically opposed to each other.

As others have recognized,² an interest arbitrator cannot arbitrate philosophy. However, I can render a decision based on the empirical evidence that was presented by the parties at the arbitration hearing. Accordingly, I now turn to that evidence to assess its probative value in assisting me in determining what agreement the parties would have reached on the residency issue if negotiations had concluded without arbitration.

External Comparability. Section 14(h)(4)(A) provides for the arbitrator to compare the working conditions of the employees involved in the arbitration with those of employees performing similar services in public employment in comparable communities. The parties are firm in their shared belief that my decision as to which external comparables to use in this arbitration will have far reaching consequences for future negotiations and interest arbitrations between the parties. Accordingly, they have gone to great lengths to establish comparables that favor their positions in the hope that, if I adopt their proposed comparables, they have set the stage for their future relationship. Unfortunately, this has caused the parties to "cherry pick" among the comparable communities, establishing ranges and criteria, under the guise of the "Benn analysis,"³ that enable the parties to select only those communities that favor their positions. After engaging in this manipulation, the parties then loudly accuse each other of "cherry picking" to establish an advantage in the arbitration proceeding. Such accusations are irrelevant since I expect the parties to present the evidence most favorable to their respective positions.

I have great respect for Arbitrator Benn and his method of analysis can be very helpful in certain cases. However, and I believe Arbitrator Benn would agree, there is no set formula that an arbitrator or the parties can rely on to determine automatically whether an external comparable community is appropriate in every situation. In any given case, it is necessary to keep in mind the reason arbitrators look to external comparables. In determining what the parties would have

²See, e.g., City of Kankakee and Illinois Fraternal Order of Police Labor Council, No. S-Ma.99-137, at 20 (Leroy 2000).

³This reference is to Arbitrator Ed Benn, who developed a method of determining the appropriateness of a comparable community by establishing low and high ranges using the data submitted by the parties. If a disputed community falls within the range established by the parties, through the submission of agreed upon comparables, a sufficient number of times, under the "Benn analysis" it would be included as a comparable.

agreed to had the bargaining process had not broken down, a clear pattern of agreements in comparable communities can provide very significant evidence. Ultimately the arbitrator must make a judgment call about what the parties would have agreed to if they had been able to reach agreement. The relevant question thus is which communities are sufficiently comparable to Macomb so that their agreements and practices are relevant to how the parties would have reached a resolution of the residency issue in negotiations?”.

With this in mind, I must first determine which communities, among those proposed by the parties, are comparable to Macomb. Thus, I find the communities of Canton, Dixon, Kewanee, Lincoln, Sterling, Streator, and Taylorville, which are contained in the stipulation between the parties, to be comparable communities for the purpose of this arbitration. I next turn to the two communities that the Employer initially stipulated were comparable and then decided were not: Centralia and Edwardsville. I will not attempt to probe, as the Union does, the reasoning behind the Employer’s decision to withdraw these two communities from the stipulated list of comparables. Instead, I confine myself to examining the undisputed facts surrounding the Employer’s action.

The first correspondence between the parties on this issue occurred on March 18, 2002, when the Union notified the Employer that it intended to include Centralia and Edwardsville in its list of proposed comparables to be presented to the arbitrator. On April 12, 2002, the Employer notified the Union that it stipulated to a list of comparable communities that included Centralia and Edwardsville. On April 22, 2002, two days before the arbitration hearing, the Employer notified the Union, that it had “more closely studied the issue of comparable communities,” and that it did not want to include Centralia and Edwardsville among the list of stipulated comparable communities. The Union objected to the Employer’s change in the stipulated list.

While there are occasions when a party is allowed to disavow a previously made stipulation, this is not one of those occasions. The Union is entitled to rely on the entire stipulation entered into in preparation for this arbitration. To allow the Employer to avoid such a stipulation, especially where, as here, the issue is crucial to the preparation of the other side’s case, within so short a period of time before the scheduled arbitration is to begin, does harm to the Union’s presentation of its case, as well as harm to the underlying basis for reaching such stipulations in the first place, the elimination of needless and time consuming presentation of evidence on issues about which the parties agree.

