

case involves a single issue, residency, which the parties agree is non-economic. The final offers on the issue were exchanged by the parties during the course of the hearing. After several agreed-on extensions of the due date, post-hearing briefs were filed by mail by the postmark date of June 16, 2003.

Final Offers

At the hearing each party submitted its last offer on the issue in dispute, as follows:

Union's Last Offer

Employees shall be required to establish their primary place of residence on the Illinois side of the Mississippi River and within twenty (20) miles of the corporate limits of the City of Alton. Such residency requirement must be established within ninety (90) days of an employee's appointment by the Civil Service Commission. Such residency requirement shall be a term and condition of continued employment with the Alton Police Department.

Employees who do not establish their primary place of residence within the corporate limits of the City of Alton and are assigned to positions that provide a take-home vehicle shall waive the use of a take-home vehicle.

City's Last Offer

ARTICLE 33

RESIDENCY EXEMPTION OPTION

Employees with 20 or more years of service may elect to reside within the corporate limits of any Illinois municipality which borders on the City of Alton. During the period of time that an employee resides outside the corporate limits of the City of Alton pursuant to this Article 33, such employee shall be ineligible for any assignment which requires/permits the employee to keep a City police vehicle at his home for transportation to and from work.

Statutory Criteria

The Illinois Public Labor Relations Act ("the Act"), 5 ILCS 315/1 *et seq.*, states in Section 14(h) that "the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable" and lists eight factors:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Comparable Communities

Since item (4) requires that a comparison be made with employees "in comparable communities" it is necessary to determine which communities are comparable to Alton. The Union proposes the following 13 Illinois municipalities as comparable communities to Alton: Belleville, Collinsville, Danville,

Edwardsville, Fairview Heights, Galesburg, Granite City, Moline, Normal, O'Fallon, Quincy, Rock Island, and Urbana.

The City chooses for its list of comparable communities the following six jurisdictions, four of which are also on the Union's list of comparables: Belleville, Collinsville, East St. Louis, Edwardsville, Granite City, and Wood River.

Absent agreement between the parties or a precedent involving the same parties, the selection of comparable jurisdictions is always difficult. Arbitrator Alan Miles Ruben made the following observation on the subject in The City of Willowick (Ohio) and Fraternal Order of Police Lodge 116, 110 LA 1146, 1149 (1998):

This Fact-Finder believes that ideally comparable communities ought to be located nearby in the same labor market and county, be of similar territorial size and population density, draw upon similar resources and tax bases, have a similar mix of commercial, industrial and residential properties with similar need for Police protection, and maintain similarly sized Police Departments.

Unfortunately, developing a list of comparable communities which meet all of these criteria is seldom possible, and the selection process is further complicated because information relevant to disputed issues may not necessarily be available from a community which does meet the criteria.

In North Shore Water Commission, 111 LA 321 (Fredric R. Dichter, 1998), the arbitrator accepted the employer's choice of external comparables except for one city, Marinette, which the arbitrator stated was "too far and too small." 111 LA at 323. The employer, according to the arbitrator's decision, was located "just north of the City of Milwaukee." According to Map Quest the distance between Milwaukee and Marinette is approximately 170 miles.

Geographical proximity or distance is considered a relevant criterion in determining comparable jurisdictions in most of the interest arbitration cases cited by the parties in this proceeding. For example, in City of Effingham, ILRB Case No. S-MA-99-133 (2001), arbitrator Matthew W. Finkin stated at page 6, ". . . Geographic proximity is a factor because, to the extent the labor market for the protective services is more localized than not, these communities would be more likely to compete for or draw from the same labor pool. . . ." He also

noted that "no evidence has been offered that Effingham does not compete in a wider labor market with communities of similar characteristics." The five agreed upon comparable cities were within close proximity of Effingham, as was also a sixth jurisdiction added at the employer's request. The two additional jurisdictions added at the union's request were each approximately 110 miles' driving distance from Effingham.

