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BEFORE THE ILLINOIS LABOR RELATIONS BOARD (ILRB):

IN THE MATTER OF ARBITRATION)
)
between)
)
THE CITY OF BLUE ISLAND)
)
and)
)
BLUE ISLAND PROFESSIONAL)
FIREFIGHTERS ASSOCIATION,)
LOCAL 3547, IAFF)

Marvin Hill, Jr.
Arbitrator

Case No. S-MA-01-190

Hearing Date: December 4, 2001
Submission of Briefs:
February 25, 2002

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I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

The City of Blue Island is a non-home rule municipality with a population of 23,463 people. Its equalized assessed valuation for the year 2000 is \$165,759,152. The City has 136 employees full time and is comprised of seven major departments: police, fire, public works, building, recreation 9-1-1 telecommunication department and general administrative and clerical department. The employees in the police, fire, public works and 911 departments are all represented by four separate

unions. The employees in the other departments are not organized into any collective bargaining unit.

The fire department has twenty-two full time firemen, one secretary and the chief. There are three lieutenants, eighteen firefighters and one fire prevention officer who are members of the bargaining unit, Local 3547. Twelve of these firefighters and the chief have served on the fire department for ten (10) years or more. Ten have been with the city from 1 to 5 years. This unit has been in existence since 1986 and the present contract which is the subject of this interest arbitration will be the eighth collective bargaining agreement between the parties. The last contract which expired on April 30, 2001, was a three year agreement. All contracts coincide with the city's fiscal years which run from May 1 through April 30.

II. ISSUES FOR RESOLUTION

The parties are in agreement concerning a general wage increase of four percent (4%) per year in each of the three contract years. The issues in dispute are (1) equity wage increase, (2) contribution for health insurance, (3) uniform allowance, and (4) residency.

1. Equity Wage Increase

Immediately prior to the hearing, the City was offering a 4% general wage increase in each year of a three-year contract, and the Union was demanding a 7% general wage increase in each year of a three-year contract. At the arbitration, the City adhered to its offer of a 4% general wage increase for each year. The Union reformulated its wage proposal into a demand for a general increase of 4% a year for three years and a demand for an equity wage increase of 3% over three years. Thus, the parties agree that a 4% general wage increase for each year of the contract is appropriate. They disagree on whether an additional 3% amount is necessary as an equity adjustment.

2. Health Insurance

For many years the City has paid 100% of the cost of health insurance for City employees, including firefighters. In May 2001, the City gave all non-union employees a choice of giving up two sick or personal leave days or contributing \$20 a month for single coverage and \$50 a month for family coverage. The latest police contract contains a contribution of \$20 a month for single coverage, \$50 a month for family coverage, and one less sick day per year.

At the beginning of the hearing, the City's final offer on insurance was identical to the provisions in the police contract, i.e. a \$20 monthly contribution for single coverage, a \$50 contribution for family coverage, and reduction of yearly sick days from 12 to 11. The Union's final

offer for insurance was to maintain the City's 100% contribution for health insurance and to forgo one sick day per year. During the hearing the City amended its final offer to require the same individual contributions but with the give-back of one-third of a sick day in each year of the contract. Subsequent to the hearing, the Union amended its final offer to provide for a gradually escalating contribution combined with the give-back of an entire sick day. This gradual escalation reaches \$25 per month for single coverage and \$50 per month for family coverage in the final year of the contract.

3. Uniform Allowance

The current uniform allowance for firefighters is \$400 per year. The City proposes to keep it at that level for the term of the successor three-year contract. The Union proposed that the uniform allowance be increased to \$550 per year.

4. Residency

The City has a requirement that all firefighters must move into Blue Island at the end of their probationary period and must continue to reside there during the term of their employment. The Union proposed a residency area which in essence extends 15 miles north and south of the City limits of Blue Island, is bounded by Lake Michigan and the State line on the east and is bounded on the West by a line running from Downers Grove to New Lenox. The City proposed no change to its current rule. Indeed, the Administration's position is that the issue of residency is not arbitrable.

III. POSITION OF THE UNION

The position of the Union, as outlined in its post-hearing brief, is summarized as follows:

A. WAGES (3% Equity Adjustment)

The Union's wage proposal is justified by the need to maintain internal comparability with the police officers employed by the City and with other employees of the City. The Union acknowledged that the evidence on external comparability was mixed. Of the eight or nine comparable jurisdictions, Blue Island ranks in the middle with respect to fire and EMS runs, firefighters per 1000 population and population density. Starting salaries in Blue Island rank 5th among comparable jurisdictions, while salaries for senior employees rank last. According to the Employer's evidence, Blue Island ranks in the middle with respect to hourly rate, primarily because Blue Island firefighters work fewer hours.

The Union points out that in the last police contract, police officers received raises of 15% to 21% over the term of the three-year agreement. The employees in the Public Works Department

received raises of 90 cents an hour for each of the three years covered by their contract. On a percentage basis, these raises range from just over 4% to over 7%, with almost half of the employees in Public Works receiving more than 5% per year. In the police dispatcher bargaining unit, the starting salary for dispatchers was raised 33% and the salaries for incumbent dispatchers were raised 30%. The Office Manager for the dispatchers received a raise of 26% over the course of the contract.

The evidence on the raises received by policemen is particularly pertinent. Union Exhibit 16 shows that the firefighters have fallen far behind their historical parity with police in the last two years. This disparity exists at virtually every level of seniority and has increased in the last year. The police officers work fewer hours than the firefighters for this higher salary and have roughly equivalent other benefits. Union Exhibit 16 also demonstrates that raises of 8% to 10% are needed now to catch the police.

With respect to the City's argument that firefighters make up the difference because they work overtime, the Union responds that firefighters already work more hours than the police for less salary. Second, the police officers work substantial overtime as well. For the years between 1994 and 2000, for example, police overtime averaged over \$200,000 per year, ranging from a low of \$171,760 in 1994-95 to a high of \$277,093 in 1997-98. Firefighters receive less overtime, averaging about \$115,000 a year for the group. That is what the expenditures were for the most recent complete fiscal year. If the figures from the current year are extrapolated to an annual basis, the firefighter will receive less than that in the current year. Thus, overtime compensation in no way makes up for the difference in the salaries of the two groups.

The Union points out the City did not argue that they were unable to pay for the raises sought by the firefighters. This would be a difficult argument to make, argues the Union. The 3% equity adjustment requested by the Union would cost about \$30,000 a year in an annual budget of over 11 million dollars. While the City ran a small deficit last year, Mayor Peloquin outlined in detail the extensive measures he had taken to put the City on a sound financial footing and to grow the tax base of the City. The City cannot now claim that its resources are inadequate to maintain the historic comparability between its police officers and its firefighters.

Of the eight factors listed in Section 14(h) of the Act, two (lawful authority of the employer and stipulations of the parties), are irrelevant here, in the Union's opinion. The City did not make an inability-to-pay argument at the hearing in this case and such an argument would be difficult if it were made. The parties made no argument or offered any evidence regarding 14(h)(7), changes in circumstances.

In the Union's view this leaves three factors for consideration: (1) internal and external comparability, (2) cost of living, and (3) overall compensation. The parties basically agree that a 4% raise is justified by changes in the cost of living. In this case, internal comparability strongly support the equity increase requested by the firefighters. While the other employees in the City are now receiving different health insurance benefits, this factor also has minimal weight because the monetary values of the firefighters' final offer and the City's final offer are so close. Thus, the

evidence on internal comparability should outweigh any contrary conclusions which might be drawn from external comparability. Accordingly, for the above reasons the Arbitrator should award the Union a 3% equity adjustment in each year of the contract.

B. HEALTH INSURANCE

The final offer on insurance presented by the Union at the outset of the hearing was to maintain the City's historic 100% contribution to the cost of health insurance and to reduce the number of sick days allowed per year from 12 to 11. The rationale for this proposal was simple: all non-bargaining-unit employees of the City had the option to reduce their yearly sick days from 12 to 10. Since firefighter sick days contain 24 hours and all other City employee sick days are for one eight-hour shift, the sacrifice of one 24-hour day seemed reasonable compared to the sacrifice of two eight-hour days. Thus, the original final offer merely took one of the choices offered by the City to its non-union employees and adapted it to the special schedule of the fire service.

At the hearing, the City presented evidence that insurance costs have risen over the life of the current contract. The statistics offered by the City indicate, however, that the rise seems to have leveled off. (City Ex. 2.)

The evidence established that City of Blue Island has paid the full cost of health insurance for at least the last decade. The Union argues that since the City seeks to change the status quo by having its employees pay part of the costs, it bears the burden of proving that its proposal is necessary.

In contrast to the way the City has steadfastly refused to consider any change to its residency requirement, the Union in this case acknowledges its obligation to join with the City and with the other unions representing City employees to deal with the rising cost of health care. The Union is willing to accept the principle that firefighters, like municipal employees in less hazardous positions, should make some contribution to the cost of their health insurance.

Simple math demonstrates the logic of the Union's amended final proposal. Assuming that a firefighter's sick day is worth approximately \$443 (Union Ex. 2), the three-year cost of family coverage for a firefighter would be approximately \$2,243 under the City's amended final offer. Under the union's amended final offer, the three-year cost of family coverage for a firefighter totals a nearly identical \$2,229.

The Union submits the Administration offered no evidence that any specific levels of contributions were necessary to maintain the stability of its health insurance program. Thus, the arbitrator should accommodate the firefighters' desire to phase in their contribution to insurance and to make a greater contribution to the cost of the insurance through the sacrifice of a benefit instead of immediate cash contributions. The Union's proposal accommodates the legitimate interests of the Employer. It accepts the principle that employees should contribute something to currently

spiraling cost of health care. Since the firefighters eventually reach the level which exists in the current police contract, acceptance of the Union's proposal would not unduly prejudice the City's position in negotiations with other collective bargaining units. The Union's proposal merely accounts for the greater value of a firefighter's sick day, something that the City implicitly acknowledges in its amended final offer.

The City has abandoned any argument that might exist in the context of a self-funded plan for its interest in providing a uniform health insurance program for its entire workforce. It has two options in place for its non-union employees. The police have a third option. The City's amended final offer creates yet a fourth plan. In such circumstances, the arbitrator's award will not affect any interest in uniformity.

