

ILLINOIS STATE LABOR RELATIONS BOARD
INTEREST ARBITRATION
OPINION AND AWARD

CITY OF PEORIA
Employer

and

PEORIA POLICE
BENEVOLENT ASSOCIATION

ISLRB Case S-MA-02-106

Hearings: February 5,6,7
May 15, 16 October 14,15, 2003

Arbitration Panel:

Ellen J Alexander, Chair

James Baird: City appointee
Joel D'Alba: Union appointee

Appearances for the Union

Sean M. Smoot, Chief Legal Counsel
Theresa B. Phillips, Staff Attorney

Appearances for the City:

James Murphy, Esq
Alan Pennington

Introduction

This proceeding arises under Section 14 of the Illinois Public Labor Relations Act. The undersigned was appointed in January 2003 to serve as neutral chair of a three arbitrator panel. Hearings held in Peoria, Illinois on the seven dates stated above were reporter-transcribed and the parties were afforded full opportunity to present evidence and argument.

The parties to this dispute are the City of Peoria (“City” or “Employer”) and the Peoria Police Benevolent Association (“Union” or “PPBA”). Their most recent collective bargaining agreement covered January 1997 through December 2001. Negotiations for a successor agreement began in late 2001 and took place intermittently including with use of an FMCS mediator. The first interest arbitrator was appointed in late 2002. Following voluntary mediation conducted by that arbitrator there remained unresolved wages and residency. The first neutral arbitrator resigned and the undersigned was appointed as neutral. Party arbitrator James Baird was appointed by the City and arbitrator Joel D’Alba by the Union. Immediately prior to the commencement of the first scheduled hearing dates the parties exchanged final wage offers which turned out to be identical, leaving the sole issue outstanding to be residency. Upon written stipulation of the parties, all tentative agreements including the wage agreement were implemented by an interim stipulated award of this panel.

The vital importance placed by both parties upon the issue of residency is reflected in the seven days of hearings, more than 125 joint, city, or union exhibits, and 1756 page transcript. In addition to their post hearing briefs, the parties have submitted for panel review and consideration more than 50 decisions by arbitrators and the courts.

The hearings proceeded according to various party stipulations . Leaving aside those that are purely procedural the stipulations state in relevant part:

1. The Arbitration Panel in Case No. S-MA-02-106 shall consist of Ellen J. Alexander, Chair and neutral member; Joel D’Alba, delegate of the Benevolent; and James Baird, delegate of the City. The parties stipulate as to the jurisdiction of the Panel to hear and decide the issues presented to it.

2..... If additional days are required for the presentation of evidence, the hearing shall continue on such other and further dates as may be agreed upon by the parties. The requirement set forth in Section 1230.90(a) of the Rules and Regulations of the Illinois State Labor Relations Board, that the hearing begin within fifteen (15) days of the appointment of the Panel Chair, has been waived by the parties.

4. The parties stipulate that the arbitration hearing involves “collective negotiating matters between public employers and their employees or representative,” and therefore, is not subject to the public meetings requirement of the Illinois Open Meetings Act (5 ILCS 120/1 et seq.).

8.The parties stipulate and agree that for the purpose of this hearing, the comparable communities shall be Rockford, Springfield, Decatur, Champaign, Urbana, Bloomington, Normal, Moline and Rock Island.

9.The sole item in dispute is residency. The Union is the moving party as to this issue. Therefore, the Union shall proceed with its case first.

10. The parties stipulate and agree that residency is a non-economic issue under Section 14 of the Act.

11. The parties shall simultaneously exchange final offers of settlement on the issue of residency and submit the offers of settlement to the Panel at the close of the Record.

Final Offers

Following conclusion of the interest arbitration hearing the parties' respective final offers on the issue of residency were as follows:

Union

Section 35.2 Residency: Employees shall by the end of their probationary period establish and maintain their principal place of domicile within Peoria County or outside Peoria County within a twenty five (25) mile radius of the Peoria Police Department Headquarters Building (66 S.W. Adams Street Peoria Illinois.) Violation of this Section shall be grounds for immediate discharge

City (Existing Contract Language)

Section 35.2 Residency: Employees hired after February 21, 1989 shall establish and maintain their principal place of domicile in the City by the end of their probationary period. Employees hired prior to that date shall maintain their residence within the County. Violation of this Section shall be grounds for immediate discharge.

Background; Bargaining History

Peoria is a home rule municipality with a council manager form of government. The city council consists of five members elected from each of five districts and five additional members and a mayor elected at large. The 2000 census population for the City itself was 112,936 but its metropolitan statistical area population was 347,387. The city is fifth in the state in population, but the second largest MSA in Illinois "supporting a much larger surrounding area". Its population is diverse, including 31% non-white. Public education for grades one through twelve is provided by Peoria School District 150 except for a northwest portion of the city which is served by the Dunlap School District.

Using February 2003 figures, the city employs approximately 816 full-time employees and has eight bargaining units. The four largest are the police (231), firefighters (185), AFSCME (205), and craft/trades (78). The total staffing of the police department of 283 includes 7 in management, the 231 members of the PPBA, and 45 members of AFSCME.

From 1973 until 1989 all members of the police department as well as all other city employees were free to live anywhere in Peoria County. Effective February 21, 1989 the current residency language was placed in the police labor contract. The PPBA was the last of all union contracts to receive residency language (the other contracts had similar wording but effective dates in 1986 and 1988.) The Illinois Public Labor Relations Act had been passed in 1984 but a dispute concerning the scope of the Peoria police unit resulted in a delay in that first post statute union-bargained contract until 1989.

The residency language has remained unchanged through all police contracts bargained since that first contract, i.e. contracts for 1989-1990, 1991-1992, 1993-1994, 1995-1996, and the most recent 1997-2001 contract. During the periods of all these prior contract negotiations, residency was a permissive subject of collective bargaining. January 1998 was the effective date of an amendment to the Illinois Public Labor Relations Act to make residency a mandatory subject of bargaining (in cities under one million).

The union has not in any previous bargaining requested relaxation of the residency requirement. These parties dispute whether any union request to remove the language bargained in 1989 would have been effective to settle the matter. The city argues that as a mere request from the Union the subject would have had to be removed from the contract since it was permissive and could not be bargained to impasse. An ILRB memo appears to support this, as do some court decisions. However, the Union also correctly notes that if the subject had been removed from the contract the same requirement could have been imposed by ordinance or personnel rule with no recourse by the Union. That situation changed only when the issue was placed under arbitral authority effective with the 1998 ILRA amendment..

The city also emphasizes-- and the record supports-- that since the residency requirement for the city limits was placed in the contract, each officer hired after the February 1989 cut off date was not only informed of the city limits residency obligation at several points in the application process but executed his or her consent to the conditions set forth in the city's "conditional offer letter." The submitted copies of that letter contain a paragraph entitled "residency" which states

the city administration requires that new employees live within the City of Peoria. Employees v

At the bottom of the offer letter is a paragraph stating "acceptance of employment" and the officer signs a statement that

I hereby accept this offer of employment with the City of Peoria as described above including a

The city offers as its "radical" argument the theory that these individually signed letters are individual contracts with each officer which cannot be modified by an interest arbitration award. That argument is discussed in detail below.

During the 14 years that have passed since the city limits residency was placed in the contract, the two-tier system has remained in place for the police and for all other unions. All persons hired before the mid or late 1980s date set by the respective union contract or

personnel rule are still free to live anywhere in Peoria County. The resignations or departures of older personnel to be then replaced by those subject to the city limits residency has, as the City intended , gradually increased the percentage of city employees, including of course the police officers, who live inside Peoria city limits. Using Union exhibit 21, there are 97 sworn personnel whose hire dates allow living anywhere in the county, of which 48 live outside city boundaries. There are 185 officers living in the city, 136 of them being obligated to do so. An October 2002 city exhibit 7 shows 47 police officers out of of 94 eligible to live outside do so, and that 137 officers have been hired since the residency date, of which 127 had by then moved into the city. Thus either a total of 185 (Union) or 174 (city) officers live in the city and 48 (Union) or 57 (city, including probationary hires) live outside.

As for the non represented employees, no ordinance mandating residency was submitted of record but witnesses represent that those employees are held to the residency standard contained in all labor contracts. Not one witness suggested that there has been less than full compliance or enforcement of the requirement as to any covered group or employee, represented or otherwise.

As for the hotly disputed question of the degree to which the current residency requirement was truly “bargained,” the business records of the city include a memo dated February 21, 1989 entitled “police labor agreement” addressed to the mayor and city council from the “police bargaining committee through the city manager.” That memo reports that after “hundreds of hours of work by both teams of negotiators... the attached labor agreement was ratified.” Among the memo’s list of the major features of the proposed contract is included “for those hired after the date of ratification, they must maintain city residency throughout their career”. (City Exhibit 9A)

Current assistant city manager and former assistant director for human resources Alan Pennington asserted that based upon his review of collective bargaining documents and notes, residency was not raised in bargaining by this union from when it was placed in the 1989 contract until the most recent negotiations. The union does not dispute this, but again, emphasizes that it would have been futile to do so because of the city’s alternative ability to impose residency by personnel rule or ordinance. Eric Poertner of the statewide Policemen’s Benevolent Labor Committee, acted as chief negotiator for the PPBA in the current negotiations--his first for Peoria. Mr. Poertner testified that union participants from earlier bargaining teams in Peoria asserted to him that the matter was not truly “negotiated “in 1989 in that the local union did not have any choice. However, Mr. Poertner also stated that it is his understanding that the Union could have refused to keep a permissive subject of bargaining in the contract.