Interest arbitration is a part of the negotiating process; thus the parties have the opportunity to negotiate after they have applied for arbitration. Indeed, it is common for parties to reach agreement on the eve of an arbitration hearing, or even after the hearing has been held. The IPLRA recognizes this dynamic by empowering the arbitrator to remand a dispute to the parties for further negotiation. The stipulation as to comparable communities is a part of the ongoing negotiations between the parties which, besides facilitating preparation for the hearing, may also help bring the parties closer together in their positions and, thereby, facilitate settlement.

Thus, there is an inherent prejudice in withdrawing from such a stipulation so close to the hearing and the withdrawing party must provide substantial justification.

The Employer offers no such justification for its withdrawal from the stipulation. The sole stated reason for the Employer's withdrawal is that it merely reconsidered its position. That is not good enough. It is true that Edwardsville is part of the St. Louis metropolitan area, but it was part of the St. Louis metropolitan area on April 12, 2002, when the City stipulated with the Union that it was comparable to Macomb. It is true that Centrailia is a good deal more distant from Macomb than the other stipulated comparable communities, but its distance from Macomb has not changed since the stipulation was agreed to on April 12, 2002. There is no showing that the Employer was unaware of these facts when it entered into the stipulation. Accordingly, the Employer is bound to the entire stipulation that it reached with the Union on April 12, 2002. The communities of Centralia and Edwardsville are included as comparable for the purpose of this arbitration.

I next consider the communities that are in dispute between the parties. The Union contends that LaSalle, Morton, Ottawa, Peru, Rock Falls, and Washington are comparable communities, while the City argues that they are not. The Union lists twelve points of comparison between these communities and Macomb that it argues proves that the communities are comparable: Population, Total Salaries Paid, Number of Employees, General Government Revenue, Property Tax as a Percentage of the General Government Revenue, Sales Tax as a Percentage of the General Government Revenue, General Fund Revenue, Property Tax as a Percentage of the General Fund Revenue, Sales Tax as a Percentage of the General Fund Revenue, Public Safety Expenditures, Numbers of Officers, and the Distance from Macomb. The Union establishes a range of plus or minus 50 percent from Macomb's position within these twelve factors into which it places the comparable communities. The City lists fourteen points of comparison with Macomb that it contends proves that the disputed communities are not comparable: Distance, Population, Metropolitan/Non-Metropolitan, Per Capita Income, Equalized Assessed Evaluation (Total and Per Capita), Sales Tax (Total and Per Capita), Budget (Total and Per Capita), General and Special Revenues (Total and Per Capita), Number of Full Time Employees, and the Number of Sworn Officers. The City then establishes a range of plus or minus 25 percent from Macomb's position within these fourteen factors into which it places the disputed comparable communities.

Initially, I observe, there is no established group of comparable communities that the parties have looked to consistently over the years as providing the basis for comparison in negotiations and/or interest arbitration. Second, it is clear that the dispute over residency is what has driven this impasse. Both parties spent the overwhelming majority of their time at the hearing on the residency issue and devote the overwhelming majority of their briefs to that issue. Longevity pay is only in dispute because the Union has offered concessions on the issue as its *quid pro quo* for relaxed residency. Thus, the two issues are directly linked with the real dispute being over residency. Although the dispute over the Entire Agreement Clause is independent of

the dispute over residency, the dispute appears to be relatively minor. It is extremely likely that if the parties had resolved their dispute over residency, they also would have reached agreement over the Entire Agreement Clause.

The factors that an arbitrator traditionally would consider in determining comparability when economic issues are in dispute are not necessarily the most significant factors for a dispute over residency. A municipality's total tax base is highly relevant to a dispute over wages or health insurance but not necessarily all that relevant to a dispute over residency. Arbitrator Berman recognized this in the context of a dispute over residency in a community in the Chicago metropolitan area. *See Town of Cicero and IAFF Local 717*, No. S-MA-98-230, at 25-27 (Berman 1999). Although the factors will play out differently in an isolated rural municipality than in a community in a large metropolitan area, the concept is the same – in focusing on what factors to use in evaluating comparability, I am focusing on a residency issue and not an economic issue.