In City of Macomb, ILRB Case No. S-MA-01-161 (2002) arbitrator Martin H. Malin listed "Distance from Macomb" as one of the criteria "of significant relevance" in deciding which municipalities to choose as comparable jurisdictions. Page 17 of Malin decision. In Town of Cicero, Illinois, ILRB Case No. S-MA-98-230 (Herbert M. Berman, 1999), the arbitrator stated, "In evaluating competing economic proposals, arbitrators generally compare nearby, demographically similar towns of comparable population." Decision, page 25. The comparables selected by arbitrator Berman were all within relatively close proximity to the town of Cicero.

In City of Kankakee, ILRB Case No. S-MA-99-137 (Michael H. LeRoy, 2000), the arbitrator selected the five comparable jurisdictions, using the standard of "small cities located within 100 miles of Kankakee" for three of the municipalities, Danville (70 miles), East Peoria (97 miles) and Pekin (94 miles); and "neighboring municipalities" for the two remaining comparable communities, Bradley and Bourbonnais. Arbitrator LeRoy expressly excluded all Chicago-area suburbs despite their reasonable closeness to Kankakee because they are "densely populated suburbs of Chicago" that "are much more closely integrated in the Chicago-area economy than is Kankakee." As in all of the ILRB arbitration cases cited in this opinion with disputed comparables, the arbitrator also relied on various statistical comparisons between the comparable jurisdictions and the subject municipality, in addition to distance or proximity.

In Calumet City, ILRB Case No. S-MA-99-128 (Steven Briggs, 2000), the arbitrator expressed the following opinion about selecting comparable jurisdictions:

. . . [I]t is important to underscore the importance of selecting as comparable only those in Calumet City's local labor market. The assumption here is that even if wages and benefits in another city looked attractive to police officers here, unless the differences were drastic they would most likely not be willing to pull up stakes and move to take jobs there. Put another way, the labor supply is not perfectly mobile. Employees are not inclined to leave one job for another

if it means changing residences, taking the kids out of school, changing churches, doctors, etc. Accordingly, it is not realistic to use as comparables in interest arbitration municipalities so far removed from the focal city that its employees would most likely have to move their households to work there. Decision, page 6.

On the basis of the foregoing analysis, without consideration of statistical data, arbitrator Briggs excluded six cities whose distance from Calumet City ranged between 29 and 45 miles. He accepted as comparables four suggested municipalities approximately 20 miles distant each from Calumet City and that met the arbitrator's criteria with regard to population, median home value, median household income, and equalized assessed valuation. Two jurisdictions that met the criteria for distance, population, and median home value, but not for median household income and equalized assessed valuation were rejected. Arbitrator Briggs took a similar approach to selecting comparable jurisdictions in his decision in City of North Chicago, ILRB Case No. S-MA-99-101 (2000) at pages 7-8.

In City of Rockford, ILRB Case No. S-MA-99-78 (Elliott H. Goldstein, 2000), the parties stipulated to a group of eight comparable jurisdictions, which, if their locations were plotted on a map of Illinois, would form more or less of an ellipsis pattern, with six of the jurisdictions less than 86 miles from the next jurisdiction and the longest distance between any two jurisdictions 136 miles.

In City of Lincoln, ILRB Case No. S-MA-99-140 (Robert Perkovich, 2000), the parties stipulated to a group of six comparable municipalities, which formed a more or less circular pattern when plotted on the map, with less than 100 miles from one jurisdiction to another in the circle.

In Village of Cahokia, ILRB case No. S-MA-00-215 (Robert Perkovich, 2003), the arbitrator approved the union's proffered list of comparable jurisdictions, all of which were within a 25 mile radius of Cahokia.

Among the Illinois decisions cited by the parties where the parties agreed on relatively close surrounding communities as comparable jurisdictions are the following: Village of University Park, ILRB Case No. S-MA-99-123 (Matthew W. Finkin, 1999), City of Highland Park, ILRB Case No. S-MA-98-219 (Edwin H. Benn, 1999), Village of South Holland, ILRB Case No. S-MA-98-120 (Elliott H. Goldstein, 1999), City of Country Club Hills, ILRB Case No. S-MA-98-225 (George Edward Larney, 2000), City of Elgin, Illinois, ILRB Case No. S-MA-00-58 (Elliott H. Goldstein, 2002);

and City of Blue Island, ILRB Case No. S-MA-01-190 (Marvin Hill, Jr., 2002).