Documents submitted of record as well as testimony of more than one witness persuades the undersigned that the language imposing residency in this two-tier system (again, designed to affect only those hired after the date the contract was effective of 2/21/1989) was to some degree “bargained” by the parties. But it was bargained under a different statutory scheme and the record lacks any suggestion of what if any benefit was given to the Union as specific consideration for the contract clause. Another obvious and

relevant consideration is that the language exempted all Union members then employed, a not minor matter. The City places much weight on the fact that this residency requirement was not “unilaterally imposed” via ordinance as a distinguishing feature from other fact patterns examined by interest arbitrators. However, this argument is weakened first by the fact that the Union would, in 1989, have been subject to a City personnel rule or ordinance had it not agreed to the contract language (no bargaining to impasse available.) . Second, none of the later hired officers directly affected and who now seek to change it were part of the group that agreed to it on behalf of future hires in the department.

Considerable testimony addressed a further core issue: the means by which these parties reached impasse in the most recent bargaining. Mr. Poertner testified that in late October 2001 the parties exchanged initial offers. The union’s lists of topics included a proposal that there be no residency requirement and the city’s list of issues made no reference to residency. Negotiation meetings took place on November 7 and 14, 2001 with no discussion of residency. On November 27, the parties met but only discussed briefly whether this topic had been a subject of true bargaining those years ago and they did not otherwise discuss the union residency proposal. At negotiation sessions on December 10 and 13, 2001 the subject was not addressed. On December 18, 2001 the city responded to various non-economic items at which time either city attorney James Murphy or human resources administrator Pennington expressed the city’s view that there was “not a compelling need” for change in the residency obligation. The city’s team (generally referring to Mr. Murphy and Mr. Pennington) asserted the view that there was, in fact, a strong need to maintain the residency requirement, and they told the union that there were plenty of different housing choices in Peoria, that the requirement was not intrusive on employee lives, and that all affected officers had, when hired, been fully informed of the strict residency requirement. The City also pointed out to the union that no other bargaining units in the city had obtained a relaxed residency requirement in any year since various contracts first received that requirement in the 1980’s or since the change in the ILRA effective in January 1998.

The respective bargaining teams met again January 18, February 1, 6, and 11, 2002. At none of these meetings was residency discussed, although the city made counter proposals on other items. On February 22, 2002, union negotiator Poertner asked the city negotiators “if there was anything we can give them for expanded residency” and the answer was no.” The city asked why the union wanted expanded residency and Mr. Poertner explained that:

We want an expanded choice of schools. We have safety issues with officers and their families. Every single one of the external comp(arable)s that the city had proposed has expanded residency.

We wanted to expand our housing options and to have the ability to maximize our housing dollars, the argument there being that you can buy -- the house that you can buy at x price in Peoria is probably more house out in the county or at least more in terms of the size of the lot and the property available.

We indicated that there were a lot of hardships with people being forced to move in, especially with the people being hired from other cities and from out in the county which has been a trend lately in this department to hire from other departments.

We argued that there was internal comparability with those employees that are grandfathered and in addition to that with those grandfathered employees, we argued that those people are, in fact, never required to move in and a lot of those people that are grandfathered out and do live out are on-call. There is no evidence that it ever has been a problem.

Union lead counsel and presenter, Sean Smoot, also testified to the February 22, 2002 conversation between Mr. Poertner and Mr. Pennington. His recall was that when the union had asked what the city wanted in exchange for extended residency, the answer was “that the union did not have anything that we could give them for it.” This was the extent of the February 22 discussion on residency.

The parties prepared for and met three times with a federal mediator in March and April 2002. Several issues remained unresolved after that and there was a September 5, 2002 meeting over a number of issues. At that time, the union made a new residency offer, i.e., that in exchange for expanded residency, it would “waive the sick leave early retirement issue” and also waive six months of retroactive pay on the part of those officers currently required to live in the city who would benefit from the changed residency. That offer to waive six months of a 2.25% increase for certain officers was ultimately valued at just under \$100,000, a figure essentially agreed to be accurate by the parties. At the September 9, 2002 meeting the city came back with three separate packages for the union to consider, none of them mentioning expanded residency. The union countered that it would accept one of the packages but only with relaxed residency added back in. At that meeting, city attorney Murphy stated that the city could not make an offer at that time that would include expanded residency and Human Resources Assistant Director Pennington informed the union of the evaluation he had calculated of \$100,000 for its wage give up offer.¹

Union negotiator Poertner testified that when he asked what the city’s price would be to give to the officers expanded residency Alan Pennington responded that not everything was for sale and James Murphy told the union team that the city team “never had any authority to negotiate residency.” Union counsel Smoot asked if there was anything the union could give in exchange for it and Mr. Pennington had replied that this city council would not move on it. Mr. Smoot had asked “was there a magic number?” and Mr. Pennington had said that there was no magic number and “the city is happy with the status quo and we don’t see a need for a change.” The Union testimony as to these conversations is consistent with the careful testimony of the City witnesses. I conclude that there was never any intent by the City Council to offer any counterproposal, nor did it express any financial or other concept to the Union as to anything that the City would have considered adequate “quid pro quo” to give up such a precious condition of employment.

Local union president and Peoria police sergeant Jeff Adams testified that he has been on the union’s negotiating team for three prior contracts and that, indeed, in none of the bargaining sessions had the union sought to have the contract residency language removed or lifted. His explanation for that, however, was that “under the current laws at that time ? it wasn’t a mandatory bargaining issue, nor could we arbitrate on it, so we never negotiated on it.” Sergeant Adams stressed that this is now a number one issue with the union and that even though the senior or older officers can already live anywhere in the county, they are solid in their support of pursuing the issue. “I was never asked to move on and drop the residency issue. To a man, it was the right thing to do, and they wanted to push the residency issue all the way.” (Tr. 191)

Sergeant Adams himself lives outside the city as do a large number of the senior grandfathered officers as noted. However, it is local president Adams’ view that if a contract had been taken to members which did not include the requested expanded residency, it would not have been ratified. Sergeant Adams explained why residency was such an important issue to the union membership.

The officers feel, and I agree with them completely, that they want to have the ability to one, be able to pick where they want to live and feel safe in their own homes. When you’re a police officer, the stresses of the job have a tendency to stay with you. But when you’re within your own jurisdiction and you have no ability to leave the jurisdiction, you’re a police officer 24 hours a day, seven days a week, 365 days out of the year.

The ability to get away from the place, have your family raised where you want to raise them. We hire officers or try to hire officers from all over. Some of them come from rural areas, and they would prefer to continue to live in rural areas. For us to say that they can’t to me is just un-American which is why we’re negotiating what we’re negotiating.

The school system in our town is not the best. We have many officers who are having to send their children to private school because of our school system. They don’t feel comfortable sending them to school. (Tr. 197)

Then Assistant Human Resources Direction Pennington testified that the union’s initial (December 2001) proposal was that there be no limit on residency and there was “a very short discussion” where each party recited their reasons. In the second discussion on February 22, 2002 the union again gave its reasons for seeking a change and the city indicated that it felt its original reasons for a status quo remained appropriate. In September of 2002 when the topic was again raised in an exchange of proposals and counter-proposals, the union changed its residency extension request to cover the county, a narrowing from its “no limit” request. The city gave the union certain choices of three packages responding to all remaining issues and the union responded that one of the three packages would be acceptable if the city gave a change in residency. The city had indicated it would not accept County limits. As Mr. Pennington further testified:

(Sean Smoot) asked: well, what do you want? What's the price for residency? And I recall (referring to Counsel Murphy) that you made a comment regarding "we're not going to set the price and its not always a money cost, that there can be other costs involved to consider."

I do recall the comment that I made which followed up your comment, which was "not everything is for sale, but everything has a price," because we had an extended discussion on what price did we want for residency.

We had continually indicated that we weren't going to set a magic number to say... that meant what they were willing to do, but if they made us offers, we would consider them and take them back.

Mr. Pennington indicated that union's offer of foregoing a six-month period of retroactive pay of 2.25% --valued at just under \$100,000--was taken to the city council where "there was strong consensus that there was no interest in that proposal (and) there was no discussion regarding a counter-proposal." Mr. Pennington further testified that he "had no authority to make a proposal on expanded residency" and that he informed the union at various points of the negotiations that the city team had no authority to make a proposal on residency. Further, he did express that the City "felt there was no compelling need for a change" He gave as one reason for this that "our internal comparability based on our recent negotiations is that no other Union had had a change." (tr 1553-1538.)

Following the September 9, 2002 negotiation session the only future attempts to avoid impasse were efforts by the first appointed interest arbitrator to mediate the remaining issues which he did with large success except for residency and wages. Union witnesses suggest that additional narrower proposed residency boundary limits were brought unsuccessfully to an unyielding council.

In arbitration Mr. Pennington expressed the City's great concern as to opening the door to a mass exodus:

I think, as I previously testified, other unions are already watching this issue. I have no doubt that just as every union did in the last round of negotiations, every union will again come forward with a request to change the residency requirement.

.... if (residency) is granted with no concession, I think other unions are --will not be willing to pay anything for a substantial change from the status quo if another union got it for little or no cost. Our unions tend to, on major issues, be fairly standard in their contractual language...(tr 1596.)

The undersigned would note that with such internal consistency of testimony by several witnesses and negotiation participants, it is indisputable that the city's willingness

to bargain over the union's proposal to expand the residency limits for the 2001 to 2004 contract had been largely "pro forma." There was no interest in compromise. The city team took (most) union residency proposals to the council and the council listened to them but never wavered in its intent to maintain existing language. No witness suggests that the Council considered what perimeters, if any, might be acceptable to it. The Council was standing firm on "status quo" and again did not make its own proposal or suggest to the Union what might be acceptable by way of any modification of current language. The testimony on this subject leaves no doubt but that the council was unmovable.

The Union's allegedly inadequate offer as for a "quid pro quo" is a core city argument but one that I evaluate in the context of the city team's communication that there was in fact no quid pro quo that would get an affirmative council response. The degree of impasse was absolute. I consider this significant in view of the City's argument that to award relief here, this panel would be giving the union an unwarranted or undeserved windfall ("the Union here must not be permitted to obtain through arbitration 'for free' that which it could not have obtained at the bargaining table without a monumental concession in return." City Brief p 70, underlining in original.)