This is not to say that where residency is one of a multiple issues in dispute the arbitrator should develop separate comparability criteria for residency than for the other issues. Nor is it to say that an arbitrator should ignore a previously established set of comparable communities that formed the baseline against which the parties negotiated. *See City of North Chicago and Illinois F.O.P. Labor Council*, No. S-MA-99-101, at 6-8 (Briggs 2000). However, in the instant case there is no established set of comparable communities in the context of which the parties have negotiated and, as discussed above, this dispute is about residency, with the other two issues merely along for the ride. Thus the question to which I turn is which communities are sufficiently comparable to Macomb such that their agreements or practices concerning residency provide probative evidence of how the parties before me would have resolved their dispute had their bargaining process succeeded?

First, it is clear that the communities of Morton and Washington are not comparable to Macomb. Both communities are part of the Peoria metropolitan area. Intuitively, a metropolitan suburban community does not seem comparable to a rural municipality with respect to treatment of employee residency requirements. The record in the instant proceeding supports this intuition. Both parties recognize that officers and their families who reside outside of Macomb will still be likely to come into Macomb for shopping and services that are not available in the more rural environs within the Union's proposed twelve mile radius. The Union made this point in contesting the City's claim of lost revenue and reduced off duty presence and the City made this point in determining the increased commuting costs for officers living outside of town. Employees working in one community in a metropolitan area and residing in another are far more likely to find needed goods and services in their home communities. Furthermore, commuting patterns and traffic are likely to be very different in a metropolitan area than in a

rural municipality with different effects on such matters as response time. Thus, I agree with the City that Washington and Morton are not comparable to Macomb.⁴

Turning to the other communities in dispute, I observe that while the Union and the City's presentation of financial data under the headings of General Government Revenue, General Fund Revenue, Public Safety Expenditures, Total Equalized Assessed Evaluation, Total Sales Tax, Budget, and General and Special Revenues would be highly relevant to economic issues in dispute between the parties (i.e. salaries or benefits), the economic issues, save for Longevity Pay, which I have found to be part and parcel of the residency issue, were resolved by the parties prior to the arbitration hearing. Therefore, the focus must be on data that is relevant to the non-economic issue of residency.

While I have reviewed all of the economic data presented by the parties, I find the following items to be of significant relevancy concerning the residency issue: Per Capita Income; Equalized Assessed Valuation-Per Capita; Sales Tax Revenue-Per Capita; Property Tax as a Percentage of Total Government Revenues; and Sales Tax as a Percentage of the Total General Government Revenue. These economic items are more significant in the examination of a non-economic issue like residency because they focus on how this data relates to the circumstances of the individuals involved in, and who are affected by, this dispute. Per Capita Income reflects the average earnings of the residents of the communities, which can be useful in determining whether police officers can afford to live in the communities, something clearly relevant to the issue of residency. The value of individual homes in the comparable communities and whether there is a pool of affordable housing are reflected by the Equalized Assessed Valuation-Per Capita. Property Tax as a Percentage of Total Government Revenue and Sales Tax as a Percentage of the Total General Government Revenue more accurately reflect the impact of the City losing the portion of these items contributed by the police officers and their families than do the figures for total revenues generated by these items.

⁴I note that Edwardsville is also part of a metropolitan area. However, as discussed above, the parties previously stipulated that Edwardsville is comparable to Macomb and the City is bound by that stipulation.