Based on above-cited arbitration decisions the arbitrator does not accept Danville, Galesburg, Moline, or Rock Island for inclusion as comparable jurisdictions to Alton. Each of them is more than 200 miles' distant from Alton. Given the distance, they are unlikely to be within the local labor market for Alton police officers, and the Union has provided no evidence to the contrary. Nor are Alton police officers likely to compare their wages and working conditions with communities more than 200 miles away. It is a safe assumption that most officers make such comparisons with surrounding communities.

The arbitrator would also exclude the cities of Normal and Urbana from the list of comparable jurisdictions based on distance and the nature of these communities as compared with Alton. Alton is part of the large metropolitan St. Louis area while Normal and Urbana are not part of any major metropolitan area. As a general rule, the frequency and complexity of crime is greater in a major metropolitan area than in cities in more rural areas. Union Exhibit 11, Crime Rate Statistics for Alton and Comparable Communities, would appear to bear this out for Alton as compared with Normal and Urbana. In addition, the distance of those cities, 155 and 188 miles respectively from Alton, plus the fact that they are not within the St Louis metropolitan area, take them outside of the local labor market. Further there are many communities between each of those cities and Alton of similar size that were skipped over by the Union without explanation. This fact indicates that some consideration other than comparability may have motivated the Union's choice of those cities. The arbitrator will not include Normal or Urbana among the comparable jurisdictions.

The only remaining community proffered by the Union that is not part of the metropolitan St. Louis area is Quincy. According to Union Exhibit 10, Quincy is 137 miles by car from Alton. It is not part of the metropolitan St. Louis area. Moreover, Quincy being a jurisdiction that requires its police officers to reside within the city limits, it was probably added by the Union to its list of comparables to provide some balance to a group that was heavily weighted in favor of communities that did not have a strict residency requirement. It would hardly be fair to exclude the other jurisdictions outside the St. Louis area proffered by the Union and include only a city that has a strict residency requirement. For these reasons I shall also exclude Quincy.

We are left then with Belleville, Collinsville, East

St. Louis, Edwardsville, Fairview Heights, Granite City, O'Fallon, and Wood River as proposed by the City or the Union, with both sides agreeing to Belleville, Collinsville, Edwardsville, and Granite City. The Union challenges the inclusion of East St. Louis and Wood River and the Employer objects to the inclusion of Fairview Heights and O'Fallon. In an effort to determine which, if any, of the disputed communities should be included the arbitrator will compare all of the communities with Alton in respect to population, distance from Alton, equalized assessed evaluation of property ("EAV"), both total and per capita, property tax extension¹, both total and per capita, sales tax receipts, both total and per capita, median home value, number of full-time police officers employed, number of residents per full-time officer, per capita income, crime index, and crimes per 100 residents. A comparability range of +/- 50% of Alton's numbers for the various criteria will be used in making the selection of comparable jurisdictions. The arbitrator has found that to be the most commonly used range.

The following tables show how the different jurisdictions compare with respect to the various criteria.

	Population	Distance from Alton	EAV.	Property Tax Extension	Full-Time Police Officers	Sales Tax Receipts	Per Capita Income	Crime Index
Alton	30,496	0	216.7 m	3,927,804	72	21.4 m	16,817	2045
Belleville	41,410	39	298.3 m	3,566,656	76	21.5 m	18,990	2374
Collinsville	24,707	25	237.6 m	2,054,482	33	16.8 m	22,048	1074
East St. Louis	31,542	23	46.7 m	1,168,165	63	3.0 m	11,169	4973
Edwardsville	21,491	14	272.9 m	4,506,458	35	10.2 m	26,510	482
Fairview	15,034	31	253.7 m		39	37.7 m	22,614	1023

¹The term "Extension" is defined in an Illinois Department of Revenue publication viewed on the Internet by this arbitrator as follows: "The actual dollar amount of tax billed to property taxpayers in a taxing district. The sum may differ from the levy due to the tax rate limits or other factors."