Union Witness Testimony in Support of Change of Residency

Examples of alleged hardship from being required to live in the city limits were proffered by several union witnesses and are fairly summarized as follows:

Sergeant Lisa Snow is a 13 year veteran who hired in after 1989 and had to establish City of Peoria residency. In 1996 she married a fellow officer who was grandfathered and living outside the city. The hardship she described was that they could not live in or raise future children in her husband's "very nice home" in Chillicothe, a distance she describes as ten minutes north of the city's north limits. Each of them sold their respective houses and together purchased a home in a good neighborhood in Peoria. Sergeant Snow conceded that she knew the residency requirement when hired and that her obligation to live in the city would have applied regardless of the occupation of her husband. Sergeant Snow further testified that when she was a juvenile officer, she "established relations with a lot of juveniles in the city that caused problems?" It was important to the sergeant and her husband that they move to a Peoria neighborhood allowing their children to go to Dunlap schools because of the fact of these established relationships; she "did not want our children to go to school with the children that I am arresting. So it was very important that we have... our child go to different school district although I still wanted him in a public school setting "

Sergeant Snow stated that she kept track of the test scores of District 150 and they're going down and it was a big concern for her that achievement scores were dropping in District 150. She also was a liaison officer for Manual High School (one of four in District 150) and to feeders to that high school and she was familiar with the incidence of crime occurring inside of District 150. Sergeant Snow was in fact able to afford a house in Peoria in a neighborhood served by the Dunlap school district which district and

northwest neighborhood are viewed as superior and are popular with several of the officers.

Sergeant Snow also spoke generally as did Sergeant Adams of following a policy of changing out of her police uniform before going home, something she had been advised to do by her field training officer but she conceded that this is advice that applies to all officers. The only encounter she could describe in her personal life was that “a gang banger” was “dating a girl in our neighborhood...and just let us know that he knew who we were and where we lived by driving very slowly and waiving at us when he drove by and waving at my husband when he was moving the lawn.” (Tr. 291)

Officer Timothy Moore was hired in July 1989 and therefore is obligated to live in Peoria city limits. He testified to an earlier (1996) incident when he was assigned to special investigations/vice and had nearly daily contact with gang members in that period. One summer day at home when he went to investigate a dog barking, he was greeted by a member of a city tree cutting crew working in the alley whom he knew to be a gang member. This crew was part of a program specifically intended for disadvantaged or underemployed persons to help them gain work. The crew just coincidentally happened to be in the alley behind the officer's home, trimming bushes and trees. The officer testified that “I knew all of them and I thought I'll just get my dogs, quietly get them back in the house. Before I could even get halfway back to the house, one of them already started jacking his jaws about, ‘you shouldn't have come out of your house. Now we know where you live.’ “

Officer Moore stated that subsequent to that incident, quite a number of gang members have let him know that they knew where he lived. This happens less frequently because he has moved from that neighborhood both for his family's safety and because he could afford it. He too lives in the Dunlap school district part of Peoria. He estimated that he has not gotten a threat in such a way for probably about a year. Officer Moore testified generally that he had been raised in the original neighborhood where he lived and it had been fairly peaceful when he moved into it in 1991, but that by the time he moved his family out in about 1997 “we were hearing gun shots down the street.” The officer also recalled an off duty event where he assisted in an arrest of a person fleeing the police who happened to go through his yard. (Police Chief Stenson spoke up at this point that this showed a “good argument for residency”). Sergeant Moore's only knowledge of the problem in the schools of District 150 is what he has heard from other officers in a general fashion.

Officer Elizabeth Blair, with eight years seniority, testified to an incident involving two juveniles, one a self-admitted gang member who told her she could not arrest him because he knew where she lived. A few weeks later when she was on duty and talking to some kids about searching for another man with a gun, one of the kids said that it would be “too bad if your house caught on fire”. Officer Blair arrested this child on the spot and he was, in fact, prosecuted and found guilty of intimidation. This event occurred some years ago. She has since moved to another Peoria neighborhood. Officer Blair acknowledged that receiving threats is a routine experience for an aggressive police officer. She has put

an alarm on her present house and has never been attacked or threatened at any residence she has lived at since becoming a Peoria police officer.

Officer Blair's general impression as to problems with Peoria School District 150 is that some of her friends have "quit being teachers because of the different incidents that have occurred in school." She has not specifically looked into the Dunlap school district part of Peoria but has nonetheless moved there and now lives "almost at the farthest north of the city limits that I can because I want to live in a place that I can stay and my son can go to school throughout his education." The officer also admitted that anytime a gang unit officer deals with "a lower end clientele," kill threats can occur as often as once a week.

Officer Michael Patterson, a nearly nine year veteran, testified that he is required to live in the city but he and his wife pay a non-resident \$488 monthly fee to send their twin eight year old boys to another public school district because "first and foremost I want the best education for my children? .secondly, the class size, the teacher to student ratio is much smaller and plus by sending my kids to Hollis (school district outside Peoria) I don't have to worry, ? when they're not with me." Officer Patterson also lives in the northern "Ridgewood area" of the city. He has not researched the District 150 elementary schools that would serve him and his neighbors versus the school district that he is utilizing by paying private tuition. All he knows is that the media has been reporting low District 150 average test scores.

Officer Keith Burwell, a three year veteran, testified to a 2001 incident where he had done the paperwork for persons arrested in his assigned district and later heard from an informant of "a hit" being out on him. He has had a total of one or two threats made on his life in the course of his 3-1/2 years of duty. He was offered a TAC house alarm by the department and declined it. He was also offered to be in a two man car and declined it.

Officer Katherine Baer, wife of police officer Burwell, testified that before her marriage and while a new police officer, she had rented a house in the "east bluff area". She had, while on duty, answered a complaint involving her next door neighbor who told the police woman that she knew about her personal life and her dog and that she would do everything she could to make the police officer leave the area. That neighbor was at the time being tried on drug charges and is, in fact, in prison. This officer testified that there has been "nothing major about my house or my family" in terms of threats and that she just received the "everyday threats that police officers, especially female police officers, get that they are going to beat me up and they can take me down and stuff like that? Nothing that offends me or my family? . Routine, when they're under arrest they get a little angry." (Tr. 396-397)

Officer Douglas Hopwood, a seven year veteran, testified that in July of 2002 when he was assigned to work in a south side district in answer to a call of drug dealing in an alley, he was threatened by a gang member who told him his residence address. That man was arrested. Officer Hopwood was "scared for my wife and myself" and obtained a department paid TAC panic alarm connected to the police dispatch center for his house. He added that since his July 2002 event, he has frequently been yelled at by guys driving by

his house. He also has been burglarized (never solved) and speculates that it was connected to a neighbor's daughter's boyfriend who had previously threatened him. This police officer estimated that in the period of his Peoria police employment since 1996, he has been threatened "between 10 and 30 times". But there have been no other incidents to make him believe he has been targeted. He lives on a "main drag" used by gang members driving to an apartment complex west of his house.

Officer Calvin Jones, a nearly ten year veteran, also pays for his youngest daughter to attend a different public school district (\$350 a month). He asserts that his middle school daughter was bored in her District 150 grade school and further implausibly asserts that the District 150 school "wouldn't let her read in school" whereas the Hollis school district has smaller class sizes and his daughter gets a lot of attention. However, the officer admits that his daughter had been accepted into an accelerated or gifted middle school program at District 150 that would have allowed the family to bypass the "behavior and discipline problems" at another middle school and that he had not taken advantage of this resource offered to his daughter.

Officer David Nelson has been with the department 24 years and is not required to live inside Peoria. He moved outside the city in 1987 to find a "larger home, more stable, safe neighborhood, and a public school system that would offer what we had gotten accustomed to at the parochial level without paying the addition tuition". The officer had moved to the "Limestone area" which is just six miles distant from the Peoria police station\City Hall. He admits that his religion had been a factor in his paying for parochial school while in Peoria and that he had not met with the staff at the District 150 elementary school his children would otherwise have attended. That elementary school within blocks of his house in the "general east bluff area" was in a "very high call concentrated area as far as police calls"(tr 473).

.Several more officers testified. Former officer Youngman left the department many years ago after four years on the force in order to work in insurance. He recalled being frightened for his family once when he was encountered at a mall at Christmas time by a five or six persons from the housing project who greeted him and asked if that was his family. This officer recalled that he'd been stared at and recognized other times at the mall. Once he had been concerned when a man that he saw across the street from his house was someone he had once arrested for armed robbery. (That person, it turned out, was waiting for a bus.)

An officer Chiola also pays parochial school tuition for his two school age children; he does this because "having been a patrol officer and seeing the amount of calls and the type of calls that occur at the Peoria public schools, and having worked in the housing.... worked in the street crimes unit, which we have daily contact with criminal street gang members, I felt that my children would be best placed in an environment where they would not have to go to school with gang members' kids." This officer also recalled being greeted at the Northwoods Mall by subjects that he knew were criminal gang members, including someone he had once arrested.. These gentlemen "were talking to me, they were talking to

me in street terms. They were not favorable terms toward me, yet they know that I am a serious person and that I will not put up with that kind of activity.” He also acknowledged that after a brief conversation, those individuals had walked away from him.

Officer Chiola recalled a second event at Circuit City when someone he’d arrested recognized him and spoke to him conversationally and said to his wife “Goodbye, Mrs. Man.” Officer Chiola took this as an indication that the speaker recognized his wife and that she could be in jeopardy; the event greatly upset his wife. Officer Chiola indicated that he could have been recognized because he had arrested a lot of people and made a lot of contacts when he assigned to public housing projects in 1998 and 1999 and then again to patrol and to street crimes helping enforce gang and narcotics loitering ordinances. He estimates there are between 2,000 and 2,500 state registered gang members in this city. Office Chiola estimates that he is threatened once or twice a month on average and described the Peoria gangs as transient, moving both within and outside of city boundaries.