In conclusion, the City has not carried its burden of proving its final offer is more reasonable than the Union's proposal. Both proposals envision the reduction in sick day benefits to help pay for the rising cost of health care. Given the virtually identical cost of the two proposals, the firefighters' preference to sacrifice more sick time than proposed by the City is entitled to deference, especially since the City has given the same choice to its non-union employees and high-ranking officials. Accordingly, the Arbitrator should adopt the Union's final proposal on health insurance.

C. UNIFORM ALLOWANCES

The Union argues that both internal and external comparables favor the final offer of the Union on uniform allowances.

Internally, the police receive a substantially greater uniform allowance – \$650 – than that proposed by the Union. Indeed, the police received a \$150 increase in their last contract. The Union's final offer of \$550 mirrors that increase and maintains the historic relationship between the two benefits.

Of the eight comparable communities cited by the City, five have cash uniform allowances. Of the five, one is lower than Blue Island, one is the same, and three are higher. The Union's proposal will move Blue Island squarely into the middle of these communities, with three of them having a higher allowance and two of them having a lower allowance. Based upon these comparables, therefore, the Arbitrator should select the Union's offer on this issue.

D. RESIDENCY

1. The Arbitrator Has Jurisdiction To Consider the Residency Issue

The Union rejects the City's position that since residency is within the purview of the Civil Service Commission of the City of Blue Island, the Employer has no power to alter or amend the

rules of that entity. Under Illinois law, the Mayor of the City has the authority to appoint members of the Civil Service Commission and to remove them. The Commission is funded by appropriations by the City Council. Under these circumstances, the Commission is part of the City and an agent of the City. People v. Coffin, 282 Ill. 599, 608 (1918); County of Cook v. ILLRB, 204 Ill. App. 3d 370 (1st Dist. 1990), reversed on other grounds, AFSCME v. County of Cook, 145 Ill. 2d 475, 490 (1991). Accordingly, the City has an obligation to bargain over the actions of the Civil Service Commission. See, Village of Franklin Park v. ISLRB, 265 Ill. App. 3d 997 (1st Dist. 1994) (employer has duty to bargain regarding promotional examination rules promulgated by Board of Fire and Police Commissioners in non-home-rule Village).

Further, argues the Union, the explicit language of the 1997 statutory amendment to the IPLRA gives the arbitrator authority to resolve impasses regarding residency. Specifically, Section 14(i), paragraph two, of the statute now provides that in the case of firefighter matters, “the arbitration decision shall be limited to wages, hours and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000 . . .).” The award may not allow residency outside the State of Illinois. 5 ILCS 315/14(i).

The Union urges that the undersigned Arbitrator should follow Arbitrator Berman’s commonsense reading of the meaning of this amendment in the Cicero decision which, in relevant part, provides as follows:

The General Assembly obviously intended residency requirements to be read *in pari materia* with – to be considered in the same category as – all other “wages, hours and conditions of employment” to which “an arbitration decision shall be limited.” Clearly, the General Assembly considered “residency” a condition of employment.

Town of Cicero, ISLRB No. S-MA-98-230, at 12 (Berman, 1999). Accord City of Blue Island, Case No. S-MA-00-0138, at 2 (Perkovich, 2001) (Union Exh. 20).

According to the Union, Markam v. State & Municipal Teamsters, 299 Ill. App. 3d 615, 618 (1st Dist. 1999), has no relevance to the present case for several reasons. Unlike the provisions of the municipal code at issue in Markam, there is no state statutory provision which requires municipalities to maintain a residency requirement for firefighters or for any other class of employee. Thus, adoption of the Union’s proposal on residency would not put the City “in violation of the provisions of any law.” Instead, adoption of the Union’s provision would result in a collective bargaining agreement which “supplements, implements or relates to” the other statutory provisions regarding civil service.

In summary, state law does not dictate either that municipalities maintain a residency requirement or the contents of such a requirement. The City and the Civil Service Commission could repeal the rule in question at any time. At best, therefore, the rule is optional and cannot override Section 7 of the IPLRA. AFSCME v. County of Cook, *supra*, 145 Ill. 2d, at 486. A municipality has no such discretion regarding the removal of employees under the Municipal Code.

Assuming, arguendo, that Markam is good law, argues the Union, it does not control this case because of the rationale set forth by the Illinois Supreme Court in the AFSCME v. County of Cook decision.

2. **The Firefighters Have a Substantial Liberty Interest in Free Choice of Residence**

Residency is a basic personal decision. Where one lives has an important impact on family and social relationships, in the Union's view. Residency also fixes the choices for social services such as education and health care. It also affects less tangible, but significant, personal lifestyle choices. The Union accordingly submits that in today's day and age, liberty interests of this weight will usually outweigh a municipality's asserted justifications for a residency requirement. Arbitrator Berman made this point in his lengthy and well-reasoned decision on residency in *Town of Cicero*, *supra*, as follows:

In modern American society it seems an anachronism, a vestige of patronage or race or ethnic based politics, to compel the in-town residence of municipal employees of a geographically small town with limited housing opportunities and crowded schools. A residency restriction may make sense (and be less onerous) in Chicago, with its wide choice of neighborhoods, housing, cultural opportunities and schools; it makes less sense in Cicero. Town of Cicero, *supra*, at 42.

The same rationale should apply to this case, the Union submits.

3. **The City Did Not Prove Operational or Community Needs Sufficient To Justify a Residency Requirement**

The Union maintains that neither of the City's arguments for its residency rule hold water.

The evidence clearly contradicted any argument that residency was needed to fight fires. Indeed, the City has never relied on mandatory call back of firefighters to fight fires. Instead, the City has an automatic aid policy. This means that the fire departments in surrounding communities automatically respond to fires in Blue Island. Off-duty firefighters in Blue Island, should they wish to respond to a call, go to the station as backups. The evidence established that many firefighters do not respond to off-duty calls because they have secondary employment. Thus, residency has no bearing on how quickly the Department can respond to an emergency. Further evidence of this point is that the City does not require its paid on-call firefighters to live within the City limits. See, Town of Cicero, *supra*, (existence of cooperation among fire protection districts mitigated concern about ability of employer to fight fires without residency requirement).

The foregoing facts dispel any notion that the special geography of Blue Island requires a residency requirement. As such, the Union argues there is no reason to believe that firefighters must live within the corporate limits in order for the City to properly respond to fires or other emergencies.

With respect to the City's contention that its residency requirement is good for the community, the Union argues the Administration presented no specific evidence on this point beyond the generalized testimony of the Mayor that residency added to the security and stability of the City. Further, the Administration presented no specific evidence that the residency of firefighters or other City employees was essential to the economic health or diversity of Blue Island. It is difficult to imagine that the residence of two dozen firefighters in a City of 23,000 residents could have a significant impact in this respect. Indeed, the Mayor testified at length regarding the successful measures his administration had implemented to revive the economic base of the City.

Moreover, the Administration presented no argument or logic for the proposition that firefighters have some special duty to Blue Island in addition to performing their risky duties in a professional manner. And the City's position regarding the stability of the community is inconsistent with the fact that several high-ranking municipal officials and a group of police dispatchers do not have to live within the City.

In summary, the City's arguments regarding its need for a strict residency requirement do not withstand a rigorous analysis. This Arbitrator should conclude as Arbitrator Berman did in the Cicero case, that the "projected or hypothetical needs [of the City] cannot take precedence over the actual here-and-now freedom of the individual firefighter to exercise a basic right enjoyed by most unincarcerated U.S. residents." Town of Cicero, supra, at 43-44.

4. The Statutory Factors Weigh Against A Residency Requirement

In further support of its position the Union contends that two of the most important factors used by arbitrators, *internal* and *external comparability*, weigh against the City's position on residency.

With respect to internal comparability, the City forthrightly admitted that there are a number of high-ranking municipal officials who live outside city limits. The Administration also conceded that it employs police dispatchers who are not residents. Finally, Arbitrator Perkovich rejected the City's position with respect to the police force in an arbitration decision rendered last summer. (Union Ex. 20)

Addressing external comparability, the Union submits almost all of the comparable communities agreed upon by the parties have less stringent residency requirements than Blue Island. (Union Ex. 24.) The City introduced no evidence that Blue Island had a greater need for a residency requirement than these comparable communities. In addition, the Union notes that only a minority

of suburban communities in the larger Chicago metropolitan area maintain strict residency requirements as well. Town of Cicero, supra, at 33.

5. The Arbitrator Should Not Apply "Breakthrough" Analysis to The Residency Issue

The Union asserts the linchpin of so-called "breakthrough analysis" is that interest arbitrators hesitate to issue awards which contain "breakthroughs" that a party could not have gotten through the collective bargaining process because such awards would encourage interest arbitration instead of collective bargaining. The Union does not quarrel with the general proposition that interest arbitrators should strive to support the collective bargaining process. At the same time it asserts that a mechanical application of the concept of "breakthrough," however, similarly undermines the collective bargaining process.

In the firefighters view, the General Assembly decided that the public interest cannot tolerate the results of poor risk appraisers in the case of police, fire and essential services employees. These employees and their employers must use interest arbitration instead of resorting to economic warfare. In the normal course, where both sides appreciate the risks of litigation, the potential for interest arbitration will drive both sides to settlement. In the case where one side refuses to acknowledge the risks of litigation and is unwilling to consider any discussion of a particular issue, however, the arbitrator must be willing to consider a "breakthrough." Otherwise, a party willing "to pick up its marbles and go home" will be better off than a party committed to the collective bargaining process.

In the Union's view, the interest arbitration process must, in order to motivate good faith bargaining, penalize those parties that poorly estimate their risks or that refuse to acknowledge them. The only penalty that works is the power of the arbitrator to award a breakthrough in the case where one side refuses to engage in collective bargaining over an issue.

According to the Union, that is the situation in this case. The City opposed residency in negotiations for the 1998-2001 contract. At that time the firefighters made a decision that the issue was not worth the time and money required by the interest arbitration process. Having made that decision, the unit should not be barred forever from seeking a contract which allows them to exercise such a basic personal liberty as the right to decide where to live. In this case, the only way to vindicate the collective bargaining process is to adopt the Union's final offer on residency, in the Union's view. In addition to allowing firefighters to exercise basic personal liberties, such an award would send a message that the City cannot put its head "in the sand" when it deals with its unions. This message would go a long way to avoiding an interest arbitration in the next round of negotiations.