Heights								
Granite City	31,301	18	263.3 m	3,395,601	60	12.6 m	17,691	1788
O?Fallon	21,910	36	285.7 m	2,874,804	41	24.0 m	24,821	508
Wood River	11,296	6	76.2 m	1,250,084	19	7.9 m	18,098	586
Alton	15,248 - 45,744		108.35 m - 325.05 m	1,963,902 - 5,891,706	36 - 108	10.7 m - 32.1 m	8,408.50 - 25,225.50	1022 - 3067

	EAV Per Capita	Median Home Value	Extension Per Capita	No. Of Residents Per Full-Time Police Officer	Sales Tax Receipts Per Capita	Crimes Per 100 Residents
Alton.	7,106	55,400	128.80	424	702.92	6.7
Belleville	7,205	69,700	86.13	545	519.73	5.7
Collinsville	9,616	80,800	83.15	749	680.42	4.3
East St. Louis	1,482	41,600	37.04	501	93.97	15.8
Edwardsville	12,697	80,800	209.69	614	476.34	2.2
Fairview Heights	16,876	84,800		385	2508.30	6.8
Granite City	8,412	56,400	108.48	522	401.37	5.7
O?Fallon	13,039	121,400	131.21	534	1094.14	2.3
Wood River	6,746	58,900	110.66	595	699.89	5.1
Alton +/- 50%	3,553 - 10,659	27,700 - 83,100	64.40 - 193.20	212 - 636	351.46 - 1054.38	3.35 - 10.05

The only jurisdictions that fall within +/- 50% of Alton for all criteria compared in the two preceding tables are Belleville and Granite City. The parties are agreed that these are comparable jurisdictions. Collinsville, the third municipality that the parties agree to include in the group of comparable communities, comes within the +/- 50% standard on all 14² criteria but Full-Time Police Officers, No. of Residents Per Full-Time Police Officer, and Crimes per 100 Residents. However, the fact that Collinsville comes within the standard for Crime Index should offset the fact that it does not meet the standard for Crimes Per 100 Residents, especially since it misses the latter standard only by a fraction.

²The arbitrator is counting ?Distance from Alton? as one of the factors in the sense that Collinsville is in close proximity to Alton.

Edwardsville, another agreed-upon jurisdiction, fails to meet the +/- 50% standard in seven criteria: Full-Time Police Officers, Sales Tax Receipts, Per Capita Income, EAV Per Capita, Extension Per Capita, Crime Index, and Crimes Per 100 Residents. However, Edwardsville does meet the standard for Sales Tax Receipts Per Capita, total EAV, and total Property Tax Extension. The arbitrator believes that so long as a jurisdiction is comparable in terms of population, it may be considered comparable also in EAV, Property Tax Extension, and Sales Tax if it meets the standard for either the total or the per capita criterion in these categories. Consequently the only areas in which Edwardsville does not meet the +/- 50% standard as compared with Alton would be Full-Time Police Officers, Per Capita Income, Crime Index, and Crimes Per 100 Residents.

The arbitrator would agree, as a general rule, with the statement in the City's brief that "[w]here both parties have asserted or agreed that part of the relevant universe of comparables must include the same communities, the arbitrator is bound by that assertion. . . ." Nevertheless the fact that the agreed-upon jurisdictions differ from Alton in particular criteria would mean to this arbitrator that other jurisdictions should also not be excluded from the group of comparables merely because they fail to meet the +/- 50% standard in those same criteria.

Strictly applying the foregoing approach the arbitrator would have to exclude Wood River, a jurisdiction the City would include. Wood River does not meet the +/- 50% standard with regard to six criteria: Population, EAV, Property Tax Extension, Full-Time Police Officers, Sales Tax Receipts, and Crime Index. One could reasonably contend, however, that the last five categories are offset respectively by EAV Per Capita, Extension Per Capita, No. of Residents Per Full-Time Police Officer, Sales Tax Receipts Per Capita, and Crimes Per 100 Residents. Wood River meets the +/- 50% standard in all five categories.