Officer Michael Eddlemon is an eleven year officer and an eight year detective in the Juvenile Bureau. He has worked with the police department’s strategic planner to plot on a map the residences of all Peoria officers including those able to live in the county and those who must live in the city. Due to the unique geographical location of the city with a long north south orientation, certain adjacent communities are as close to the police department (located at the southern end of the City, in the downtown area. arb) as are certain Peoria neighborhoods within the city. He estimates that the farthest point that an officer living anywhere in Peoria would be from the police station would be 13 miles. Other estimates are 10 and 11 miles.

Officer Eddlemon testified that he pays \$2,700 a year to send his six year old to a parochial school out of concern both as to safety and the quality of the education of District 150. What he knows about the District , however, he learns only from “friends and family members, including some who reported problems.”

Housing Choices

Peoria appears to have a very large number of active neighborhood associations and there is regular contact by these associations with their city council representative as well as their assigned neighborhood or community police officer. Persuasive testimony and exhibits which need not be discussed here in detail indicate that the City’s neighborhoods offer a wide variety of housing choices and prices as well as distinctively different perceived levels of safety and school quality. The neighborhoods with higher housing prices also provide a chance to send children to the Dunlap school district-- or the high performing Ridgewood High School (the best of the four high schools in District 150 by test scores.)

The city presented extensive documentation in support of the essentially un rebutted proposition that as for median and upper housing sales prices its officers would qualify to live in virtually all of its neighborhoods, including those where the schools are deemed the better performing on the north and northwest side. The majority of the City’s officers earned a gross income (including overtime) of above \$60,000 in 2002, many of them earning

in the \$70,000 and \$80,000 range. The union in reply points out that its officers can get a “rural life style” outside of city limits along with more housing for the same amount of money. Through its exhibits, the city also points out that there is no “property tax penalty,” i.e. there is no significantly higher property tax paid to own property inside the city in contrast with a City of Rockford factor discussed by that interest arbitrator.

The city also submitted exhibits (35-37) to show that the crime rate inside the city varies by police district or census tract and that particularly in the northern area, crime rates compare favorably to areas beyond city limits. Many police officers who must live in the city have, in fact, elected to live in these safer neighborhoods. As for the problems of District 150, the city points out that in this consolidated district there are schools with high performance levels of achievement on standard tests as well as, indeed, significant problems with low performing schools.. The district’s primary and middle schools have widely varying statistics of students who “meet or exceed” state standards. The middle school students who “meet or exceed ” state standards in 2001 ranged from a low of 21% of the students at a school to 83% of the students at a school.. Primary school achievement performance ranged from 34.4% up to 75.1% of students in a particular school. (The union exhibit omits the Washington Gifted School in its entirety.) The fact remains that many District 150 schools had very low scores.

A substantial number of police officer children (49 or about one third) are in private or parochial schools. Nearly two thirds (95) are in District 150 schools and another 18 attend Dunlap schools, according to union exhibits. Thus 67 of 162 police children have been placed elsewhere than District 150 schools, with officers either paying tuition, or paying the higher prices to live in the Dunlap school district boundaries.

Three of the four District 150 high schools have definite problems both as to student performance and some security issues, leaving still two high schools in Peoria that do not have problems: Richwoods High School of District 150 and the Dunlap school district high school. In District 150 there are also primary and middle schools that do not appear to have performance problems looking at the statistics provided. But that said, there appear to be a large number of District 150 schools at all levels including three of its four high schools which are on the Illinois academic warning list. Illinois State Board of Education figures reveal no other schools within 25 miles radius of city limits to be on academic early warning although the time period covered in this study is not stated.

Testimony of City Council Members

Councilman Gary Sandberg presently serves at-large and previously was a councilman from the Second District; his total service on the council to date is approximately 14 years. Councilman Sandberg explains that for nearly four years the council has been comprised of five district elected council persons and five at-large council persons serving staggered four-year terms. Mr. Sandberg is a registered architect who once worked as director of the city’s inspection (code enforcement) department (about 1978 to 1989.) The second district that he had represented and where he still lives is an older neighborhood with historic homes on top of the bluff and with 1950’s homes also. Councilman Sandberg indicated that, based upon neighborhood meetings:

“Residency is a very important component to maintaining confidence and trust in transitional neighborhoods. It is frequently brought up at neighborhood meetings. outside the political election process. In the last political election process it was brought up on several occasions during forums, special questions because the election was running concurrently with some of our? your earlier meetings.

It was a topic of knowledge that this was an issue. Citizens on several occasions asked a question and expected the candidates to have a position? they would make some very strong statements saying that it was not for police officers but for all city employees that have a direct impact, especially in their neighborhoods, zoning, code enforcement, the fire department, that it was very critical to keep city employees living in the city of Peoria.

There were some objective things. “We pay your salary” and things like that. But from most people’s point of view, it was more a statement of philosophy. `The city employees don’t want to live here,’ that sends a very strong signal to each citizen of Peoria? that why should we live here. We don’t want an occupational army. We want people within our community that are employees that provide the service that understand the problems? (Tr. 732-733)

The councilman indicated that he lives about one mile from downtown Peoria in an area described four years earlier as one of the three areas with top crime statistics. He has bought three other houses to fix up and has never felt insecure in his neighborhood (despite a homicide next door...) This councilman indicated that in the first district there are probably houses available for \$5,000 and another in the million dollar price range (a lot of land and a river view.) He has not ever had children schooled in District 150 schools. Councilman Sandberg explained the importance of the issue to the whole city council:

“It is extremely high. Quite frankly, in the 14 years that I’ve been on the council, It has gotten higher. I really believe that when I first went on the council in 1989, it may have been 7 to 4 but I believe right now, there’s only one city council person that feels that it’s not important. (Tr. 741)

The councilman when asked if the council had ever authorized its bargaining team to make any offer on relaxing residency answered as follows:

I guess I would characterize the city council’s position, absent the one council person, as it is something that we didn’t want to offer up. It didn’t mean we wouldn’t respond to any offers. We just felt so strongly about it that we’re not going to put it on the table? It was on the table, but we’re not going to make an offer.

Council Sandberg indicated that only one of fourteen neighborhood patrol officers are community residents and perhaps that was why the program has not been successful, or not made the progress that people had expected for it in the older Peoria neighborhoods.

First District Councilman Clyde Gulley represents an area “below the bluff” in the river valley at the whole south end including Peoria’s downtown. He is a minister and was once a city employee in the “Build Peoria” program which was a training and skills program for underemployed men on city public works project. Council Gulley is currently employed at the Springfield Urban League. He has been a councilman for two years but has lived in his “crime hot spot” neighborhood for about eighteen years. His two sons were educated in District 150 schools. As councilman he expressed the reasons that he supports maintaining the current city limits on residency. Core arguments are “I believe that police officers that are paid by the City of Peoria should live in the City of Peoria so that they can invest in the product that we actually sell.” The product he was referring to is “safety, services.” He also feels that “if people continue to move out of the City of Peoria, we won’t be able to afford the officers that we currently have employed in the City of Peoria.” (Tr. 808-810)

The councilman noted that the Peoria River West mixed use housing complex has a high scoring school (Keller) and one of the city’s best high schools (Richwoods). Therefore, as he noted “you can live in the First District and go to the best schools and have affordable housing.” When asked what, if anything, would cause him to consider relaxing the residency rule as a vote on the council, he answered that perhaps substantial financial gain to the city would cause him to consider it and he does not deny that at some point something could happen. However “of all the things that I’ve seen up to this point, there wasn’t anything that would cause me even to give it a second thought, to give it consideration.” Councilman Gulley expressed a major city argument in this case:

That’s the real fear, in my opinion, that we could lose, you know, residency to other units? which is like a foundational reason why we need not to allow them to move or it could hurt us as a city. You allow it to happen with the police and it would be reciprocated and really hurt us down the line.” (Tr. 853)²

Councilwoman Gale Thetford is Third District and serving her second city council term. Councilwoman Thetford described her district as “the most diverse of the five council districts” containing \$15,000 homes up to \$500,000 homes. Her district encompasses the eastern portion of the city including the East Bluff and as far north as Proctor Hospital. It is a “long eastern portion of the city but it is very diverse.” The councilwoman stated that she has had discussions with constituents, neighborhood associations, and neighborhood leaders about the issue of residency.

“Quite candidly, not just with respect to police officers, but with respect to residency of all city employees, but probably most significant police officers, the majority of people that I represent feel that its very important for the

police officers to live in the city, to actually commit themselves, not just to public service from 8 to 5, but to commit themselves to public service within their community.”

The councilwoman indicated that the persons that she represents consider it an honor to have a police officer live in the neighborhood, that this gives them a sense of safety and a more positive feeling about their neighborhood. She recalled a number of officers who have at different times lived in her district. Councilwoman Thetford, Councilman Gulley and Councilwoman Teplitz had met and together set down informally the reasons that they believed that residency should not be relaxed. A strong view of these three members of the council is that all city employees, by residing in the city, indicate a commitment to the concept of public service and to the city. Further, for a police officer and his or her family to live in the city “is a key component in the maintaining of neighborhoods.”