* * *

Summarizing the residency issue, the Union contends the era of "company towns" has passed. No private employer would seriously consider a residency requirement in this day and age.

So, too, society has come to value the contributions that public employees make to the overall social good. We are well past the days when public employment was a vehicle to reward personal and political supporters, the Union argues. Public employees are no longer "second-class citizens." Blue Island will truly be an "island" unless the Arbitrator follows the overwhelming evidence in support of the Union's final offer.

IV. POSITION OF THE ADMINISTRATION

The position of the Administration, as outlined in its post-hearing brief, is summarized as follows:

A. WAGES

- 1. The parties' final offer for an annual wage increase of four percent (4%), when analyzed in light of the hours the firemen are required to work to earn their base salary, places their wage structure at or near the top in the South Suburban Area.**

Management initially notes the parties are in agreement that a four percent (4%) wage increase in each of the three years of the contract is fair and equitable. Indeed, this annual increase exceeds the average percentage increase accorded firefighters in all of the external comparable jurisdictions presented in this interest arbitration in the years 2001 (3.75%) and 2002 (3.89%); and is only 0.1% less than the average increase for all comparable municipalities for 2003 (4.10%). (Union Exhibit 8 and City Group Exhibit 1). The Administration also notes the parties are in agreement that all step (longevity) increases should be implemented on an employee's anniversary. Finally, the parties agree that the wage scales, as represented in the recently expired Collective Bargaining Agreement, should be merged together in the manner reflected in the city's wage proposal. Because of this merger the longevity language set forth in Article 18 is no longer necessary and should be deleted from the contract.

Upon implementation of this wage increase, the base salaries of the Blue Island firefighters, analyzed in light of hours required to be worked to earn those base salaries, rise to a level of not less than third, and more likely second or first, when they are accurately compared to those in all of the external jurisdictions submitted for comparison. This conclusion finds compelling and uncontroverted evidentiary support in the record and results because the city's firefighters are able, by their own admission, to earn their base wage by working an average of 213 hours, or 4.4 of their work weeks, less than the average hours worked by firemen in all comparable municipalities. (Union Exhibit. 10). They are also able to earn, and in the city's fiscal year ended April 30, 2001, did in fact earn in overtime an average in excess of \$5,000 per firefighter. Management notes they did this without working even one (1) hour more than the average minimum required of all firefighters in every other municipality used for comparison, and this advantage is continuing. (City Group Exhibits 6(A) and 6(B) and Tr. 113-120).

These truths are unassailable and cannot be overlooked or ignored. They stand as proof positive that the wages paid to the city's firemen, when accurately compared to those of their counterparts, are comparable or better than virtually all wages paid for hours worked in the South Suburban Area.

2. The City objects to the consideration of the 3% equity-adjustment issue since it was never raised during negotiations which led to the present impasse.

While the city continues its objection to the union's tactic of proposing an "equity adjustment" for the first time on the day of arbitration, it nevertheless addresses the substance of this issue with the reservation that it is not conceding this subject is properly before this Arbitrator for consideration and decision.

Analysis of the parties' past collective bargaining agreement reveals that all are devoid of any reference to an "equity adjustment." This concept, to say the least, is conspicuous by its absence as a subject that exists in any agreement with any union representing employees in Blue Island. Simply put, there are no internal comparisons to aid the firefighters in their belated attempt to make this breakthrough. Indeed, this total paucity of evidence militates against an award of any "equity adjustment."

In a similar vein, "equity adjustments" are absent from the Agreements submitted into evidence for Burbank, Chicago Ridge, Matteson, Oak Forest, Park Forest, Riverdale, Worth and Forest Park. While the Midlothian agreement did provide for a 1.25% adjustment in 1999 and 1.0% in 2000, even it is silent on the subject for 2001. Again, this absence of evidence in the external comparables mandates a conclusion to deny the union's request.

Management also contends that the Audited Annual Financial reports submitted by the City in City Group Exhibit 4 also establish conclusively that the Administration does not have the financial wherewithal to support payment of this "equity adjustment." Six years of reports were submitted into evidence. Each report, from fiscal year ending April 30, 1997 through fiscal year ending April 30, 2000, reveals that the city expenses paid from the general fund have exceeded the city's general revenues. (City Group Exhibit 4). While management has not employed these reports to support any claim that a general wage increase of less than four percent (4%) is warranted, it is eminently clear that there are no extra funds available to pay more. Again, the evidence of a negative general fund balance of \$576,076 as of April 30, 2000, standing alone, compels a conclusion that an award of anything other than the four percent annual general wage increase, which the parties have agreed is a fair general wage increase, is not in the interests and welfare of the public and certainly exceeds the financial ability of the city to pay.

The firefighters have also failed to establish any compelling economic need for their so called annual "equity adjustments." Indeed, the agreed upon annual general wage increases of four percent (4%) outpace the historical increases in the Consumer Price Index-All Urban Consumers, U.S. City

Average and Chicago-Gary-Kenosha IL-IN-WI, for every year in the last decade. (City Ex. 5A and 5B) The four percent (4%) annual wage increments also fit nicely within the average wage increases allowed in the comparable communities for 2001 (3.75%), 2002 (3.89%), and 2003 (4.10%). (Union Ex. 8). Finally, when \$2,000 (which is the approximate sum of a 3% equity adjustment and a \$600 contribution for health care), is subtracted from \$62,095, which is the amount of Total Compensation with Insurance for the year 2001 paid by Blue Island, as represented in Union Exhibit 15, the value of city's total compensation package for its firefighters still exceeds that of every community, with the exception of Chicago Ridge and Forest Park. When the cocktail of statistics in Union Exhibit 15 is fully analyzed and digested, Blue Island probably becomes #2, since examination of the Chicago Ridge Agreement reveals that the value of \$6,933 attributed by the union to the holiday benefit is highly inflated and not even remotely close to the correct amount. While admittedly, the city is not #1, its ranking of 2 or 3 places its firefighters in the top one-third of the pack and renders their cry for an "equity adjustment" mute. This conclusion finds further support when one considers that the city's Equalized Assessed Valuation is only 6th of the ten comparable communities represented in Union Exhibit 26, while its population and the number of citizens it must serve ranks 3rd. (City Group Exhibit 1 and Union Exhibit. 26).

With respect to the argument that the firefighters require an equity adjustment to retain parity with the police unit, the City points out that eleven members of the bargaining unit (50%) earn base salaries that exceed the highest levels shown for FF6+ and Lieutenant.

The evidence of internal and external comparability, when coupled with the financial reality that the City is expending more than its revenues will support, justify denial of the Union's final offer seeking annual "equity adjustments" of 3% over and above the general wage increase. The favorable comparison of the value of city's total compensation package with the value of those in other communities also provides ample support to deny this request. Finally, the fact that this issue was never discussed in negotiations, that its details are sketchy at best and that little, if any credible evidence was presented to demonstrate a compelling reason to break new ground in this Collective Bargaining Agreement, all supply adequate rationale for this Arbitrator to avoid imposing an entirely new benefit at this time which is unrelated to anything in the parties bargaining history.

B. HEALTH INSURANCE

Management's final offer concerning employee contribution for health insurance is consistent with contributions made by employees in the City's other three bargaining units and in accordance with the prevailing norm in comparable communities.

The City's final offer concerning this issue is straightforward and consistent, in every regard, with the agreements reached with its other collective bargaining units. The offer asks for premium contributions of \$50/month for firefighters selecting family coverage, \$20/ month for those selecting single coverage and an agreement that each member of the bargaining unit give up eight (8) hours of sick leave from their annual allotment of 288 hours. The proposal also requests that the premium

contribution and return of sick leave be made retroactive to May 1, 2001, which is the beginning of the term of the collective bargaining agreement being arbitrated.

When comparisons are drawn between the City's final offer and the agreements reached between the City and its other employee unions, the compelling conclusion is that management's final offer is not only consistent, but fair and equitable, in the Administration's opinion. Examination of the contract between the City and its sworn police officers reveals that these employees make premium contributions of \$50 per month for family coverage and \$20 per month for single coverage. It also establishes that this contribution was made retroactive to May 1, 1999, which was the beginning of the term of the agreement. (City Group Ex. 3, Letter Dated August 17, 2000, Paragraph 4 and Article XVI, §16.1, Page 21, of Agreement with the Fraternal Order of Police Labor Council).

The Agreement between the City and AFSCME, for the period from May 1, 2000 through April 30, 2003, requires the exact same premium contribution as is proposed in the City's final offer to the firefighters. Similarly, AFSCME member contributions were also made retroactive to July 1, 2000. .

The Agreement with the City's 911 telecommunicators also provides for insurance premium contributions which match those in the City's final offer for the firefighters. Because this agreement with the telecommunicators did not provide for any wage increase in the first contract year, there was no request for a retroactive premium contribution. However, these employees began contributing in the same manner as those in the other two unions mentioned above when their new wages became effective.

Analysis of these other agreements also establishes that these three bargaining units have all agreed to a reduction in sick leave of eight hours per year. As a result each employee in these three unions now receives a maximum of 88 hours of sick leave in a twelve month period; an allotment which pales in comparison to the annual 288 hours of sick leave accorded every firefighter.

As part of City Group Exhibit 1, the City also provided an analysis of insurance premium contributions made by firefighters in comparable jurisdictions. Significantly, all but one of the communities require employee contributions in percentage or dollar amounts. While minimum and maximum contributions may vary, the evidence of external comparables clearly substantiates that premium contributions equal to or greater than those the city has proposed are not only prevalent in the communities analyzed, but represent the norm.

The City points out that Blue Island is the only community which pays 100% of a firefighter's post-retirement insurance premium upon retirement after twenty years of service. Full payment of this benefit, described in Article 23, §23.4 of the existing Agreement, is unique to the firefighters in Blue Island. It is a benefit that is paid for by the City on behalf of the firefighters regardless of their age at retirement. It is unequalled by any of the jurisdictions included as external comparables and unmatched in any of the other agreements with bargaining units that presently exist

in Blue Island; all of which require the employees to not only work twenty years, but to also reach minimum ages of 50 or 55 before obtaining this benefit.