The non-economic data provided by the parties (Population, Number of Employees, Number of Sworn Officers, Distance from Macomb, and, as discussed previously, Metropolitan/Non-Metropolitan Classification) are of significant relevance concerning the residency issue. Accordingly, I compare the relevant data as follows:

1. Per Capita Income- Macomb's Per Capita Income is \$9,135. For the disputed communities LaSalle's is \$11,509; Ottawa's is \$13,195; Peru's is \$13,531; Rock Falls is \$9,546. For the stipulated comparable communities the range is from the lowest of \$10,136 for Kewanee to the highest of \$15,338 for Edwardsville. The next highest per capita income among the stipulated communities is Sterling at \$12,880, followed by Centerville at \$12,404, and Taylorville at \$12,288. In this regard, Edwardsville appears to be an outlier and not useful for judging the four communities remaining in dispute. (Edwardsville was more likely stipulated as comparable in spite of rather than because of its per capita income.) Discounting Edwardsville's per capita income, it appears that Rock Falls is very close to Macomb and LaSalle is within the range that the parties themselves found acceptable in their stipulation.
2. Equalized Assessed Valuation - Per Capita- Macomb's Equalized Assessed Valuation - Per Capita is \$5,689. For the disputed communities LaSalle's is \$7,801; Ottawa's is \$10,239; Peru's is \$16,479; Rock Falls is \$6,479. For the stipulated communities the range is from the lowest of \$4,845 for Kewanee to the highest of \$11,257 for Edwardsville, with Sterling second highest at \$8,176. Edwardsville again appears to be an outlier. Discounting Edwardsville as a guide, it appears that LaSalle and Rock Falls are within range while Ottawa and Peru are not; indeed, Peru's EAV Per Capita exceeds even Edwardsville's by a large degree.
3. Sales Tax Revenue- Per Capita- Macomb's Sales Tax Revenue - Per Capita is \$121. For the disputed communities LaSalle's is \$99; Ottawa's is \$185; Peru's is \$548; Rock Falls' is \$114. For the stipulated communities the range is from the lowest of \$99 for Dixon to the highest of \$208 for Sterling. All disputed comparables except Peru appear to be in range.
4. Property Tax as a Percentage of Total General Government Revenues- Macomb's is 7 percent. For the disputed communities LaSalle's is 23 percent; Ottawa's is 22 percent; Peru's is 6 percent; Rock Falls' is 12 percent. For the stipulated communities the range is from the lowest of 14 percent for Kewanee to the highest of 22 percent for Edwardsville and Streator. All disputed communities appear to be in range, except for LaSalle, which falls just outside the range of the stipulated comparables.
5. Sales Tax as a Percentage of the Total General Government Revenue - Macomb's is 25 percent. For the disputed communities LaSalle's is 0 percent; Ottawa's is 31 percent; Peru's is 70 percent; Rock Falls' is 22 percent. For the stipulated communities the range

is from the lowest of 18 percent for Centralia to the highest of 36 percent for Sterling. Ottawa and Rock Falls fall within the agreed on comparable range, while LaSalle and Peru fall way outside the range.

6. Population- Macomb has a population of 18,558. For the disputed communities LaSalle's is 9,796, Ottawa's is 18,307; Peru's is 9,835; Rock Falls' is 9,580. For the stipulated communities the range is from the lowest of 11,427 for Taylorville to the highest of 21,491 for Edwardsville. Ottawa's population is very close to that of Macomb while the other three communities fall considerably outside the range.
7. Number of Full-Time Employees- Macomb has 106 full time employees. For the disputed communities LaSalle has 50; Ottawa has 104; Peru has 74; Rock Falls has 77. For the stipulated communities the range is from the lowest of 77 for Lincoln to the highest of 134 for Streator. LaSalle is considerably outside the range, Peru is just outside while Rock Falls and Ottawa are within range.
8. Number of Full-Time Sworn Officers- Macomb has 25 full time sworn officers. For the disputed communities LaSalle has 19; Ottawa has 33; Peru has 19; Rock Falls has 20. For the stipulated communities the range is from the lowest of 19 for Taylorville to the highest of 35 for Edwardsville. Edwardsville again appears to be an outlier, as the next highest are Lincoln and Sterling with 29. Discounting the outlier, all disputed communities fall within the range except for Ottawa.