If Wood River were to be excluded from the group of comparable communities, it would be on the basis that its population is only 37% of that of Alton. The City points out, however, that in an interest arbitration in 1996 under the same statute between the City and the Fire Fighters Union, arbitrator Edelman found that Wood River should be included in the group of comparable communities. The bases for his finding were that Wood River lay within the same labor market as Alton, its fire fighters were covered by a collective bargaining agreement, and it was relatively close to Alton with regard to per capita EAV, median family income, and median home value.

The City argues that this arbitrator should defer to arbitrator Ellman's determination of comparable communities with respect to the City, citing a statement by arbitrator Steven Briggs at the 18th Annual Public Sector Labor Relations Law Program, Chicago Kent College of Law, October 4, 2002. According to the City, arbitrator Briggs "commented publicly that arbitrators should afford great deference to the prior determination of comparable communities in another interest arbitration, notwithstanding that the Union may not be the same as in the subsequent proceeding."

The arbitrator agrees with the City's position regarding Wood River. Wood River meets the +/- 50% standard with regard to the criteria of Per Capita Income, EAV Per Capita, Median Home Value, Extension Per Capita, No. of Residents Per Full-Time Police Officer, Sales Tax Receipts Per Capita, and Crimes Per 100 Residents. It is also located in the same labor market. This arbitrator believes that the fact that an experienced, well-accepted arbitrator found Wood River to be a comparable community to Alton in a fairly recent interest arbitration involving the City under the same statute, but with a different union, is a sufficient basis for including Wood River in the group of comparable jurisdictions in light of the fact that it is in the same labor market as Alton, the police officers there are covered by a collective bargaining agreement, and it meets the +/- 50% standard in the seven criteria listed above in this paragraph. The arbitrator so finds.

East St. Louis has a population very close to that of Alton. It is in the same labor market. Its police officers are represented by a collective bargaining agreement. Its number of full-time police officers is fairly close to Alton's. Further, East St. Louis meets the +/- 50% standard with respect to the criteria of Per Capita Income, Median Home Value, and No. of Residents Per Full-Time Police Officer. In addition, this arbitrator attaches significant weight to the fact that in the 1996 arbitration before arbitrator Ellman two highly experienced and respected attorneys agreed that East St. Louis was a comparable jurisdiction to Alton. For all of these reasons, but with the reservations expressed below, the arbitrator finds that East St. Louis should be included in the list of comparable jurisdictions.

The arbitrator has considered the Union's arguments against the inclusion of Wood River and East St. Louis. With regard to Wood River the Union argues that at the time of the 1996 arbitration Wood River was at the median of the seven cities

in per capita EAV whereas now Wood River has slid to last. However, the Union itself, as it notes in its brief, "[i]n devising its list of comparables, . . . began by selecting communities throughout the state with populations with department sizes +/- 50% of Alton." This arbitrator would not limit the +/- 50% standard to population and department size, but would apply it to all criteria being compared. Wood River's per capita EAV of \$6,746 is approximately 95% of Alton's per capita EAV of \$7,106. Wood River's per capita EAV figure therefore argues strongly for its inclusion in the group of comparables rather than its exclusion.

The Union also argues to exclude Wood River on the basis that with respect to the criterion of median family income it has dropped from the median of the seven considered communities in the 1996 arbitration to "next to last when compared to Alton and the four other agreed upon cities." Aside from the fact that the Union's comparison excludes East St. Louis in asserting that Wood River is now next to last, whereas East St. Louis was included in the 1996 comparison, the Union fails to note that Wood River's median family income is only approximately 8% above Alton's--well within the +/-50% standard.

The Union also argues that Wood River is last in population, department size, EXT, and municipal sales tax revenue by substantial margins. As previously noted, however, it meets the +/- 50% standard for median home value, per capita property tax extension, per capita sales tax receipts, number of residents per full-time police officer, and crimes per 100 residents. For the reasons explained more fully above, the arbitrator believes that Wood River is properly included in the list of comparable jurisdictions.

With regard to East St. Louis, the Union has accurately pointed out the disparity between it and the other jurisdictions in the various criteria used for comparison. Perhaps if there had not been a history of the stipulated inclusion of East St. Louis among the comparable communities in the fire fighters unit interest arbitration, this arbitrator would not have found that it should be included as a comparable jurisdiction in this proceeding. In view, however, of the stipulation; the closeness of the population sizes of the two communities; their geographic proximity placing them in the same labor market; the similarity of the sizes of the two police departments; and the fact that East St. Louis meets the +/- 50% standard for Per Capita Income and Median Home Value, the arbitrator has decided to include East St. Louis in the group of comparable communities.