In support of its proposal the Administration also points out that Terrence Sullivan, the City's Insurance Administrator, established that Blue Island's health insurance costs are indeed substantial, that these costs have exceeded \$1,100,000 in the last two insurance contract years and will, in all likelihood, equal or exceed that amount when the current year expires. When viewed against this evidentiary backdrop, the City's final offer seeking an annual contribution of \$240 for single coverage against a premium cost which exceeds \$5,000, or an annual contribution of \$600 for family coverage against an expense of almost \$13,000, along with a return of eight hours of sick leave, is not only reasonable but financially prudent, necessary and warranted.

The Administration also notes that it has had a Section 125 IRC plan in place for its employees, including its firefighters, since July 1, 2000. For whatever reason, the firefighters have chosen to ignore the invitation to participate and realize the benefits and financial advantages of this program. While the City is committed to continuing this benefit and allowing all employees to participate, it can only do so in accordance with the provisions of the Internal Revenue Code. For this reason the City is uncertain as to the wisdom of including this in a new collective bargaining agreement and prefers leaving the plan as a voluntary program, available to the firemen but not mandated by the Collective Bargaining Agreement.

In closing, the City acknowledges that since it is seeking to vary its current practice of paying 100% of all health insurance costs it has the burden of proof to establish a sound rationale for the change. The Administration submits the body of evidence it has presented concerning internal and external comparables and financial cost data provides overwhelming proof to support this change and to warrant selection of its final offer. In contrast, the firefighters failed to supply any legitimate reason for their proposal that they be treated differently than the employees in all other bargaining units. While it is correct that non-represented city employees are given an option to either contribute money and give up one sick or personal day, or give back two days and pay nothing, it is also important to note that the selection of this second choice requires a non-union employee to give back one-eighth of their total annual sick and personal leave; while one day for a firefighter, as they have proposed for year one, is only one-sixteenth of their 384 hour annual allotment.

The City's final offer regarding this issue clearly represents a legitimate choice and one which would reproduce the agreement the parties might have reached in the course of successful negotiations. For this reason it should be selected.

C. UNIFORM ALLOWANCE

The City's final offer to pay an annual cash allowance of \$400 for each member of the bargaining unit for the term of the contract is fair and equitable.

The current clothing allowance is \$400. Additionally, the City pays for and provides all protective clothing which consists of bunker coats, bunker pants, bunker boots, helmets and eye shields, gloves and nomex hoods." In essence, the firefighters must only purchase shirts, pants, shoes, a belt, collar brass and name pins from their annual \$400 allowance. The City's proposal to continue this existing \$400 annual payment and practice is fair, equitable and amply supported by all of the evidence presented concerning this issue.

The City submits that when deciding economic issues in an interest arbitration the elements of 5 ILCS 315/14 (h) (2000) should be analyzed and, if applicable, utilized as a basis for the arbitral decision. One of these factors which is significant and worthy of consideration in deciding this issue is the comparison of what is paid and provided to members of this bargaining unit with the amounts paid to members of other employee bargaining units in the city. When these parallels are drawn, it is evident that the city's proposal should be selected.

Management submits it currently has three other bargaining units with collective bargaining agreements providing for uniform allowances. These units are the Police Labor Council for sworn full time police officers, AFSCME Council 31 for public works employees, and the police civilians and the Fraternal Order of Police Labor Council for 9-1-1 Telecommunicators. (City Group Exhibit No. 3) The clothing allowance received by sworn police officers is \$650 per contract year effective May 1, 2001. While this amount is admittedly more than the City's proposal to the firefighters, it must be noted that police officers must purchase their entire uniform, including firearms and ammunition. They also work and must be in uniform five or six days each week as compared with the firefighters, who only work two days in a comparable time period. Finally, the police officers did not receive a uniform allowance in either of the first two years of this contract.

Members of AFSCME who work in public works receive a clothing allowance of \$300 each year for the purchase of steel toe boots, underwear and other clothing. The police civilians in this unit receive \$400 per year and must use this to pay for their entire uniform. Again, unlike the firefighters, all of these employees must be in uniform during a conventional work week of five days.

The 911 telecommunicators receive a clothing allowance of \$450 per contract year. However these employees, like their counterparts in the police department, must provide for and maintain their entire uniform and dress professionally five days a week.

These internal comparisons clearly establish that the City's proposal to its firefighters is fair and equitable. They also provide clear and convincing evidence that the allowance offered by the city to the firemen is equal to or greater than that provided to most of the other city employees who receive this benefit.

With respect to external comparables, City Group Exhibit No. 1 establish that the City's final offer of \$400 per year for a cash uniform allowance falls squarely in the middle of the comparable communities. Indeed, of the five comparable communities that pay a cash clothing allowance only Chicago Ridge pays more, at \$650 per year, while Blue Island, Oak Forest and Riverdale all pay

\$400 annually, with Park Forest paying only \$365. Three communities, Matteson, Midlothian and Worth, have a quartermaster system with no cash allowance, while Burbank employs a voucher system with a limit of \$700. Again, the Blue Island firemen are equal to or greater than most of their counterparts in other municipalities and the city's offer to continue in this manner finds abundant support from this evidence. (City Group Exhibit No. 1, Uniform Allowance Comparison).

In summary, the internal and external comparables, coupled together with the credible and unrebutted testimony of the Fire Chief, provide overwhelming support for the selection of the City's final offer. The Union's wholesale failure to substantiate its request only buttresses this conclusion. For these reasons, the city's final offer to continue to pay \$400 annually should be adopted.

D. RESIDENCE

1. THE ISSUE OF RESIDENCY IS NOT ARBITRABLE

- a. Residency of all members of the bargaining unit is required pursuant to the Rules and Regulations of the Civil Service Commission for the City of Blue Island.**

The City of Blue Island, a non-home rule municipality, has adopted Division 1 of Article 10 of the "Illinois Municipal Code," 65 ILCS 5/10-1-1 et. seq., providing for a Civil Service System in the City of Blue Island. Pursuant to its statutory authority the Civil Service Commission has enacted and implemented Rules and Regulations which include, among others, a requirement that members of the Classified Service become domiciled within the City of Blue Island and remain so domiciled for as long as they remain in the Classified Service. All full time firefighters working in the fire department are members of the Classified Service and, as a condition of their employment, are subject to the jurisdiction and Rules and Regulations of the Civil Service Commission.

Management points out that Article XI, Section 11 of the Rules of the Civil Service Commission provides:

Removal of non-resident officers or employees. All officers or employees with the Classified Service of the City of Blue Island, with the exception of temporary appointees, shall, within one year from the effective date of their appointment, become domiciled within the City of Blue Island and remain domiciled therein so long as they remain in the Classified Service. Failure to observe the foregoing requirements as to domicile shall be deemed sufficient cause for removal from the Classified Service. Nothing herein contained, however, shall prevent the Commission from granting a temporary suspension of the operation of the rule in any individual case upon written application therefore made to the Commission and supported by a good and sufficient reason.

It cannot be disputed that the Commission has the authority to promulgate this rule and to enforce its application. Harvey Firemen's Association, et. al. v. The City of Harvey, et. al., 75 Ill.2d 358, 389 N.E.2d 151, 1979 Ill. Lexis 277 (1979). As such, in management's view, the parties to this collective bargaining cannot change the statutory grant of authority empowering the Commission to make this rule or to enforce its application and have expressly agreed, in Article 10 of the existing and past collective bargaining agreements, to the Commission's rule making power. (City Group Ex. 3) Likewise, this interest arbitration cannot modify or alter this authority. Accordingly, the City submits that this issue is not arbitrable and that the present Arbitrator is without authority and jurisdiction to consider and decide it in this case.

- b. As a non-home rule community, the City of Blue Island has no authority to decide which parts of the state statute authorizing the adoption of a Civil Service System and Classified Service it may adopt, alter, amend or abolish. Likewise, neither the city, the union nor an arbitrator has any authority or power to direct the Civil Service Commission to change or alter its validly enacted Rules and Regulations in a manner which effectively circumvents its authority and ignores the statutory mandates and requirements of 65 ILCS 5/10-1-1 et. seq.**

Management submits the Union is asking the Arbitrator to impose an award concerning residency which circumvents the lawfully enacted Rules of the Civil Service Commission, and which the City has no authority to impose on its own. As a non-home rule entity, Blue Island possesses no inherent governmental powers not specifically provided by the General Assembly. Ill.'Const. 1970, Art. VII, § 8. Because of this fact, the City argues it has no ability to direct the Civil Service Commission to change its rule requiring residency, to alter or amend the Commission's disciplinary prerogatives if this residency requirement is violated or to make a choice as to which portions of 65 ILCS 5/10-1-1 et. seq. it will implement and follow. In this same vein, the City cannot be ordered to bargain away or to even bargain a compromise of the Commission's lawful authority to mandate residency as a continuing requirement for employment. City of Markham v. State and Municipal Teamsters, Chauffeurs and Helpers, Local 726, 299 Ill. App.3d 615, 701 N.E.2d 153, 1998 Ill. App. Lexis 655 (1st Dist. 1998) and Will County Board and Sheriff of Will County and American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, (Nathan, 1988) and City of Decatur and Police Benevolent and Protective Association Labor Committee, S-MA-93-212, (Perkovich, 1994), discussed in *Brief for the Employer* at 19-23).

For the above reasons the City respectfully submits the residency issue is not arbitrable and asserts the Arbitrator is without authority and jurisdiction to alter the legal mandate of the Civil Service Commission requiring residency for members of the Classified Service in Blue Island.

- c. It is part of the integral duty and function of the Civil Service Commission to determine what constitutes cause for discipline or discharge. This function cannot be delegated or abrogated by a Collective Bargaining Agreement.**

Citing Parisi v. Jenkins, 236 Ill. App.3d 42, 603 N.E.2d 566, 1992 Ill. App. Lexis 1318 (1st Dist. 1992) , Harvey Firemen's Association v. The City of Harvey, and City of Markham v. State and Municipal Teamsters, Chauffeurs and Helpers, Local 726, *supra*, the City maintains it is apparent that the Civil Service Commission possesses the absolute authority under the law to impose a residency rule and to consider its violation cause for discharge. It is also clear that this rule making authority is exclusively within the lawful province of the Commission, has been explicitly recognized by the parties in Article 10 of their existing and past Collective Bargaining Agreements and may not be unilaterally abrogated or altered by a Collective Bargaining Agreement or an interest arbitration award. Accordingly, the City requests a ruling that the issue is not arbitrable and that the Arbitrator is without authority and jurisdiction to consider and decide this matter.