Councilwoman Thetford asserted that there are between 25 and 30 neighborhood associations, some more or less active, in her district alone, and she could name ten that she interacted with on a regular basis. She recalled that the Union offer of (giving up) \$100,000 in back wages for obtaining extended residency had been brought to the council by the city bargaining team and that “in comparison to the benefit that was being requested, the amount did not seem to make sense.” This councilwoman testified that she would be willing to consider having police officers or other union members not live within the city “only if there is a substantial financial benefit to the city. I mean that it would have to be substantial.” (Tr. 1138)

Councilwoman Marcela Teplitz was a member of the police department from 1971 to 1982 including as a sergeant. After leaving the department to take care of her child, she became an involved community volunteer and leader. She has been a city councilwoman for 2-1/3 years but is also a former Peoria Housing Authority board member and chairman and has her own private investigation business. Councilwoman Teplitz describes her District 2 as “just above downtown in the West Bluff.” It is a residential neighborhood with historic homes and other homes and commercial thoroughfares. Whereas there were houses chopped up into several units “for the lot of criminals, many of whom I knew and had sent to jail”, there has been rehabilitation also. Councilwoman Teplitz testified—without being able to give specific dates or names—to having had “multiple discussions with some constituents” in the past year:

I would have to say that the vast majority of my constituents and the overall opinion of them is that they would very much want to see police residency requirement remain within the City of Peoria. Its very important to their sense of well being.” (Tr. 1316).³

The councilwoman also described her satisfaction with the District 150 education received by her now 21 year old son, first at Roosevelt Manual School and also at Central High School through his 2000 graduation.

In addition to council member testimony, the city raised arguments via exhibits seeking to show that officers who live in the city would reasonably (if not scientifically or measurably) be “more likely” to spend more of their off-duty “contact hours” carrying out their private lives in their residential community. This was to be compared to “itinerant police officers” who would live outside and feel no connection, respect for or commitment to the community that they are “sworn to protect.” City corporation counsel and also witness James Murphy noted that Peoria in particular emphasizes a philosophy of community involvement and activity by its police officers. There was a notable lack of concrete data for this and other city-expressed philosophical positions. The City offered as partial support for its argument a 1991 New York Times editorial and testimony given by a national fraternal order of police president before a House of Representatives committee considering a program of encouraging police officer to reside in inner cities via affordable housing programs.

Testimony of Chief of Police

The Chief of police since October, 1997 and a long time member of the department, John Stenson expressed his reasons that the city should be allowed to maintain the present residency limits. He noted that all officers hired since 1989 have agreed to reside in the city; and he believes that “living in the community promotes ownership of the job and resolution of the problems that the community faces.”

I’m also more entrenched on that position since 2001, September 11, and the present discussions going around the country in reference to police being the most visible arm of government and it’s in most cases the highest receiver of local tax funds

...going back before 9-11, the Oklahoma incident, a couple other domestic terrorist situations where public confidence has increased when they see police in their neighborhoods (tr 1621).

The Chief gave his personal opinion that “if you remove the city limits, I think that the citizens of the community will feel abandoned as far as the commitment to the concept of building partnerships and community policing. Our motto on the car is building partnerships. Our policing policy is problem oriented policing or community policing? .” (Tr. 1639)

The chief was present for the bargaining in 1989 and recalled that every item was discussed and signed off, with both sides making proposals before the final contract. He recalls that the result of the city proposal to bring the limits of residency to city limits from county limits was “that we ended up with where everybody that was on the job was going to be treated equally and that any impact on residency would be for new employees. In other words, new employees have to live in the city.”

The Chief indicated generally, that there have been times when his non City resident officers have in a major snowstorm needed “a couple days before they get in to

work. That includes command staff.” He theorized, without supporting documentation, that

“residency does have a very important impact on where we’re at today as far as crime..when I became the Chief in ‘97 (Peoria) was number one when it comes to crimes on a Uniform Crime Report Part I...I think if you check your Uniform Crime Report for 2000 and probably check your..numbers through June of 2003 you’ll see that Rockford and Springfield have more Part I crimes than the City of Peoria (tr 1126-27)

However, he was unclear as to how he tied in the “10% decrease” in crime (time period not stated) with residency. He also agreed that he was not claiming that the fact of police residency in the city is the “sole factor” in crime reduction

The Chief testified that when he makes assignments such as to community relations or the community service unit, the officer’s place of residence is “not a factor.”On cross examination the chief conceded that of 97 officers who are eligible to live outside the city less than 50 do so and that in fact crime is down nationally over the last ten years, not merely in Peoria. He also answered that of 35 sergeants, a third lived outside the City, that being possible for them due to the date of their hire.

Testimony of Finance Director

I do not reproduce in detail the testimony of the City’s financial director. This is not an inability to pay situation. Briefly summarized, Elvira Hogan indicated that there has been a considerable decline in the City’s unreserved fund balance, and that the 2002 revenue estimates were too high. The City took midyear necessary action to correct the decline, action which including stopping some capital projects, freezing vacancies or eliminating positions. The 2003 budget was balanced by using capital project money to balance the operating budget and again eliminating positions. Such use of capital is not planned for future budget balancing but the City was, at the time of Ms. Hogan’s testimony, looking for a means to cut four million dollars from its operating budget to balance the 2003 budget.

The City has had an AA bond rating but has not had to go to market since 2002. Its general obligation debt has stayed within the ratio considered acceptable by the rating agencies.

Personnel costs make up about 75 percent of the City’s operating budget. Ms. Hogan described the City’s overall financial situation as “not dire, but we need to manage the downturn in revenues....we need to bring expenditures in line with revenues.” Ms Hogan also explained that the City council by policy decision has regularly abated property tax levies that had been approved and recorded with the county clerk, by using other revenues in order to abate property taxes, one revenue source being its utility tax.

Internal Comparables

All of the city's union contracts (police, firefighters, AFSCME, and the crafts and trades unions including electrical workers and teamsters,) call for employees hired after certain dates to live in the city by the end of their probationary year. All city employees represented and non-represented hired after dates stated as either June 21, 1988, October 13, 1986 or (Police) 2/21/89, "must become residents of the city" or "will be required to live in the city" or "shall establish and maintain their principal place of domicile in the city" within one year from date of hire or by the end of their probationary period. Management and confidential and non-represented employees are also subject to the residency requirement.

All union contracts further allow those employees hired prior to the respective effective date for city residency to maintain residency in Peoria County. Figures compiled by Assistant City Manager and former Human Resources Assistant Director Pennington indicate that only 17.2% of all city employees live outside the City of Peoria, virtually all of them long-term employees (or new employees still within their grace period.) Mr. Pennington's statistics also indicate that of employees who have the option to live anywhere in Peoria County, 44.2% do live in the county and 55.8% live within the city limits. For police officers having the choice, i.e. the older officers, 50% live outside city limits. Therefore, Mr. Pennington surmises that if the residency requirement were changed and this change then was made for all city employees, over time "an additional 196 employees would move outside the city limits." (Exhibit 7) Mr. Pennington was referring or anticipating as to not only police departures but those of all employees. (While the current police sworn officer residency percentages show that 50% of those eligible do live outside city limits, this is exceeded by the firefighters. Of the 78 firefighters eligible to live outside, 56.4% do so. Of AFSCME members eligible to live outside, 67.1% do so. For management employees hired before their residency cut-off date--44 out of 100-- an indicated 52.3% live outside the city.)

The City's strong stand is further reflected by a personnel rule that was effective in December, 1993 and tightened up in November, 2002. It is applicable to management, confidential and non-represented employees and requires that employees promoted to or within management after November 20, 2002 must become residents of the City of Peoria within one year of their promotion. (The city argues that this will not be applied to members of bargaining units.) Thus, employees not in bargaining units but who have been promoted to management would, even if they were covered by grandfather clauses and could otherwise live in the County, be compelled by this new personnel rule to move into the city. Whether that rule has been tested is not clear.

Binding interest arbitration is only available to peace officers to resolve residency impasse and this is the first police contract bargained since arbitration of the topic became available. Other City unions whose contracts were negotiated after the Labor Relations Act made residency a mandatory subject of bargaining for police, as for their own situation would in the event of failure to reach agreement, have only the drastic strike alternative. In none of those contracts was the residency clause changed in the most recent bargaining.⁴ And none of the other contracts contain "me too" clauses. Any change would be one individually bargained at the expiration of the other contracts. However, city

witnesses testified that the firefighters union did seek at some length to have residency relaxed, a request ultimately dropped with a firefighter warning that the police should not be given that benefit either.⁵

Now Assistant City Manager Pennington testified that in the year 2000 the city's AFSCME unit "brought up" the issue of relaxation of the current residency limit but the issue was dropped as the parties reached contract agreement and residency was retained at the status quo. The city's craft and trade union negotiated in "two sets" (electricians and all others). These unions also initially requested relaxation of residency and settled for the status quo contained in the city's proposal. According to Mr. Pennington, the city was using a "win-win" negotiation approach with the firefighters and the parties put on the table all the reasons that favored and did not favor the change with an extended discussion. The city "reached an agreement with the union in principle that we would withdraw our objection to an election for the battalion chiefs for the unions dropping their demand for change in residency? .I drafted the language and proposed it to the fire union? .there was some reluctance but they did sign in that agreement. So residency then stayed status quo in the fire contract when it was implemented the following year." (Tr. 1523) (The firefighter contract covers 2001 through 2004: four years.)

Stipulated External Comparable Communities

These parties have agreed that the comparable communities for purposes of this arbitration are Rockford, Springfield, Decatur, Champaign, Urbana, Bloomington, Normal, Moline, and Rock Island. None of them require residency within their city limits. Joint exhibit 5 contains contract language of those comparable cities that have such language. Not in all cases was any release from any prior residency requirement obtained through collective bargaining.

The question of whether more significant weight should be given to these external comparables favoring the Union is disputed. The City urges that the panel give greatest weight or emphasis to the Peoria internal comparables on the theory that a "breakthrough" is being sought (because there was a status quo of city residency.) The City warns that to grant relief to the police will permeate all future contract bargaining for the non safety units.

The Union stresses that all of the external comparables support its position seeking expanded residency. Three of the comparables have no residency requirement, one of them is stated by specific response time, one has either the county limits or mileage from a public safety building and the others define an allowed radius requirement from a point in their city.

The city concedes that external comparability favors the Union's proposal, but also notes that the record is devoid of evidence as to "whether any of the comparable communities previously had citywide residency, whether they wanted or desired citywide residency, and whether such requirements were bargained away and for what price." The city also notes that its two major counties surrounding Peoria, i.e. Peoria County and

Tazwell County both do require their officers to live within their jurisdictions (that being the whole county). East Peoria and Pekin, the two largest communities in neighboring Tazwell County, have a city limit residency requirement. However, these are not among the agreed comparables, although East Peoria is immediately across the bridge. To search for more favorable ad hoc comparables post stipulation is not persuasive.