The Union contends that labor market comparability

should not be given the same weight in an arbitration regarding residency as in one where economic issues are being litigated. There is some arbitral authority supporting that approach. See, for example, the decision of arbitrator Martin H. Malin in Illinois Fraternal Order of Police Labor Council and City of Macomb, ILRB Case No. S-MA-01-161 (2002), at page 15, where he stated, "The factors that an arbitrator traditionally would consider in determining comparability when economic issues are in dispute are not necessarily the most significant factors for a dispute over residency. . . ." Arbitrator Malin, however, qualified that statement with the following assertion on the same page:

That is not to say that where residency is one of a multiple [of] issues in dispute the arbitrator should develop separate comparability criteria for residency than for the other issues. Nor is it to say that an arbitrator should ignore a previously established set of comparable communities that formed the baseline against which the parties negotiated. . . .

Arbitrator Berman in Town of Cicero, ILRB Case No. S-MA-98-230 (1999), at pages 25-27, also argued for using different communities as a comparison in a non-economic residency case than where the interest arbitration is limited to economic issues.

This arbitrator agrees with the following statement by arbitrator Steven Briggs in City of North Chicago and Illinois Fraternal Order of Police Labor Council, ILRB Case No. S-MA-99-101 (2000), at page 8, where he rejected the union's position that a separate group of comparable communities should be used for determining the residency issue than for a second issue before him in the case:

Moreover, the Arbitrator is reluctant to adopt a supplemental set of external comparables to be applied selectively and exclusively to one issue. Doing so in these proceedings might inappropriately encourage parties elsewhere to propose different sets of comparables for different issues. To the extent that interest arbitrators allow that to happen, the result might not only fragment the bargaining process, it might also unduly complicate and prolong subsequent interest arbitration proceedings.

Residency was first raised by the Union as an issue in the 1999 negotiations where it was one of a number of issues,

both economic and non-economic. If the parties used comparable jurisdictions in evaluating each other's bargaining proposals, it is not likely that they would have used a separate set of comparables for different issues. The fact that they were able to reach agreement on the other issues but not residency is not a justification for using a separate set of criteria for determining comparable jurisdictions in deciding the residency issue than would be applicable for economic or other non-economic issues. Moreover, as a practical matter, whatever selection of jurisdictions is made in this proceeding is likely to carry great weight in future negotiations or interest arbitrations where issues other than residency will separate the parties. The jurisdictions in this case should therefore not be selected in an atypical manner. In addition, as arbitrator Briggs observed, setting a precedent of using different comparables for different issues is likely to complicate and even fractionate future bargaining. The arbitrator does not agree to a different method of selection of comparable jurisdictions in this case than would apply generally.

The two remaining jurisdictions proposed by the Union, Fairview Heights and O'Fallon, will now be considered. Fairview Heights meets the +/- 50% standard as compared with Alton with regard to the following criteria: geographical proximity, EAV, Full-Time Police Officers, Per Capita Income, Crime Index, No. of Residents Per Full-Time Police Officer, and Crimes Per 100 Residents. It does not meet the criterion of EAV Per Capita, but, as in the case of Edwardsville, this is offset by the fact that it meets the total EAV criterion. With regard to Population, Fairview Heights misses the cutoff line by only 214 residents. This is to be contrasted with Wood River, which is 3,952 residents below the cutoff point and has been included in the group of comparable jurisdictions.