2. THE BURDEN OF PROOF IN THIS PROCEEDING FALLS SQUARELY UPON THE UNION. IT IS PROPOSING A BREAKTHROUGH AND SEEKS TO IMPLEMENT AN ENTIRELY NEW PROVISION IN THE COLLECTIVE BARGAINING AGREEMENT WHICH WILL MARKEDLY CHANGE THE PRODUCT OF PREVIOUS NEGOTIATIONS BETWEEN THE PARTIES.

The Administration asserts the firefighters' proposal represents a radical departure from the existing rule of the Blue Island Civil Service Commission mandating residency within the city. It also requires the crafting of language which would effectively abrogate this lawfully enacted rule, gutting its efficacy, and providing a breakthrough for members of the fire department which is at total variance with the existing practices and policies of the city as they concern mandated residency for full time firefighters.

In contrast to the firefighters, the City has simply proposed preservation of the "status quo," maintaining that the existing rule of the Civil Service Commission be left intact without modification or change. Indeed, Article 10 of the most recent labor agreement acknowledged and accepted the Commission's rule making authority, expressed the mutual intention not to replace or diminish it in any way and did so at a point in time subsequent to July 24, 1997, which was the effective date of the amendment to the Illinois Public Labor Relations Act that permitted firefighters to seek to change residency requirements through interest arbitration. Blue Island firefighters, for whatever reason, chose not to do so and should now be required to bear the burden of proof to justify this proposed change.

Management asserts that in arbitration cases when changes in residency requirements have been proposed, the burden has been placed on the party seeking the change. Management points out this was the decision in Village of University Park and I.A.F.F. Local No. 3661, S-MA-99-123 at pages 15 and 16 (Finken, 1999) and was also the determination in City of Nashville and Fraternal Order of Police Labor Council, S-MA-97-141, at page 17 (McAlpin, 1999), discussed (*Brief for the Employer* at 25-27).

In the instant case the Union's proposal, like that of the Village of University Park, is clearly seeking radical change, in the Administration's view. As in Village of University Park, the Union, as the proponent, should be compelled to bear the burden of proof to support its proposition. Similarly, like the union in City of Nashville, the Blue Island firefighters desire to change the status quo which they agreed to accept three years ago. Like the union in City of Nashville, the firefighters should now bear the burden to show the change which they request is justified.

3. THE RECORD, WHEN VIEWED IN LIGHT OF THE DECISIONAL CRITERIA SET FORTH IN 5 ILCS 315/14 (h), COMPELS A CONCLUSION THAT THE EMPLOYER'S FINAL POSITION TO RETAIN RESIDENCY AND MAINTAIN THE STATUS QUO IS MORE REASONABLE THAN THE UNION'S DEMAND TO LIBERALIZE AND EFFECTIVELY ELIMINATE THE EXISTING RESIDENCY REQUIREMENT.

- a. **The fundamental principle underlying interest arbitration is that it is an extension of the bargaining process which develops a resolution the parties themselves might have achieved. It is "essentially conservative" and when one party seeks to implement entirely new benefits or procedures or wishes to markedly change the product of previous negotiations the onus is on the party seeking the change.**

The Administration asserts its position represents a much more realistic approximation of the result of a negotiated settlement that the parties might have achieved and it is clearly reflective of the parties' present expectations concerning residency, given the fact that all members in the bargaining unit knowingly accepted this condition when they ratified the last collective bargaining agreement.

While the City's position does have the effect of preserving the status quo, the Union has offered no substantial evidence to support its contention that the system, as it exists, does not work, that it creates inequities or hardships that cannot be positively addressed or that the city has ever resisted any attempts at the bargaining table to address real problems that have resulted. The Union essentially argues, without evidentiary support, that the system is "anachronistic" . . . and urges change simply because of this. This unfounded conclusion is evidence of nothing and does not warrant the radical departure the Union seeks.

- b. **The final offer of the City is the only one of the two presented in this arbitration which comports with the lawful authority of the employer and the reasonable expectations of the parties.**

The first criterion set forth in 5 ILCS 315/14(h) upon which an arbitral award must be based is the lawful authority of the employer. The City's position in this regard requires no further elaboration or analysis. It is certainly lawful because it does not seek to alter or modify a legal rule,

promulgated by an independent commission, concerning a qualification of employment for employees over which it exercises statutory control. The Union's proposal, on the other hand, ignores this lawful authority entirely and dismisses, out of hand, the fact that the Civil Service Commission is legally empowered to impose residency as a continuing qualification and condition of employment.

The Administration further asserts the Union's proposal also ignores a very real and pertinent fact which was proven and never rebutted at the hearing. Each member of the bargaining unit is informed at their orientation before engaging in the testing process, that residency within Blue Island is a condition they must meet. If "residency" is something the applicant does not condone, then it is his choice to walk away. The knowing choice to seek and accept employment with the condition of residency is made by each individual. They are then allowed one full year to determine if the choice is correct. If it proves unacceptable, they are free to leave and seek other employment more suitable to their needs and those of their families.

c. The City's proposal is clearly more representative of the interests and welfare of the public.

The City's evidence and testimony established that residency has been utilized in a positive manner with beneficial results. To this end Mayor Donald Peloquin testified that residency of the city employees is considered important in the community because it adds a sense of security in the neighborhoods. He also indicated that people and organizations that he comes in contact with as Mayor want to see residency continue. The Fire Chief testified about the importance of early and rapid response to emergencies and fires. While the Union tried to downplay the obvious importance and advantage of having its members live in Blue Island where they retain a close presence to the fire stations where they work, they brought forth no convincing evidence to counter the city's very real operational concern for having its firefighters live in the neighborhoods where they work so they are available as the first source to respond when needed.

When the evidence presented is examined in light of this factor it is obvious that residency of the firefighters in Blue Island is clearly more representative of the public welfare and interest than the Union's position.

d. External comparables.

Management acknowledged that the submission of external comparables suggests that a number of communities have opted to either relax or eliminate residency. However, when considering a non-economic issue like residency, external comparables, while entitled to some consideration, should not be accorded undue weight. This is particularly true where the parties have an established bargaining relationship which the firefighters are now seeking to change.

The Administration points out that another potential deficiency in this "evidence" which detracts from its weight is that no testimony or documents were presented to explain the rationale

each municipality employed when deciding whether residency, or some variation, should apply within the community. The Union's submission indicates nothing in this regard. Likewise, it is not known whether collective bargaining or other extraneous factors resulted in the residency requirements, their relaxation, their absence or new restrictions.

Finally, there is no explanation or testimony which shows whether the residency policies are uniform as to all employees in the external municipalities, are enforced or what underlying circumstances in each community might exist to support the myriad policies exhibited by this presentation.

- e. **The evidence presented concerning "internal comparables" establishes that there is a reliable history in the City of Blue Island in its relationships with its three other Collective Bargaining Units that is consistent with its position that residency should not be changed.**

The city presented evidence of its collective bargaining agreement with the three other Unions that represent its employees. (City Group Ex. 3) Each of these agreements exhibit that the City has been consistent in its bargaining history regarding the issue of residency, mandating residency in two and refusing to quietly acquiesce to an arbitral decision ordering change in the other.

The current contract with the American Federation of State, County and Municipal Employees (AFSCME) requires residency within six months. The contract with the Fraternal Order of Police (FOP) 911 Telecommunicators also allows the city discretion to require residency for all employees hired after its effective date, on September 23, 1997, a requirement the city has opted to impose. Its allowance for relaxed residency is extremely limited and only applies to persons employed and living elsewhere when the contract was negotiated. Even these employees must request the Mayor's approval if they elect to move from the community in which they lived when the contract was signed. Management conceded that residency was relaxed for these employees in the interest of fairness since they had been hired to work in the city's new 911 telecommunications center when qualified personnel were needed to operate the system.

While an unfavorable arbitral decision concerning residency of the sworn police officers was recently entered by Arbitrator Perkovich, the City recently filed suit seeking to overturn the decision and has steadfastly maintained that its policemen should live in town. This suit is pending and undetermined in the Circuit Court of Cook County as Case No. 01 CH 21554.

These internal comparables clearly reveal a reliable history and stand, as convincing proof that the City's position is both realistic, reasonable and has been accepted by other bargaining units. These internal comparisons also support the city's position that its offer represents a much more realistic approximation of the result of a negotiated settlement. Finally, they serve as cogent evidence to counter and rebut the Union's position, which essentially calls for a breakthrough,

exhibiting that the city has been earnest and steadfast in adhering to its position regarding residency for its full time employees.

* * *

The City submits the record reveals that the existing residency requirement works and is beneficial to the community and its employees. No examples of any real hardships have been presented by the Union and no evidence has been brought forward to establish that the City has refused, in any way, to address real problems caused by residency. Management's final position represents a realistic and reasonable resolution of this issue. While it does preserve the status quo, nothing of substance has been presented by the Union to warrant the radical change its seeks.

The City also submits that the record is also devoid of evidence sufficiently persuasive to support a solution that falls somewhere in between the positions of the parties. Management has shown that its policy is fair, uniformly enforced and is made known to all members of the Union before they become employees. The City's final position directly reflects every expectation its employees ever had regarding residency and its own expectation that residency would remain intact.

For all the foregoing reasons, the City of Blue Island respectfully requests that its final offer to maintain residency for the firefighters be awarded.

V. DISCUSSION

The parties agree the arbitrator is directed by Section 14 of the IPLRA, 5 ILCS 315/14 (g) - (h), to decide each of the disputed issues in accordance with the following criteria:

(g) . . . As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the 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.
 - (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.

Subsection (i) in this case is critical and, in relevant part, provides:

In the case of fire fighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but to those residency requirements shall not allow residency outside of Illinois) and shall not include the following matters: i) residency requirements in municipalities with a population of at least 1,000,000; . . . Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the facts upon which the decision may be based, as set forth in subsection (h).