Based on an examination of the economic and non-economic data regarding the disputed communities presented by the parties at the arbitration hearing I find that the community of Rock Falls is a comparable community for this proceeding. I make this finding based on the similarity of Rock Falls to Macomb in all relevant factors except Population. I also find that Ottawa is comparable, as it falls within range on five of the eight criteria examined. On the other hand, LaSalle and Peru fall within range less than half the criteria. This is insufficient to deem them comparable to Macomb.

I next examine the residency requirements for police officers within these communities. I have reviewed the residency requirements provided by the parties for the eleven comparable communities as follows: three require that police officers reside within the city limits (Kewanee, Streator, and, since July 1997, Taylorville); two provide for relaxed residency that requires police officers reside within five miles of the city limits (Dixon and Ottawa); two provide for relaxed residency that requires police officers to reside within ten miles of the city limits (Canton, Lincoln); and four provide for relaxed residency that is the equivalent of the residency requirement sought by the Union (Centralia, Edwardsville, Rock Falls, and Sterling).

Three of the comparable communities (Dixon, Kewanee, and Sterling) do not have contractual residency, but look to a city ordinance for the residency requirements. The fact that

the union hasn't bargained a relaxed residency in these communities, even though residency is a mandatory subject for bargaining, is significant when one seeks to compare the residency requirement in those communities to what the Union seeks through negotiations in this instance.

Based on the above examination of the evidence presented at the arbitration hearing, I find the practice and policies concerning residency in the external comparable communities to be such a mixed bag as to provide little guidance in deciding the issue of residency. My findings in this regard are in accord with the findings of other arbitrators facing similar situations. *See, e.g., City of North Chicago, supra; Village of South Holland and Illinois F.O.P. Labor Council, No. S-MA-98-120 (Goldstein 1999).*

Other Factors. Section 14(h)(8) provides for consideration of “[s]uch other factors . . . which are normally and traditionally taken into consideration” in determining wages, hours and working conditions. Two such factors stand out in the instant case: internal comparability and bargaining history.

Internal Comparables. The evidence of internal comparability is quite compelling. The City has negotiated the same residency requirement presented in its final offer to the Union with the IAFF and the IBT. Further, all non-union City employees are required by ordinance to live within the City's limits. The negotiations for past contracts have followed pattern bargaining in that whatever is negotiated for the IAFF is negotiated for the other bargaining units and then granted to the non-union employees.

I note that this established pattern bargaining among the three bargaining units indicates a larger consequence of allowing the police officers to live outside the City limits than that solely attributed to the Union's members. That is, the other eighty-eight City employees would be in a strong position to demand the same relaxation in the residency requirement that the Union seeks if I accept the Union's final offer on the residency issue. Indeed, the IBT's collective bargaining agreement contains a “me to” provision that requires the City to grant the IBT members the same relaxed residency that the City negotiates with the Union or with the firefighters. The IAFF contract empowers the IAFF to immediately reopen the residency issue if the City agrees to a relaxed residency requirement with the FOP. The City would be hard pressed not to grant the same relaxed residency to the IAFF bargaining unit, as well as the non-union City employees. Based on the evidence presented, I find that internal comparability strongly favors the City's final offer.

Bargaining History. The parties dispute whether the Union's attempt to change the residency requirement is a “breakthrough,” which would require the Union to shoulder a heavier burden of justifying the proposed change. The City argues residency is a long established practice that the parties have accepted as the status quo. The parties negotiated the residency requirement into the contract in 1995 and the Union had the opportunity to bargain over residency in 1998, after the legislature made residency a mandatory issue of bargaining, but the

Union chose to accept the residency requirement as set forth in the agreement, with only minor modification. Based on this evidence the City argues that the residency issue constitutes a “breakthrough” issue.