The information on the agreed comparables is as follows. The City of Bloomington has no residency requirement; it is unclear whether it ever had one. There is no language in the Bloomington collective bargaining agreement. The City of Champaign has no geographic limitations. An Article 27 clause for Champaign states “officers are not required to maintain a place of residence within the City of Champaign or within any other geographic limitation; however? it is explicitly agreed and understood that inability to report to work, report to work on time, or to remain on duty, may constitute cause for disciplinary action? .regardless of the location of an employee’s residence.” The City of Decatur labor contract (2000-2003) states that “persons appointed to positions in the classified police service shall reside within 40 miles of the corporate limits of the City of Decatur.” Officers who resided outside of that requirement “on April 30, 1997 shall not be required to comply with said residency requirement.”

A Memorandum of Understanding for January, 2003 through December, 2004 between the City of Moline and the Illinois Fraternal Order of Police contains language providing that “residency shall be a continuing condition of employment. Employees hired prior to the effective date of this provision shall live within a radius of 20 miles from the city’s emergency center? there are no restrictions for these employees other than the 20 mile maximum distance. These employees may live in either Illinois or Iowa. Should an employee hired prior to the effective date of the provision decide to move, they are only required to move to a location? . within 20 miles of the emergency center. Employees hired on or after the effective date of this provision shall live within ten miles of the city’s emergency center and within the State of Illinois. The effective date of this provision shall be upon execution of this agreement.” (Therefore, Moline appears to have tightened up its residency requirement to within ten miles of the emergency center for new hires but nothing indicates whether that ten mile limit falls within or without of the City of Moline. With Moline and Decatur there is a two-tier system but no specific reference to corporate limits.

The City of Rockford’s collective bargaining agreement with the police union effective January, 1999 through December, 2001 contains references to different dates of hire but its article 58.7 makes clear that all employees hired whether prior to October, 1990, prior to October, 1995, or otherwise may live anywhere in Winnebago County or within an area 15 miles from the public safety building. Whether this is a longstanding freedom, or an expanded right is not clear.

The City of Springfield police union contract for March, 1997 through February, 2001 has an added October, 1998 memorandum of agreement. This was therefore executed

well after the January 1998 effective date of the change in the Illinois statute making residency a mandatory topic of bargaining for peace officers. The Springfield October 1998 memorandum states “if the city council, in its discretion, takes official action to eliminate or modify the residency requirements for any other city bargaining unit employees, the changed requirement shall be applicable to PBPA bargaining unit employees on the same date and under the same conditions applicable to the other city bargaining unit employees.” Subsequently, Springfield city council by its own motion (not through bargaining) eliminated residency requirements.

The brief information as to the Urbana requirement is that (per joint exhibit 5 with its information from the Urbana city comptroller) there is a boundary of 15 miles from city limits. The 1999 through 2003 Urbana police contract only contains language stating “during the term of this agreement, the city will not initiate with the Civil Service Commission a reconsideration of the current residency requirements for employees covered by this agreement.”

For Normal, the residency requirement in the police contract states “employees covered by this agreement may reside within the corporate limits of the Town of Normal or the City of Bloomington or within a 15 mile radius of Main Street and College Avenue. If a portion of a municipality is located within a residence area, then the entire municipality shall be deemed within the residence area.”

For Rock Island the stated requirement is “ten mile radius as a bird flies on the Illinois side” (per chief of police’s office). There is no indication whether that ten mile radius is from city limits or an address in the City of Rock Island. This would in any event go in three directions (north, south, east) due to the fact that west of Rock Island across the Mississippi is the State of Iowa which is not a statutorily allowed residency.)

For Peoria the farthest distance still within the city’s limit that an officer could live when measured from the police department (itself a few blocks from City Hall) is 10 or 11 miles. The City of Peoria proceeds generally in a north and south orientation and is at the far east edge of Peoria County. The Police Department and downtown are at the south end of the City.

Discussion and Findings

This is the first contract negotiated between these parties after the Illinois Labor Relations Act was amended effective January, 1998 to make residency a mandatory subject of bargaining. From 1973 until 1989 all city employees, including the police, could live anywhere in Peoria County. Since 1989 all police contracts have stated that

Employees hired after February 21, 1989 shall establish and maintain their principal place of domicile in the City by the end of their probationary period. Employees hired prior to that date shall maintain their residence within the county. Violation of this Section shall be grounds for immediate discharge.

The City seeks to maintain the above language whereas the Union seeks language which reads

Employees shall, by the end of their probationary period, establish and maintain their principal place of domicile within Peoria County or outside Peoria County within a twenty-five mile radius of the Peoria Police Department Headquarters Building (600 SW Adams Street, Peoria, Illinois.) Violation of this Section shall be grounds for immediate discharge.

Because this is a non economic item, arbitrators are not limited to a choice between the two final offers, but, guided by statutory criteria, may fashion a third solution.

Statutory Factors

The statutory factors relevant to this non economic issue dispute are the following

- (3) The interests and welfare of the public....
- (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
- (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

The “Contract Impairment” Challenge

Among its other arguments, the City here challenges—in a rare argument—the interest arbitrators’ authority to render any decision that would affect any officers who were hired by means of the individual offer letters executed or acknowledged by them and setting forth the residency requirement. The City’s theory is that apart from the collective bargaining agreement, there exist individual “contracts” with each officer which the legislature did not have the authority (and which it therefore could not delegate) to modify retroactively. The City argues that

Clearly, the Contracts Clause of the Constitution does apply to the collective bargaining process. *Bricklayers Union Local 12 v Edgar* 922 F. Supp N.D. Ill (1996) and both the Illinois and U.S. Constitutions prohibit the state from enacting laws which impair the obligation of contracts unless justified as a reasonable exercise of the police power to secure an important public interest. See generally *Paella v River Trails School Dist.* 26, 33 Ill App 3d 527, 535, 729 NE 2d 954, 960-961 (2000)

It is the City’s position that the passage of the 1997 Amendment to section 14 (i) (5 ILCS 315/14 (i), to the extent it is relied upon by this or any other Arbitrator to modify

the terms of the existing “contract” (i.e. hire letter) between the City and its employees on the subject of residency impairs the obligation of contracts entered into between the City and the Recruit Police Officers hired since February 21, 1989. Indeed, since 1989 the City has included in its Offer of Employment Letter the specific requirement that new hires establish and maintain residences within the City. Those contracts were complete and establish the rights of both parties upon written acceptance by the newly hired Probationary Officer....(brief p 54-55).

The City further contends that the ILRA amendment bringing residency within an “... arbitration decision...places the city at risk of having prior contractual terms and conditions eradicated through implementation of those changes to the interest arbitration provision of the Act. Any change to make residency a mandatory subject of bargaining must be done prospectively, so as not to impair existing contracts which may have contrary terms.....”

The City has provided me with several cited supreme court decisions involving impairment of contracts by state action. Leaving aside the tempting but unnecessary invitation to address in detail the question of arbitral authority to decide a challenge to the constitutionality of the Statute under which this panel is functioning, the chair is of the opinion that there is no impairment of contract problem.⁶ First, if not foremost, it is a stretch to consider the Conditional Offer of Employment letter a contract in the genuine sense. There was no opportunity for the would be recruit to change or modify any of its stated terms, such as wages, probationary period, training, or residency requirement. This was a take it or leave it offer, a form of an adhesion contract, if a contract at all. The imbalance between the parties was such that the letter does not earn the label of protection of contract. Even more to the point is the implication for collective bargaining should the City’s position be sustained.

The City acknowledges a seminal U.S. Supreme Court decision in J.L. Case v NLRB 321 U.S. 332 (1944). The City argues that the issue before this panel is not “a question of whether the collective bargaining process can trump an individual employment contract, which it generally can.(citing Case).” Rather, it is a question of whether the collective bargaining process can trump both the Constitutions of the State of Illinois and the United States, which it cannot. Clearly, the Contracts clause of the Constitution does apply to the collective bargaining process...” (Brief 54).

In Case, the Supreme Court was reviewing a Circuit Court of Appeals decision granting an order of enforcement sought by the National Labor Relations Board against J.L. Case. That employer was refusing to bargain with a union which had won a certification on the theory that the Company had individual hire contracts (predating the union arrival) with 75 percent of its employees and that it could not negotiate any matter which affected the rights and obligations of the individual contracts. The Supreme Court stated

Individual contracts no matter what the circumstances that justify their execution or what their terms, may not be availed of to defeat or delay the procedures prescribed by the National Labor Relations Act looking to collective bargaining.....**nor may they be used to forestall bargaining or to limit or condition the terms of the collective agreement.** The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices...wherever private contracts conflict with

its functions they obviously must yield or the Act would be reduced to a futility. Id at 337 (emphasis added.)

Even were I to find that the (open ended) hire letters constituted individual contracts, such contracts cannot “limit or condition the terms of the collective agreement.” The labor contract at issue will cover a period only after the Illinois ILRA amendment. It authorizes bargaining over residency. To hold that the post 1989 Peoria police contracts cannot be affected by later collective bargaining agreements (absent the city’s consent) would nullify collective bargaining and indeed defeat its purpose. The mandated written acknowledgment by the recruit candidates that they are being required to move into the City does not equate to a waiver of their Union’s bargaining authority to seek to prospectively overturn that requirement. There are other areas where the letter no longer has any bearing, and some of these negotiated topics.. For example, the letter is silent, but the discharge of an officer must meet labor contract just cause standards. Or, as the Union points out, the letter offers life insurance of \$6,000 and “if the City decided it could not afford to offer the \$6,000 life insurance benefit offered in the letter and won that issue in interest arbitration, can the City genuinely assert that they would be obligated to continue the benefit because the arbitrator cannot `unconstitutionally impair’ the written contract?” (Brief, p 20.)