Because Section 14 of the IPLRA provides that the decision be based on the factors only "as applicable," some of the factors enumerated in the statute may not be relevant or controlling.

Further, under the IPLRA, other factors not enumerated may be relevant to the disposition of the case.

Also noteworthy, Section 14(k) of the Act provides for judicial review of interest arbitration awards, but “only for reasons that the arbitration panel was without or exceeded its authority; the order is arbitrary, capricious; or the order was procured by fraud, collusion or other similar unlawful means.” There is no provision allowing appeal or reversal of an award simply because a court, applying its own notion of industrial or social justice, would reach a different decision.¹

A. Equity Wage Increase

As noted, the Administration has offered a 4% general wage increase in each year of a three-year contract. Further, the evidence record indicates the Union initially demanding a 7% general wage increase in each year of a three-year contract. At the hearing, the City adhered to its offer of a 4% general wage increase for each year. The Union, however, reformulated its wage proposal into a demand for a general increase of 4% a year for three years and a demand for an equity wage increase of 3% over three years. While the parties agree that a 4% general wage increase for each year of the contract is appropriate, at issue is an additional 3% which the Union terms an “equity adjustment.”

Aside from the legality of structuring a wage increase in two parts,² in this case a general wage component of 4% and an equity component of 3% over and above the general wage increase, the Administration clearly makes the better argument regarding the Union’s equity wage proposal.

Particularly significant is an analysis of salary increases in the relevant bench-mark city jurisdictions. Union Ex. 8 is telling:

1 See, e.g., *Town of Cicero v. Illinois Association of Fire Fighters, IAFF Local 717*, Case No. 00 CH 17698 (2001), reversing the decision of Arbitrator Herbert Berman, ISLRB Case No. S-MA-98-230, FMCS No. 980413-08379-A (1999)(accepting the union’s position on relaxed residency).

2 I have serious reservations whether the Union’s “bifurcated offer” on the impasse category “wages” is, in fact, a valid final offer under the Act. The Union’s wage proposal is, by all accounts, one calling for a 7% increase in each year of the collective bargaining agreement. The fact that the parties have agreed on a 4% general increase is not dispositive of the issue. For the reasons stated in this opinion, *infra* at 25-27, I have not awarded the “so-called” 3% equity component. It would be a mistake to cite this award for the proposition that Arbitrator Marvin Hill found such a structured wage offer permissible under the statute.

TOPOUT SALARY PERCENT (%) INCREASE

	2000	2001	2002	2003
Oak Park	4.0%	4.0%	4.0%	negotiations
Matteson		4.0	4.0	4.0
Forest Park		3.0	3.0	4.0
Riverdale	6.0	negotiations	negotiations	negotiations
Chicago Ridge		5.0	5.0	5.0
Midlothian	4.5	3.5	negotiations	negotiations
Worth	3.75	3.75	4.25	4.50
AVERAGE (source: Union Ex. 8).	4.56%	3.75%	3.89%	4.10%

Based on external criteria, there is no justification for an increase of seven percent.

I also credit the Administration's argument (*Brief for the Employer* at 13-14) that when \$2,000 (which is the approximate sum of a 3.0% equity adjustment and a \$600 contribution for health care) is subtracted from \$62,095, which is the amount of total compensation with insurance for the year 2001 paid by Blue Island (Union Ex. 15), the value of the City's total compensation package for its firefighters still exceeds that of every community, with the exception of Chicago Ridge and Forest Park.

What of the Union's parity argument?

Some arbitrators and fact finders have ruled that they have no special duty to correct previous job inequities between police and fire units within a city. This is because the parties themselves presumptively had control over salaries and benefits previously negotiated, at least in those cases where salary structures remain outside the mandate of arbitrators' interest awards. Arbitrator Elliott Goldstein outlined this principle in *City of DeKalb v. DeKalb Professional Firefighters Ass'n, Local No. 1236*, Arb No. 87/127, Illinois Labor Relations Board (Goldstein, Chair. 1988)(unpublished):

It is not the responsibility of the arbitration panel to correct previously negotiated wage inequities, if any. The concern of the panel and its authority to evaluate comparisons is limited to the current agreement. This is because the parties themselves had control over salaries and benefits previously negotiated. They alone decide whether the "disparaty" in

either base pay or overall compensation between the FOP and IAFF was a pertinent consideration in their deliberations; and if so, whether the agreed-upon salaries and overall compensation would meet, exceed or fall below either FOP or the AFSCME unit. The chair must presume that in the past the parties reached agreement in good faith and considered all the factors they believed pertinent.

However, another interest neutral found parity a major consideration, especially where relationships were long term: "Wage parity among Metropolitan Dade County employees is a historical fact." See, *Metropolitan Dade County v. AFSCME Council 79, Local 121*, Dec. No. SM-89-019 (Levine, Arb. 1988)(unpublished).

I have studied Union Ex. 16 comparing salaries of firefighters and police officers. The exhibit indicates a difference of \$637 (starting) to 3,374 (patrolmen vs. firefighter six-plus years) in favor of the police unit. Without further analysis, Union Ex. 16 would call for some equity adjustment.

Union Ex. 16, however, does not complete a valid picture. In this respect the City submits that comparing only the wages of the police officers and firefighters to substantiate a claim for equity is inappropriate. According to the Administration, benefits such as sick leave and personal leave also have a quantifiable value and cannot be ignored. Management notes that in Blue Island the firefighters have 384 hours of this leave available annually, compared to only 120 hours for the police. The additional dollar value of this benefit for even the lowest paid fireman, when compared to its value for the highest paid patrolman, approaches an excess of \$2000.00. The Administration also pointed out that other major differences in the police and fire contracts, such as work schedules, Kelly days and the provisions for retiree health insurance, that are all favorable to the firefighters also favor its position (*Brief for the Employer* at 15). The Administration also notes that one half of the bargaining unit earn base salaries that exceeded the highest levels shown in the exhibit for firefighter six-plus and lieutenant.

On this evidence record, and applying the applicable statutory criteria for selecting economic proposals, management's position on the 3% equity wage increase is sustained.

B. Health Insurance

The City's initial final offer on insurance was identical to the provisions in the police contract, i.e. a \$20 monthly contribution for single coverage, a \$50 contribution for family coverage, and reduction of yearly sick days from 12 to 11. The Union's final offer for insurance was to maintain the City's 100% contribution for health insurance and to forgo one sick day per year. During the hearing the City amended its final offer to require the same individual contributions but with the give-back of one-third of a sick day in each year of the contract. Subsequent to the hearing, the Union amended its final offer to provide for a gradually escalating contribution combined with

the give-back of an entire sick day. This gradual escalation reaches \$25 per month for single coverage and \$50 per month for family coverage in the final year of the contract.

There is no question that the City makes the better case when *internal criteria* are considered. Specifically, the police officers make premium contributions of \$50/month for family coverage and \$20/month for single coverage. Moreover, the contribution was made retroactive to May 1, 1999, which was the beginning of the agreement. Further supporting management, the AFSCME and 911 telecommunications contracts requires the same premium contributions (see, *Brief for the Employer* at 8). Similar provisions are in place for an eight-hour reduction in sick days.

With respect to *external criteria*, the record indicates that all but one of the relevant benchmark cities (Burbank) provide for employee contributions (City Ex. 1 at 9). Clearly, full payment of insurance is unique to Blue Island firefighters. Both *internal* and *external* criteria call for a co-payment.

Working in favor of the City's proposal is an analysis of insurance expenditures incurred by the City for the 175 covered employees and retirees from July 1, 1996 through November 14, 2001. As conceded by the Union, expenditures in the current twelve-month period are averaging \$95,561/month, which works out to be \$1,146,784 on an annual basis (*Brief for the Union* at 18 n. 11). By all accounts, the Employer's health insurance costs are substantial.

Both parties acknowledged the current practice of paying 100 percent of all health insurance costs is, by all accounts, history. And with good reason. Changes in the health-care industry have mandated that private- and public-sector employers move to a share basis for premiums. To this end, the Union's acceptance of the principle that firefighters, like municipal employees in less hazardous positions, should make some contribution to the costs of their health insurance is realistic (*Brief for the Union* at 18). In the instant case the Administration argues that its offer represents a legitimate choice and one which would reproduce the agreement the parties might have reached in the course of successful negotiations. The Union submits that its amended final offer accommodates the legitimate interests of the Administration (*Brief for the Union* at 18-19). Under the Union's amended final offer, the three-year cost of family coverage for a firefighter totals \$2,229 (using the Union's numbers), almost identical to the City's cost of \$2,243.

I credit the Union's argument that some effort should be made to accommodate the firefighters' desire to make a greater contribution to the cost of insurance through the sacrifice of a benefit instead of immediate cash contributions (*Brief for the Union* at 19). The argument has face validity in light of the long-term practice of 100 percent funding by the Administration. I also credit the Union's argument that the insurance proposal should not unduly prejudice the City's position in negotiations with other bargaining units.

For the above reasons, the statutory criteria warrant a finding on the Union's favor on health insurance.

C. Uniform Allowance

The City proposes to keep the current \$400 allocation for the term of the successor three-year contract. The Union proposed that the uniform allowance be increased to \$550 per year.

The Administration's point concerning paying for all protective clothing (bunker coats & pants, boots, helmets, eye shields, gloves and nomex hoods) for firefighters is well taken. Blue Island firefighters must only purchase shirts, pants, shoes, belts, collar brass and name pins from their annual \$400 allowance. As such, any comparison to the police unit is arguably inappropriate. In contrast to firefighters, police officers purchase their entire uniform, including firearms and ammunition. They also work and must be in uniform five days/week as compared to firefighter who work two days in a comparable time period. Also, as noted by the Administration, the police unit does not receive a uniform allowance in either of the first two years of the labor agreement (*Brief for the Employer* at 5).

With respect to an *external* analysis, Blue Island falls somewhere in the middle of the eight comparables with only Burbank (\$700 voucher) and Chicago Ridge (\$500/year one; \$650/year thereafter in cash)(City Group Ex. 1). Blue Island, Oak Forest, and Riverdale all pay \$400/year, while Park Forest pays \$365. *Id.* Three communities, Matteson, Midlothian and Worth, have a quartermaster system with no cash allowance.