Prior practices and prior negotiated agreements in which the parties expressly agreed to the residency requirement is one of the factors “which are normally or traditionally taken into consideration in the determination of . . . conditions of employment through . . . arbitration . . .” This is because what the parties agreed to in the past is relatively strong evidence of what they would have agreed to had the current round of negotiations been successful. Of course, the evidence is strongest where the parties’ agreement is of long-standing duration. (*Compare Village of Maywood, supra*, where I found the union had not made a case for changing a contractual provision requiring residency within the village’s limits where the contractual provision had been in effect for twenty-years and the issue of residency had already been the subject of an interest arbitration that was decided against the Union). The inclusion of the residency requirement into the 1995 contract was done before residency was a mandatory bargaining item, so the Union had no bargaining power when it came to residency at that time. Residency was already governed by City ordinance, so the Union had nothing to lose by agreeing to place it in the contract. However, the 1998 negotiations occurred after residency became a mandatory subject of bargaining and arbitration. Although not as significant as the twenty year history in *Maywood*, the fact that the parties agreed to in town residency within sixty days following completion of the probationary period carries considerable weight.

The only argument the Union has raised against the probative value of the 1998 negotiations is that the Union did not want to risk arbitration so soon after residency became arbitrable. Such a strategic decision was perfectly rational but it does not diminish the probative value of the parties’ actual 1998 agreement. The Union has not shown any objective change in conditions since the 1998 agreement was reached. The only thing that has changed has been the Union’s strategy. The Union does not make a convincing argument that its members are suffering a hardship because of the residency agreement. While the Union argues some economic advantage to its members if they are allowed to live outside the City limits, as discussed earlier this claim is insignificant in light of evidence of a variety of increased costs for officers living outside of the City. Further, the Union makes no argument that there is a safety issue for its members or their families that would be addressed if they were allowed to live outside the City limits.⁵ Nor is there an argument that the school systems outside Macomb provide a better educational opportunity for the children of the members. I find that there is no hardship caused to the Union’s members because of the existing residency requirement. Accordingly, I conclude that bargaining history provides strong support for the City’s final offer

The Union argues that it offered a sufficient *quid pro quo* when it offered to relinquish its demand for the same increase in Longevity Pay that the City negotiated with the IAFF, while the

⁵Thus this case differs from *Kankakee, supra*, and *Calumet City and Illinois F.O.P. Labor Council*, No. S-MA-99-128 (Briggs 2000).

City argues that Longevity Pay is not a sufficient *quid pro quo* for the relaxation of the residency requirement. I consider the dispute about what constitutes a sufficient *quid pro quo* to be a red herring. Neither party has filed an unfair labor practice charge alleging that the other party failed to bargain in good faith during the negotiations over the residency issue, nor did either party present any evidence of such bad faith bargaining. The evidence that was presented at the arbitration hearing establishes that the City values residency very highly and wants a high price from the Union to change the existing residency requirements; a price the Union is not willing to pay. The deadlock over the residency issue is precisely why the parties are in arbitration.

Summary and Conclusion

To summarize, the interests and welfare of the public and external comparability provide very weak guidance in evaluating the competing final offers. The dispute over the interests and welfare of the public boils down to a dispute over philosophy that is not easily resolved in arbitration. The external comparables do not point clearly to either final offer. On the other hand, both internal comparability and bargaining history strongly support the City's final offer.

I recognize that I have the statutory authority to fashion an agreement that is different from the final offers presented by the parties because residency is a non-economic issue. I will only exercise this authority if I believe the parties would have reached such an agreement if they had continued to negotiate to an acceptable conclusion on the residency issue. For example, in *City of Kankakee, supra*, Arbitrator LeRoy awarded a requirement that employees reside in Kankakee or the neighboring communities of Bradley or Bourbonnais, even though neither party proposed such a provision. Arbitrator LeRoy found that the three communities formed a distinct geographic unit, separate from the rest of the surrounding area. He concluded that such a compromise would address the Union's concerns that in town residency threatened the safety of officers and their families and simultaneously address the City's concerns that officers maintain familiarity with the community.