The Union argues that

...there is a four part inquiry to determine if there is an unconstitutional impairment under the Contract Clause. First, the new legislation must involve a contractual obligation. Second, the legislation must impair the obligation. Third, the impairment must be substantial. Fourth, in order to be valid, the impairment must be “reasonable and necessary to serve an important public purpose.” Energy reserves Group v Kansas Power & Light Co 459 U.S. 400, 411 (1983).

The Union argues that absent a contract, or a substantial impairment of the contract obligation, “the inquiry ends there and there is no contract clause violation....an impairment rises to the level of substantial when it abridges a right which fundamentally induced the parties to contract initially or when it abridges the legitimate expectations which the parties reasonably and heavily relied upon in contracting Allied Structural Steel Co. v Spannaus 438 U.S. 234 (1978).

The undersigned finds that the City may well have “contracted” to hire only recruits who would agree to be restricted in their residency requirement. But it had no legitimate expectation or at minimum no reasonable basis to be sure that such a clause would never be part of bargained “terms and conditions” of the collective bargaining agreement governing these officers. As the City itself stresses, it had “bargained” the clause into the labor contract. A clause that was “bargained in” in can be bargained out, either voluntarily or under authority of labor laws then and now in effect. The difference now is that the “conditions of employment “ terms of the bargain, if not agreed, goes to a third party. To summarize, I find that there was no “private contract” between the City and each individual officer; in the alternative I find that if there was such a contract, the impairment to officers of being required to reside within municipal boundaries for their full professional career is not “reasonable and necessary to serve an important public purpose.” Again, if this was in fact a “legitimate expectation” of the City to obtain residency from all its new hires,

this was an expectation subject to the bargaining power of the Union and the legislative redefinition of that power.

I do not believe that this panel in expanding residency would be acting under impermissibly delegated authority possessed by the state legislature. This is not a decision that would be made by the legislature in the absence of arbitral action. The arbitrator steps in to fashion, as closely as possible, what the parties might have bargained, were they committed to avoiding impasse. The amendment to the ILRA expanded the scope of what the peace officers may bargain to impasse and states what shall happen in cases of impasse but it is not the legislature which would determine what the resolution of the impasse would be. The law has set out the criteria for resolving such impasse and arbitrators are to be guided by such criteria.

Burden upon Union: Status Quo\Breakthrough?

An initial dispute is whether this Union effort is truly seeking a change in status quo, for which it must provide compelling reasons. As discussed above, there was bargaining for the 1989 contract and at minimum some negotiation on the city-desired change from the longstanding county wide residency. What, if anything, was obtained by the Union as particular quid pro quo for agreeing to this clause in 1989 is not of record. Two important points limit the significance of this past “bargaining.” The first is that the language obtained by the Union at that time exempted all of its members. It was “prospective hires only” who would be subject to the requirement. There was no detriment to the Union members bargaining on behalf of future members; the requirement never would pertain to them. A second point, persuasively emphasized by the Union here and found significant by other arbitration panels is that peace officers had no favorable alternative at the time the language was placed in the contract. Employers at that time were free to pass ordinances or personnel rules requiring residency.

What is the Union’s burden here? Several arbitrators have addressed residency since 1998, and whether their set of facts presented a bargained “status quo” such as to trigger the “heavy burden of justifying the proposed change.” On balance, I find more persuasive that line of arbitral reasoning that holds that the statutory situation prior to the 1998 change in the ILRA erased or greatly weakened any concept of status quo in view of the inability of peace officers pre-1998 to compel bargaining, or nullify any ordinance or rules imposing residency limits. Arbitrator Goldstein, finding “not crystal clear” whether there was “bargaining history” prior to the contract before him, which already contained a residency article, commented that

In any event I am convinced that given the (statutory) amendments about residency made to ILRA in 1998, this proposal should be treated as if the parties were making a new contract. Thus, although management argued bargaining history should be relevant to the current case, I hold instead that the genesis and evolution of the Village’s uniform residency rules are more probative when connected with the claimed political realities and when considered under the rubric of criterion 3. ⁷ This is not a case where the “breakthrough analysis controls the result, or where the failure of give and take at the table can be found to require maintenance of the “status quo” I so hold.... (Village of South Holland p 45, 10/99).:

The City has cited the three criteria utilized in some arbitration decisions by Arbitrator Goldstein starting with his 1998 award (City of Burbank.) These were what, in that arbitrator's view "at a minimum the moving party must prove." (He later rejected the need for criterion #3 in his South Holland decision.) The criteria do not assist the city here. The first states that

1. The old system or procedure has not worked as anticipated when originally agreed to.

In Peoria, the response to the above is not simple. The system in place of city residency was agreed to by a group of officers whom it would not affect. It "worked" for the City in that all later hires have moved inside with an increasing majority being city residents. From the Union viewpoint, the current affected officers were not the ones to "anticipate" the result and if the Union anticipated that the requirement would work well for the future hires, that has not occurred. Their comfort level in the City and the equality of its schools and neighborhoods has not been maintained.

The second Goldstein Burbank criterion states that

2. The existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the Union.)

There are no hardships admitted by this employer, which holds fiercely to the existing system, unless one calls officer morale, officer turnover (resignation or termination after only a few months or years on the job especially in 1998 and 1999) and the quality of recruits to be potential operational hardships. From the Union side, the due process problem is that the officers who were later hired had no choice other than to accept or reject an offer that required residency. They were fully informed of the take it or leave it offer but lacked a "due process" mechanism for change. The legislature has now given it to them.

The third Goldstein criterion states

3. The party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

The evidence is more than adequate that the City has resisted bargaining and declined to consider or give any suggestions to the Union other than maintenance of the status quo. The City's view is set forth strongly in the brief as quoted. The contract before this panel was to have covered 2002-2004 and we are in 2004. The likelihood that the City will change its view when, in a few months, the next contract period comes near, based upon this record, is nil.

Interest arbitrators have commented on their "conservative role" to "merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria" with their function being "to resolve an immediate impasse, but not to usurp the parties' traditional bargaining relationship.(Arb Goldstein in re Sheriff of Cook County 1995 citing to an earlier decision of City of DeKalb, 1988).. However, later interest arbitrators, including Arbitrator Goldstein, have found that where the impasse subject is residency, and it is being addressed for the first time after equal bargaining power was given to the parties by the legislature, the burden upon

the Union is not the burden of overcoming the “status quo,” even when the restrictions were already in the labor contract. I concur with these comments of Arbitrator Goldstein in South Holland

...under these specific facts I also conclude that the general rule regarding interest arbitrators reluctance to grant breakthrough in arbitration, solely because such a grant directly undercuts the bargaining process, is simply inapplicable to these facts...the philosophical basis of the Employer’s resistance to a non-economic proposal, when viewed in light of the entire bargaining history presented to me obviated the need for the Union to bear any burden of proving it presented specific offers to compromise or some quid pro quo to induce the village to agree to its proposal. Under these facts..the process of give and take could not work but the issue would not go away either. A “break through” here is not the same as in most other areas, where the parties’ assessment of their respective interests do not preclude exchange of benefits or compromise.

Arbitrator Goldstein (while ultimately finding the City’s proposal more reasonable) further stated that

...this arbitration itself underscores the depth and difference in philosophy and the fact that, in this particular Village “residency rules liberation: could only be won by the Union in arbitration and not by bargaining across-the-table, unless a quid pro quo of some substantial value were to be offered to trade...

See also arbitrator Hill in re City of Blue Island (3/02 at page 38)..

In the instant matter, the Union did offer a quid pro quo worth \$100,000 which was not fully *de minimis* despite the City Council’s conclusion that it was hugely insufficient. More to the point, the City declined to offer or suggest any counter and instead informed the Union that there was in fact no price that the employer would accept because “some things are not for sale.” The City’s reasons for wanting full employee and full police city limits residency are understandable and found in the several other battles fought by other cities over this issue. The Union’s arguments are also sound and a resolution taking into account both parties’ interests can be fashioned. I find that the Union is not obligated here to show “a substantial and compelling need to change the status quo.” Nor was the City compelled to agree to give up what it viewed as a status quo. My role is to use the record made here to either find one or the other final offers more reasonable, or to fashion a contract solution somewhere between, one which addresses concerns expressed on both sides during bargaining which they have been unable to address or mutually accommodate and which meets the statutory criteria..

In his Calumet City decision arbitrator Steve Briggs was dealing with abundant evidence about one Union argument brought here and typical in these cases: “valid safety concerns related to their families living near those persons whom they arrest and incarcerate.” The details placed before him of threats and risks were more compelling, urgent and numerous, but the instant record portrays an equally valid concern on the part of the Peoria police officers, as neighborhoods have deteriorated and gangs proliferated in their city. Officers cannot of course be protected from the

risks inherent in their profession, but their morale and sense of family security can be improved by a solution not damaging to the city's own interests or to police department operation..

One is struck by the degree to which the City of Peoria's largely policy and philosophical arguments are not (cannot be?) supported by concrete data. While the perception of citizens is a valid concern and one they have expressed, it is not assisted by guesstimates about where officers would spend their off duty hours. Any response time goals can be accommodated without maintaining strict city limits residency. (Chief Stenson did not claim any response time problems of the officers living out in the county, other than his vague recall of a snowstorm.) In Calumet, Arbitrator Briggs did not find any "valid operational arguments in support of (the City) desire to force police officers to reside within City limits..." I find none that are determinative or persuasive. The officers' desire to have a choice of housing environments, or even to have their children in schools other than the poor performing majority of the District 150 schools are valid goals. (The City argues that the Officers' negative perceptions of the District 150 problems are also mere opinions or perceptions. There is however some strong statistical backup for them, and the additional officer familiarity with calls by schools for assistance.)