In summary, the evidence record favors the Administration's position on uniform allowance.

D. Residency

The most difficult and complex issue in this case is that of residency. As noted, the Union proposed a residency area which approximately extends 15 miles north and south of the city limits of Blue Island, is bounded by Lake Michigan and the State line on the east and is bounded on the West by a line running from Downers Grove to New Lenox. The City proposed no change to its current rule. Indeed, the Administration's position is that the issue of residency is not arbitrable.

1. Arbitrability Considerations

a. Background on arbitrability defenses

In rights disputes, substantive arbitrability goes to the issue of whether the arbitrator has jurisdiction over the subject matter of the dispute. The concern is whether the parties have *contractually* agreed to submit a particular type of dispute to arbitration. Like subject matter jurisdiction in law, a defense that a dispute is not substantively arbitrable can be raised at any time, even for the first time at the hearing, although some arbitrators may find a waiver when a party waits until the arbitration hearing before asserting a substantive arbitrability defense. The better rule has

been stated by Arbitrator Elliott Goldstein in *University of Illinois*, 100 LA 728, 735 (Goldstein, 1992), as follows:

[T]he Grievant has argued that the inaction of the Employer in waiting so long to raise the substantive arbitrability claim constitutes some form of acquiescence or estoppel. It has however been virtually universally held that this sort of attack on my jurisdiction or power may be raised at any point, since it goes to jurisdiction or my power to decide the case.

According to Arbitrator Goldstein, the doctrines of acquiescence or estoppel do not constitute an agreement by the parties to submit a dispute to arbitration. In his words, "these equitable rules cannot grant the affirmative authority for me to hear this case, when it is the contract to submit a case for arbitration which always controls." *Id.* at 735.

If the challenge to the arbitrator's power to hear a grievance involves procedural arbitrability-- a claim that the dispute is not arbitrable because of some procedural defect, such as laches or failure to observe contractual time limits (either in filing the grievance or in advancing it to the next step), or that the grievance presents a class action-type grievance not subject to the grievance procedure -- the better rule is that a procedural defense must be asserted before the case is allowed to proceed to arbitration. As stated by one arbitrator:

The issue of procedural arbitrability is generally treated by Arbitrators as an affirmative defense, therefore it must be raised by the party asserting it at the first opportunity or it is deemed to have been waived.

HBI Automotive Glass, 97 LA 121, 126 (Richard, 1991). This is the rule even where it is clear that the grievance was untimely. Arbitrator Mario Bognanno, in *Federal Aviation Administration*, 101 LA 886, 888-889 (Bognanno, 1993), thus declared:

The parties present a question of procedural arbitrability, namely whether the agreed procedures have been followed in this case. Despite the apparent delay on the part of the Grievant, and consequently the Association, to challenge the Agency's action in October 1991, one fact stands clear. The Agency did not assert that the instant grievance was untimely until March 1993 and shortly before the arbitration hearing. Based on the record the undersigned finds that the Agency waived its right to argue that the instant grievance is untimely. Time limitations in grievance procedures are akin to statute of limitations and are subject to waiver. The general rule provides that a limitations argument must be raised at the earliest possible time or be deemed waived. The Agency did not raise such a defense until the very end of the process and it has therefore waived the right to rely on such an argument at this time.

Advocates should note that some arbitrators hold otherwise and will allow a procedural defense to be asserted at the hearing for the first time. See, *H.E. Williams*, 104 LA 763 (Talent, 1995), citing *Elkouri & Elkouri*, at 220 (4th ed., 1985). See also, *Vague Coach Corp.*, 72 LA 1156,

1159-60 (Gentile, 1979); *City of Meriden*, 71 LA 699 (Mallon, 1978); *Int'l Paper Co.*, 70 LA 71 (Robertson, 1978); *Nashville Bridge Co.*, 48 LA 44 (Williams, 1967); *Western Electric Co.*, 46 LA 1018 (Dougan, 1966).

* * *

The argument that residency is not arbitrable because a residency requirement has been adopted by the Civil Service Commission is, in effect, a *substantive* arbitrability defense.

It is noteworthy that an arbitrability defense was urged by the Administration in front of Arbitrator Robert Perkovich in the City's interest dispute with the FOP unit. In what I view as a well-reasoned opinion, Arbitrator Perkovich, in ruling against the Administration, had this to say on the City's arbitrability defense:

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

Initially, it cannot be ignored that in 1997 the General Assembly clearly and unequivocally declared that residency could be the subject to an interest arbitration. Accordingly, the Legislature's explicit inclusion of residency as an arbitrable subject cannot be regarded as a meaningless act. Secondly, the legislature had already declared in Section 15 of the Public Relations Act that the provisions of the Act were to prevail in the event that there might be a conflict between the Act and ". . . any other law . . . relating to wages, hours, and conditions of employment and employment regulations . . ." In fact this later provision, *inter alia*, led the Illinois Supreme Court to reject an employer's argument that review of discipline under a contractual grievance procedure was not a mandatory subject of bargaining because of the fact that the employer's civil service procedure enabled employees to contest discipline. * * * **Therefore, the Legislature's determination of arbitrability and the supremacy of the IPLRA as recognized in *City of Decatur, supra*, compel me to conclude that the issue of residency is properly before me.** (*Perkovich* at 2-3, footnotes omitted)(emphasis mine).

What is especially noteworthy is the legal authority the City cited in the FOP arbitration is the same authority cited in the present case. Similar to Arbitrator Perkovich, I too conclude that the

Harvey and *Markham* decisions are not controlling in this matter. To this end, Arbitrator Perkovich concluded:

The cases cited by the Employer are easily distinguishable and do not compel me to conclude otherwise. First, *Harvey Firefighters' Association v. City of Harvey*, 75 Ill.2d 358, 389 N.E.2d 151, 21 Ill.Dec. 339 (1979) pre-dated the passage of the Illinois Public Relations Act and the residency requirement noted above. The second case cited by the Employer, *City of Markum v. State and Municipal Teamsters, Local 726*, 299 Ill.App.3d 615, 701 N.E.2d 153[1st Dist. 1999], is similarly distinguishable. There the court determined, distinguishing City of Decatur, that the subject of the arbitrability of police officer discipline was not a mandatory subject of bargaining under Section 7 of the IPLRA because Section 7 excludes from the scope of bargaining wages, hours and terms of conditions "not specifically provided for" in other laws. Therefore, because police officer discipline was specifically provided for in the Illinois Municipal Code, the subject was not arbitrable because it was not a mandatory subject of bargaining under the IPLRA. In the instant case, however, the subject of residency is not specifically provided for in the Illinois Municipal Code not any other law. Thus, it is not excluded from the scope of mandatory bargaining. (*Perkovich* at 3).

I concur with Arbitrator Perkovich regarding the arbitrability issue. Section 14(i), ¶2 of the Act clearly declares "the arbitration decision shall be limited to wages, hours and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000 . . .)." The only limitation is that the award may not allow residency outside of the State of Illinois. See, 5 ILCS 315/14(i).

Further supporting the Union's position that residency is arbitrable is Section 15(a) of the Act which reads:

In case of any conflict between the provisions of this Act and any other law, executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any other collective bargaining agreement negotiated thereunder shall prevail and control.

Under Section 15 of the Act, the provisions of Section 14(i) override other laws relating to employment. I find nothing in the record that would persuade me that the intent of the legislature was to declare residency a mandatory subject of bargaining, but not allow the parties to submit the issue to interest arbitration similar to economic items.

By all accounts a decision for the Administration on arbitrability would require ignoring the plain language of the Act, as well as the Perkovich decision.³ For the above reasons, I hold the residency issue arbitrable.

b. Decision on the Merits

The Union correctly points out that two of the most important factors used by arbitrators, internal and external comparability, weigh against the City's position on residency. Indeed, the decision by Arbitrator Perkovich in the FOP case, while not dispositive of the matter, effectively sets the table for firefighters' contract when these criteria are examined.

Internal Comparability. The City acknowledged there are a number of high-ranking municipal officials who live outside the city limits. Further, the Administration employs police dispatchers who are not Blue Island residents. Finally, and significant in this case, Arbitrator Perkovich rejected the City's residency argument with respect to police officers. All these factors favor relief from a strict residency requirement.

Addressing the internal comparability criterion, Arbitrator Perkovich had this to say in concluding that a clear and convincing pattern of internal comparability has not been made by management:

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

3 Query whether the Perkovich decision is *res judicata* with respect to the Administration's arbitrability defense in the firefighters' case? While the firefighters were not a party in the prior FOP proceeding (and, thus, presumptively not entitled to assert the doctrine affirmatively against the City), all policy reasons for applying *res judicata/preclusion* in legal and arbitral proceedings work in favor of applying the doctrine in this proceeding. The City certainly had incentive to litigate the matter of residency before Arbitrator Perkovich. In addition, the interests of the FOP and the firefighters are closely aligned on the residency matter. At minimum, the Perkovich decision is persuasive precedent in the firefighters case. See, Allen Vestal & Marvin Hill, Jr., "Preclusion in Labor Controversies," 35 *Oklahoma Law Review* 281 (1982).

enough to be afforded adequate weight, and/or because of the "unique role" that police officers play.

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

Clearly, once Arbitrator Perkovich awarded a relaxed form of residency, the internal comparability criterion moved decisively to the Union's favor.

External Comparability. Almost all of the comparables urged by the parties have less stringent residency requirements than Blue Island. Union Ex. 24 makes the Union's point:

RESIDENCY REQUIREMENTS IN COMPARABLE COMMUNITIES

Community	Residency Requirement
Oak Forest	None
Forest Park	None
Park Forest	None
Worth	None
Riverdale	None
Matteson	Area bounded by 127th Street (N) Indiana State Line (E), Eagle Lake Rd., Cherry Hill Road (S).
Chicago Ridge	Area bounded by 79th St. (N), Cicero (E), 167th St. (S), and County Line Road (W).
Midlothian	City Limits

The City's response to the data is outlined in its *Brief* at 32:

It is fair to say that the submission of external comparables suggests that a number of communities have opted to either relax or eliminate residency. However, when considering a non-economic issue like residency, external comparables, while entitled to some consideration, should not be accorded undue weight. This is particularly true in our case where the parties have an established bargaining relationship which the firefighters are now seeking to change.