In contrast, the present case presents no principled basis on which I can craft a compromise award between the two final offers. The strength of the philosophical differences between the parties suggests that "all or nothing" is the only acceptable approach for an arbitrator to take. Therefore, since I do not believe that any middle ground exists that would permit me to craft an award different from the final offers presented by the parties, I confine myself to selecting an award from between the two offers presented by the parties. For the reasons set forth above, I award the City's final offer with respect to residency.

The Economic Issue: What amount of longevity pay shall be provided to bargaining unit members?

Union's Final Offer:

The Union's final offer provides for no change to the existing longevity amounts as follows:

Appendix A, Section A-3 Longevity:

A. All employees shall continue to receive longevity pay of 1-1/2 percent on base salary only, in increments of 2 years, 4 years, 6 years, 9 years, 12 years, 15 years, 20 years, and 25 years of employment.

Employer's Final Offer

The Employer's final offer provides for increases in the Longevity Pay as follows:

<u>Length of Service</u>	<u>5-1-2001 Longevity Pay</u>	<u>5-1-2002 Longevity Pay</u>
2 years	1-1/2%	1-1/2%
4 years	2%	2%
6 years	1-1/2%	1-1/2%
9 years	1-1/2%	1-1/2%
12 years	2%	2%
15 years	1-1/2%	1-1/2%
20 years	1-1/2%	1-1/2%
25 years	1-1/2%	1-1/2%

Additional Background:

In this rare instance it is the Employer who wishes to increase the longevity pay for the members of the bargaining unit, while the Union does not propose any increase in longevity pay. However, when viewed in the broader context of the negotiations the parties' positions are quite logical since the Union is using its proposal to reject the longevity increase as the *quid pro quo* to achieve a change in the residency requirements contained in the Agreement, and the Employer seeks to negate the longevity increase as a *quid pro quo*.

The City's final offer is identical to what the City negotiated with the IAFF bargaining unit. Throughout the negotiations the Union demanded a longevity increase identical to the increase negotiated between the City and the IAFF. The Union only rejected the offer of a longevity increase when it realized that it needed a *quid pro quo* with which to negotiate a change in the residency requirement contained in the Agreement. The parties were thus unable to reach agreement on longevity increases.

Union's Position

The Union argues that its final offer should be selected. The Union agrees that historically longevity increases have been identical for the Union's members, the members of the IAFF, and the non-union City employees. However, the Union contends that in the negotiations for the successor contract the City withheld the longevity increase that it had granted to the IAFF. When, in the final negotiation session between the parties, the City demanded that the Union "pay" for a relaxation of the residency requirement, the Union offered to forego the longevity increase as that "payment". However, the City's response was that the value of the longevity increase was "negligible".

Employer's Position

The Employer argues that the internal comparability presented in this case requires adoption of the Employer's final offer. To support this argument the City points out that since the commencement of formal collective bargaining in 1986, the Union and the IAFF have achieved identical financial settlements, including longevity pay benefits. From 1993 to the present the IBT and the non-union employees have, likewise, earned the same increases.

In the negotiations for a successor contract the Employer and the Union have already agreed to across-the-board wage increases that are identical to those achieved by the other groups. Throughout these negotiations, including impasse and mediation, the Union demanded a longevity increase. The Union's proposal to forego the longevity increase was made only two weeks prior to the arbitration hearing.

Further, the City argues that even when using the Union's proposed comparable communities the City's final offer equitably positions the employees in relation to the external comparables. Using the six comparables it proposed the Employer contends that with the proposed longevity increase it would go from 3rd of 8 to 2nd of 8 in May 2001, and remain in that position in May 2002 when the next proposed longevity increase would go into effect, while using the Union's comparables, it would move from 7th of 16 to 6th of 16 with the first longevity increase and remains in that position for the second longevity increase. The Employer concludes that, because the Union experiences no loss of competitive advantage when compared to either set of proposed comparable communities, the Union's offer to sacrifice the proposed longevity increase should be rejected. By deferring a modest longevity increase the Union suggests that it is sacrificing something of value on this issue when in reality, no *quid pro quo* of meaningful permanence on like breakthrough issues has occurred.