The fact is that even after 14 years about one fifth of the Peoria force, including its most senior officers, live in various parts of Peoria County outside the City and their performance has been described as essentially unaffected and often exemplary. One or two incidents every few years of a problem after a heavy snow or construction on highways does not mandate the strictness of the requirement. As it is, a large number of the affected officers have grouped themselves in the most northern or western areas of the City for reasons stated. I do not agree with the City claim (brief, p. 46) that as to housing, inadequate schools or officer safety, "neither has the Union produced any evidence that any of these issues have substantially changed since they initially negotiated the City limit residency in 1989." There is evidence of deterioration.

A key, albeit undefined statutory criterion is the "interest and welfare of the public." The public interest and welfare can be served by the requirement that Police Officers be residents of the community that they police for a certain period, after which having acquired some experience and seniority they can be given a limited area for their freer choice. A distance of course can and generally is placed on such boundaries (see external comparables) in order to retain the ability to give quick response. The City seeks for its officers to obtain knowledge of the city that they police, and to demonstrate their commitment to the City. But commitment cannot be compelled and the benefit of acquired experience can be made available to the community whether or not the officer forever resides there. (Logically or presumably there was a conclusion by the legislature that the public interest could be served by allowing bargaining over residency rather than one sided employer imposition of it.) The benefits of any weakening of absolute employer discretion could inure to both recruitment, to officer and family safety or morale, to better retention and efficiency (retaining officers who have been expensively trained). There is the added benefit of simply allowing police officers the freedom, within reasonable limits, to leave the area where their function is to stop, enforce, arrest, control, and identify crime and criminals.

The opposing values of public employer and public employee calls for a balancing of interests. The officers seek freedom in leading their private lives which includes greater personal privacy and safety for their families and better schools. This urban middle sized city seeks to keep its trained personnel, paid with its dollars, committed to the city, and a model or comfort to foster

citizen confidence in the city as a desirable and safe place to live..The balancing act has been shifting with a recent and increasing recognition that the broader sense of “public interest” means not only the sense of security of the citizens of Peoria, but of the officers themselves.

Another key statutory criterion is that arbitrators are to consider “conditions of employment....in public employment in comparable communities.” As discussed, all external comparables fall soundly with the Union position. The City acknowledges this but argues that

The record is void of evidence whether any of the Comparable communities previously had city-wide residency, whether they wanted or desired city-wide residency, and whether such requirements were bargained away and for what price.

The City had many months to acquire such information “for the record” if it considered it useful or relevant for this panel. The fact is that at the present time in Illinois and elsewhere, the benefit of some relaxation of residence boundaries has become so widespread as to be universal in the cities that the parties agreed to utilize. This is not the first year for use of these same external comparables. And the City-posed issue of what bargaining was done to obtain them is less relevant in view of the total unwillingness of the City to bargain.. The reasoning of the majority of interest arbitrators is that between external and internal comparables, the externals have the greater weight. (See i.e. Marvin Hill in re City of Blue Island; Goldstein discussion in re South Holland) Residency of course poses unique problems. Cities are different sizes, with different levels of housing choice, of crime, of costs of living, of population and police department size and of traffic or travel conditions..

Arbitrator Perkovich in re City of Blue Island\FOP 1/2001) was faced with mixed internal comparables and had thirteen agreed to external comparables. Six of those had no residency requirement and five had distances that were different than the employer’s jurisdictional boundaries. Moreover, of the remaining comparables the residency requirement was imposed via city ordinance and not by way of collective bargaining. Thus the external comparables weighed heavily in favor of the Union’s final offer.” That arbitrator elected to weigh “the basic right of individuals to live where they choose” against the needs of the employer and he granted a Union proposal to set a 15 mile from city “jurisdictional boundaries’ within Illinois.

In the instant case, Peoria argues that while arbitrators are authorized for this non economic item to fashion a remedy, and are not obliged to adopt one of the final offers...

“from the City’s perspective there is no middle ground which could be considered a fair compromise...the Union’s final offer of all of Peoria county plus a 25-mile radius from the Police Station is a red herring, a proposal never advanced during bargaining...an arbitration stratagem...to allow (or entice?) the arbitrator to cut it back to....expand residency to Peoria County’s boundaries.” (Brief p 41.)

..

The City argues (and the award takes note of the fact) that an expansion to cover the boundaries of all of Peoria County would allow distances of greater than 25 miles from the station. “Expanded residency to Peoria County will not alleviate the City’s problems in any way.” The city enumerates a plethora of problems that it asserts would be “sacrificed by any deviation from the current

contract's City limits residency rule." These include both "availability and response time .. community buy in and participation, contact hours, perception of the citizens of neighborhood safety and security, impact on other Unions and destruction of the bargaining process." There is, however, a huge divide between the city's claims, and its evidence-- generally consisting of reproduced articles, argument and speculation-- in support of these claims. The strength of the City comment here and its choice of terms does indicate the futility of sending these parties back to the bargaining table.

The unique circumstances of this dispute must govern. I consider pivotal that **all** external comparables regularly used by these parties have a more relaxed or generous residency requirement, none confined to city limits. The advantages from allowing officers to live somewhat beyond the boundaries of their municipality are the greater morale for those officers, resulting from a freedom of choice as to school system, living environment (rural versus urban, near versus further in distance). Another advantage is the greater pool of applicants available for hiring of officers despite the city's indication that it has had adequate pools.

I have considered the other arguments raised by the parties and their discussion of other interest awards, all of which I have read. The City places great, pivotal emphasis on its theory that the matter was bargained in 1989 and that this fact should be determinative in placing a proof burden on the Union which it has not met. The City seeks for this panel to disregard the persuasive aspect of the recent decisions where residency was granted. I have discussed above my view of the lesser weight to be given to what occurred in 1989 in view of the statutory change considered seminal by many arbitrators beside myself. I have considered the City's claim that " in the absence of any real bargaining over this issue it is especially inappropriate for this arbitrator to award the Union's requested change through interest arbitration." (Brief p 46). I find such claim disingenuous and unpersuasive in the context of a record replete with City refusal to bargain in any meaningful fashion.

The officers who testified indicated their concern for the safety of their families and their own sense of security once returned to their home. The work of a police officer incorporates of necessity constant exposure to criminal and gang elements, and running into them in off hours and public places is somewhat of a "given." But while these officers have not painted as dire a picture of incidents affecting their private lives as are found in certain other recent interest arbitration fact discussions, they have provided substantial evidence of periodic invasions of their sense of privacy and interference with their desire to be "off" of their job in off hours.

I take careful note of that fact that in Peoria all unions and all non represented employees (except those grandfathered) live under the same requirement and that to grant extended residency to the Police Benevolent Association would be the first such break in the carefully enforced policy. But the clear move toward expansion of required limits is reflected in the external comparables and in decisions. A resolution can be crafted that accounts for the problems in each final offer here and that will in my view accommodate the interests expressed by each party.

Award

The Union proposal establishes an unworkably wide area for allowed residency, beyond the area needed to address the desires of officers for housing choice, school choice and privacy. The City has valid concerns that its officers be part of the community, have a “live in” knowledge of it, and be responsive in times of urgency and crisis. This is the first instance of relaxed residency, and a paced rather than immediate and drastic change will allow the different goals to be accommodated and further negotiations to address the question again..

I adopt neither final offer. The language granted shall read as follows

Residency: Employees hired after February 21, 1989 shall establish and maintain their principal place of domicile in the City by the end of their probationary period. At the conclusion of five full years of active service and of Peoria city limits residence, they may establish and maintain their principal place of domicile within the City of Peoria or outside the City within a twenty mile radius of the Peoria Police Department headquarters. Employees hired prior to February 21, 1989 shall establish and maintain their principal place of residence within Peoria County or within a twenty mile radius of the Peoria Police Department. Violation of this Section shall be grounds for immediate discharge.

Ellen J Alexander, impartial chair
Date:_____

Arbitrator Joel D’Alba

assent:_____ dissent_____

Arbitrator James Baird

assent:_____ dissent:_____

ENDNOTES

1 The other piece of the union offer as consideration to obtain residency relief was that it would not seek to put into the contract a practice that it described as widespread whereby retiring employees with large banks of unused sick leave would “burn” all their sick leave by remaining on the full payroll with benefits until all of that leave was used up. Their contract right was to receive a payout of a lower or capped amount of unused sick leave . The city did not consider this additional offered benefit to have been significant in view of the fact that there was already language in the contact which could be enforced to pay out the capped sick leave with no right to “burn it”. It does not appear that this offer was taken to the city council at all. The agreed to provisions of the new contract included a specific prohibition of that practice and was part of the interim award .

2 As of October, 2002 17.2% of then 844 city employees lived outside. There are 328 employees eligible to live outside and of that group 44.2% live outside the city (all of them in the county of Peoria). Of police officers eligible to live outside city limits, 50% do so. See further discussion in text.

3This witness along with others concedes that police officers are not required to live in any particular city neighborhood.

4The statutory change specifically listing residency as a condition of employment that may be arbitrated only makes this statement as to peace officers. The other local unions would need to strike over this issue, a very costly extreme measure.

5 City witnesses asserted that the City gave a benefit of negligible if any value to the firefighters in return for their withdrawing their most recent demand on residency. That benefit was that the City agreed to withdraw objections to elections which would place battalion chiefs back in the union. However, City counsel Murphy indicated that the city did not anticipate it could win in opposing such an election. But he also indicated that there was some consideration in the wage package. The city urges that I consider the fact that it essentially obtained a withdrawal of the firefighter residency demand for very little if any return benefit to the firefighters. On that theory it stresses the danger were this panel to allow arbitration to be used by the PPBA as a means to obtain a enormous benefit without having to give anything back to the City.

6As the Union points out “if the City disputed the Arbitrator’s authority to award residency change under the Act, the City should have filed for a declaratory ruling under Section 1200.143 (b) of the Illinois Labor Relations Board Rules and Regulations.....