The Administration goes on to argue:

Another potential deficiency in this "evidence" which detracts from its weight is that no testimony or documents were presented to explain the rationale each municipality employed when deciding whether residency, or some variation, should apply within the community. There may be numerous reasons to explain each situation. However, the Union's submission tells us nothing in this regard. Likewise, we do not know whether collective bargaining or other extraneous factors resulted in the residency requirements, their relaxation, their absence or new restrictions. Again, these explanations are conspicuous by their absence.

Finally, we are left without any explanation or testimony which shows whether the residency policies are uniform as to all employees in the external municipalities, are enforced or what underlying circumstances in each community might exist to support the myriad policies exhibited by this presentation. While the collective bargaining agreements for these communities are presented, none tell us anything about the policies themselves. (*Brief for the Employer* at 32).

Arbitrator Perkovich's analysis of external data in the FOP case revealed a strong basis in the union's favor. His words are especially noteworthy:

On the issue of external comparability, the case is clearly made in favor of the Union's final offer. On this point the Employer made no objection to the use of thirteen municipalities as external comparables. The record reflects that of those thirteen, six have no residency requirement and that five have defined distances or other boundaries that differ from the jurisdictional limits of the employer. Moreover, of the remaining comparables the residency requirement was imposed via city ordinance and not by way of collective bargaining. Thus, the external comparables weight heavily in favor of the Union's final offer. (*Perkovich* at 5).

Applying external criteria, as the statute mandates, like the police unit the firefighters have more than carried the day in making a case for its residency proposal. If management has valid concerns regarding the external comparables submitted by the firefighters, once the Union made a prima facie case on an external basis it was up to management to submit any evidence if it were convinced the Union's evidence was incomplete. Absent such evidence, I take the Union's data at face value.

Other statutory considerations. Does the so-called "public interest" criterion mandate a residency requirement notwithstanding the compelling internal and external data?

In the Union's view, the evidence clearly contradicts the Administration's argument that residency is somehow needed to fight fires. To this end the Union points out that the City has never relied on mandatory call back of firefighters to fight fires. Rather, Blue Island has enacted an automatic aid policy which essentially means that departments in surrounding communities will respond to fire calls. Accordingly, off-duty firefighters, should they wish to respond to a call, go to the station as backups (*Brief for the Union* at 9). Further supporting the Union's point is the City does not require its paid-on-call firefighters to live within city limits. One would surely expect at least a mandatory call back policy in, in fact, the City's residency requirement was critical to its ability to fight fires. A non-mandatory call back policy belies the Administration's argument that a residency requirement ensures a rapid response to emergencies and fires (*Brief for the Employer* at 31).

What of Mayor Donald Peloquin's testimony that residency of city employees is considered important in the community because it adds a sense of security in the neighborhoods? I credit the Mayor's argument on this one consideration, although the City's position is somewhat inconsistent with the fact that several municipal officials and a group of police dispatchers, along with the policy after the Perkovich award, do not have to live in the city.

Should so-called "breakthrough" analysis be applied to the residency issue? I am on record as holding that while there is no *per se* burden of proof on either party in an interest arbitration, if one party is (1) making an unusual demand or (2) one that substantially alters the parties' past practice, it is not uncommon for the interest neutral to place the burden of persuasion upon the proponent of such a proposal. *City of Batavia and Firefighters Local 3426*, ISLRB Case No. S-MA-95-36 (1995). For example, the Chairperson of the Arbitration Board in *Twin City Rapid Transit Co. v. Amalgamated Ass'n of Street Employers, Division 1005*, 7 LA (BNA) 845, 848 (McCoy, 1947), stated:

We believe that an unusual demand, that is, one that has not found substantial acceptance in other properties, casts upon the [the party proposing the demand] the burden of showing that, because of its minor character or its inherent reasonableness, the negotiators should, as reasonable men, have voluntarily agreed to it. We would not deny such a demand merely

because it has not found substantial acceptance, but it would take clear evidence to persuade us that the negotiators were unreasonable in rejecting it.

Similarly, in the often-quoted decision, *Tampa Transit Lines Inc. v. Amalgamated Ass'n of Street Employees, Division 1344*, 3 LA (BNA) 194, 196 (Hepburn, 1946), the Chairperson of the Arbitration Panel stated that: "An arbitrator cannot often justify an award involving the imposition of entirely novel relationships or responsibilities. These must come as a result of collective bargaining or through legislation."

Arbitrator Sharon Imes, in *School District of Wausau v. Wausau Education Ass'n*, Decision No. 18189-A, Wisconsin Employment Relations Commission (Imes, Arb. 1982) (unpublished), expressed this principle as follows:

It is not uncommon for arbitrators to require a "compelling need" be shown and/or that a quid pro quo exists in order to justify the removal of benefits secured by a party through negotiations

. . . .

Absent a showing of need for change or a showing of financial difficulties if the status quo were to be maintained, the undersigned finds no reason why she should implement a change in the working conditions which is more appropriately accomplished voluntarily by the parties.

And, Arbitrator Joe Kerkman, in *Fort Atkinson Education Ass'n v. District of Fort Atkinson*, (Decision No. 17103-A, Wisconsin Employment Relations Commission (Kerkman, Arb.)), set forth a three-fold criteria for change in the status quo, accordingly:

- 1) a demonstration that the existing language is unworkable or inequitable;
- 2) an equivalent "buy-out" or quid pro quo;
- 3) a compelling need.

Status quo arguments are especially prevalent in disputes about higher insurance deductibles, co-insurance, and premium sharing.

Arbitrator Perkovich considered the breakthrough argument in ruling on the FOP's request to remove residency. A number of factors convinced Mr. Perkovich to apply internal and external comparability factors rather than a strict breakthrough approach:

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

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

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

I therefore turn to the factors which must be used in order to choose between the two competing final offers. (*Perkovich* at 3-4).

Working against the Administration on the breakthrough argument is this: the present residency requirement is less the result of collective bargaining than the Union's inability to negotiate over the issue prior to the 1997 statutory amendments. While it is true that the Union did not elect to arbitrate the issue when bargaining the last agreement, they did oppose it in the 1998-2001 contract and I accept their argument that they made a decision that the issue was not worth the time and money required by the interest arbitration process (*Brief for the Union* at 13). A residency restriction may have been long term at Blue Island, but unlike, say the firefighters' insurance benefits, it did not come about because of long-term bargaining. In short, this is not a situation where one party is attempting to markedly change the product of previous *long-term negotiations*, thus requiring a strict-scrutiny type breakthrough analysis. Even if breakthrough analysis were applied (as some courts apparently

mandate),⁴ application of breakthrough principles overall would still favor the Union's position once Arbitrator Perkovich concluded his award in the police case.

* * *

Applying all relevant statutory criteria cited in Section 14(h), the Union has carried the day on the issue of residency, especially when internal and external considerations are examined against this evidence record. Indeed, there is some indication that in the FOP arbitration management asserted that internal criteria should carry more weight than external factors (*Perkovich* at 5 n.5). To this end, Blue Island now has a collective bargaining agreement where the police unit is not subject to a strict residency requirement, and this fact, while not dispositive of the firefighters' contract, carries significant weight in formulating the interest award. And, as already noted, many other Blue Island employees are not so burdened with a residency requirement. This, coupled with the numerous factors outlined in this opinion, mandate relief for the firefighters on the issue of residency.

For the above reasons, under this specific record, where both the police and firefighters' bargaining units have elected to challenge residency requirements in interest arbitration, and where the arbitrator in the police case awards a relaxed or limited residency provision, the firefighters bargaining unit is presumptively entitled to the same provision *where external and other statutorily criteria, fairly applied, also support relief from strict residency*. The fact that the Administration has elected to challenge the police award is a matter of record and not dispositive of the outcome in this case. Until a court rules otherwise, the firefighters' unit is awarded the exact same residency provision as is applicable to the police unit. Thus, the relevant language in the successor agreement will provide as follows:

The parties' collective bargaining agreement is to provide on the subject of residency that bargaining-unit firefighters may live within fifteen (15) miles of the jurisdictional boundaries of the city so long as they reside within the State of Illinois.

Applying the statutory criteria outlined in Section 14(h),⁵ the following award is entered:

4 See, *Town of Cicero v. Illinois Association of Fire Fighters, IAFF Local 717*, *supra* note 1, where Judge Nancy J. Arnold, disagreeing with Arbitrator Berman's decision not to apply breakthrough analysis in a residency dispute, declared: "It appears to the court that failure to abide by established principles of arbitral law is indicative of an arbitrary and capricious decision." *Id.* at 14.

5 A final note is in order. There are numerous arguments the parties made either at the hearing or in their lengthy briefs that were considered but not specifically addressed in this opinion. For example, the Administration correctly points out that firefighters know the job requirement matrix when

VI. AWARD

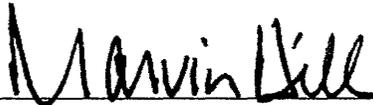
Equity Wage Adjustment: City's final offer awarded

Health Insurance: Union's final offer awarded

Uniform Allowance: City's final offer awarded

Residency: The parties' collective bargaining agreement is to contain the same residency provision as Arbitrator Perkovich awarded in the City of Blue Island & FOP decision, specifically bargaining-unit employees may live within fifteen (15) miles of the jurisdictional boundaries of the city so long as they reside within the State of Illinois.

Dated this 15th day of March, 2002,
DeKalb, Ill, 60115.



Marvin Hill, Jr.,
Arbitrator

they apply for employment at Blue Island. If you seek employment with Blue Island, be advised that there is a residency requirement. No firefighter is forced into employment. (*Brief for the Employer* at 30-31). The Union advances a liberty-type argument which appears to track constitutional law. (*Brief for the Union* at 8-9). I could talk at length about both these propositions. The parties, however, have asked for an opinion, not a book. *cf. Pal Joey* (1940) ("If they asked me, I could write a book.") (Music by Richard Rodgers, lyrics by Lorenz Hart). The point to be made for the record is this: No arbitrator in an interest case addresses every argument and every single point made by the parties. What we do is apply the statutory framework and draft an opinion that, hopefully, provides a clear blueprint on how we reached an award.