The Employer contends that its final offer concerning the longevity increase should be accepted since it maintains internal consistency between the Union and the IAFF and all other City employees, and equitably positions the bargaining unit employees in relation to external comparables.

Discussion

When deciding an economic issue I am left with only the option of choosing between the final offers presented by the parties in the arbitration hearing. In this instance the City offers the same increase in longevity pay to the Union that it negotiated with the IAFF. The Union, solely because it offered the longevity pay increase as a *quid pro quo* for a relaxed residency requirement, sought no increase in longevity pay. The determination of the residency issue clearly determines the issue of longevity pay.

Since I have selected the City's final offer on residency I must select its final offer on longevity pay. It is clear from the past history of negotiations between the parties, that, if the parties had negotiated to conclusion instead of seeking interest arbitration, the Union's members would have received the same longevity pay that the City negotiated with the IAFF. Further, there is no question that the Union would agree that it wants the longevity pay increases if it can't have relaxed residency for its members. Therefore, I award the City's final offer on the issue of Longevity pay.

Non-economic Issue: Entire Agreement

Employer's Final Offer

The Employer proposes to maintain the language of the 1998 through 2001 Agreement. Specifically, that Agreement provides:

Article 39 Entire Agreement

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the Employer has made adequate disclosure of relevant financial matters, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both the parties at the time they negotiated or signed this Agreement.

Union's Final Offer

The Union proposes to delete the words "or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both the parties at the time they negotiated or signed this Agreement."

Additional Background

In the 1995 negotiations the Union presented a proposal to eliminate the last sentence of the Entire Agreement language. This proposal was later dropped by the Union and the Entire Agreement language remained unchanged. In the 1998 negotiations neither party proposed a change in the Entire Agreement language. In the negotiations for the successor Agreement, at the February 20th session of negotiations, the Union proposed that the last sentence of the Entire Agreement language be deleted. The City rejected this proposal. The City's Agreement with the IAFF contains the same Entire Agreement language as is contained in the Agreement between the parties.

Discussion

The Employer maintains that the Union has the burden of justifying departing from provisions that the parties voluntarily agreed to in the past, especially since “There has never been a problem with respect to [Article 39 Entire Agreement] being workable and operational” (Tr.111). The Union counters that the language hasn’t worked, and the parties have ignored it and modified various provisions of the Agreement to maintain consistency with operational changes.

Generally speaking, with respect to issues of this type, the best indication of what the parties would have agreed to if their negotiations had not broken down is what they have agreed to in the past. Consequently, interest arbitrators are fond of saying that the party who seeks to change the status quo bears a heavy burden of justification.

The sole justification provided by the Union is that the parties have not abided by the language in the past. However, the Union has not sought to change this language in any prior contract, and merely saying it wants to change the language now, without proof that it has been harmed by the language, does not justify changing what the parties agreed to in the past. See *Illinois Fraternal Order of Police and Village of Fox Lake*, ISLRB No. S-MA-98-122 (Malin 1999). Accordingly, I conclude that it is more likely than not that if the parties’ negotiations had resulted in agreement, the agreement would have continued the Entire Agreement language contained in Article 39 of the May 1, 1998 through April 30, 2001 Agreement. Therefore, I will award the City’s final offer on this issue.⁶

A W A R D

Based on all of the factors provided in Section 14(h) of the Illinois Public Employees Labor Relations Act, and for the reasons set forth in the opinion above, I award as follows:

1. The Employer’s final offer with respect to Longevity Pay;
2. The Employer’s final offer with respect to language concerning Residency; and
3. The Employer’s final offer with respect to language concerning Entire Agreement.
4. All prior tentative agreements are hereby incorporated by reference.

Chicago, Illinois _____

October 14, 2002

Martin H. Malin, Arbitrator

⁶In so doing, I recognize that this is a non-economic issue and that I am not confined to the final offers submitted by the parties.