Given the fact that Fairview Heights meets the +/- 50% of Alton standard as to 8 of the 14 criteria summarized in the tables while East St. Louis meets only 6; that Fairview Heights is in the same labor market as Alton and has a collective bargaining agreement; that it barely misses the cutoff line on population; and that the criteria it meets include such important ones as EAV, number of full-time police officers, per capita income, and crime index, it is the arbitrator's determination that Fairview Heights should be included in the group of comparable communities.³

³Except for East St. Louis being included by this arbitrator as a comparable based largely on the fact that the Fire Fighters Union and the City, by agreement, included East St. Louis as a comparable in their interest arbitration, the arbitrator probably

With regard to O'Fallon, the arbitrator finds no reasonable basis for excluding that jurisdiction while Edwardsville is included by agreement. O'Fallon meets the +/- 50% of Alton standard with regard to all of the following criteria: Population, proximity, EAV, Property Tax Extension, Full-Time Police Officers, Sales Tax Receipts, Per Capita Income, Extension Per Capita, and No. or Residents Per Full-Time Police Officer. Although it is slightly above the cutoff line (1094 v. 1054) for Sales Tax Receipts Per Capita, it is well within the 50% acceptable range for total Sales Tax Receipts. Similarly, the fact that it is above the 50% limit with regard to EAV per capita is counterbalanced by its being well within the acceptable range both for population and total EAV.

It is true that O'Fallon has a low crime index.

would exclude both Fairview Heights and East St. Louis. However, in view of the fact that commonly, although not necessarily, police officers and fire fighters have similar terms of employment in many areas, the arbitrator hesitates to exclude for the police officers a jurisdiction that the fire fighters agreed was comparable. On the other hand, the fact that East St. Louis's crime index is substantially more than double Alton's for similar size populations would be a reason for excluding East St. Louis despite its inclusion as a comparable jurisdiction in the fire fighters arbitration. After all fire fighters do not fight crime. On balance the arbitrator has decided that it would be best to include both jurisdictions and leave it to the parties themselves for future negotiations and/or interest arbitrations to decide on the inclusion or exclusion of those jurisdictions.

However, both its crime index and its number of crimes per 100 residents are higher than Edwardsville's. The inclusion by agreement of Edwardsville shows that the parties did not deem a low crime index a sufficient basis in itself for excluding a jurisdiction from the group of comparable jurisdictions. The arbitrator would not exclude O'Fallon merely because of its much higher median home value than all of the other jurisdictions. The fact is that O'Fallon meets more of the criteria used for determining comparability in this case than Edwardsville.

The arbitrator has considered the City's objections to the inclusion of Fairview Heights and O'Fallon but does not find them persuasive. The City focuses on six criteria in its analysis of whether Fairview Heights and O'Fallon should be included in the group of comparable jurisdictions: Population, Per Capita Income, Median Home Value, Population Per Municipal Employee, Population Per Police Officer, and EAV Per Capita. It uses a comparability range of +/- 33% of Alton's figures for these items.

The arbitrator takes issue first with the City's use of a comparability range of +/- 33%. Although there is not one range that is necessarily appropriate in every case, the most frequently used comparability range is +/- 50%, and the arbitrator sees no good reason to adopt a lower range in this case. In addition, usually the calculation of the number of employees per capita is made only with respect to the group in dispute--in this case police officers--and not the entire work force of the municipality. Further, although neither Fairview Heights or O'Fallon meets the standard for the EAV Per Capita criterion, they both meet the +/- 50% standard for total EAV.

If a +/- 50% standard is used, Population per Municipal Employee excluded, and EAV substituted for EAV Per Capita, O'Fallon would come within the acceptable range in four of the five criteria used: Population, Per Capita Income, Population Per Police Officer, and EAV. So long as O'Fallon is within the comparability range in population, the arbitrator does not believe that EAV per capita is a better indication of comparability than total EAV. On the other hand, for a city with a population much below the bottom of the comparability range, such as Wood River, the arbitrator would agree that EAV Per Capita would better reflect comparability than total EAV.

The only criterion which O'Fallon does not meet in the City's list, as adjusted by the arbitrator, is Median Home Value. This criterion by itself would not be deemed by this arbitrator a sufficient basis for excluding O'Fallon as a comparable community. The City cites City of Kankakee, ILRB Case No. S-MA-99-137 (Michael H. LeRoy, 2000), for the importance of median

home value in determining comparability. It notes that O'Fallon's median home value is 219% above Alton's.

City of Kankakee does not support the position that a proximate city in the same labor market should be excluded from being considered a comparable community based on a large differential in home value. In that case arbitrator LeRoy found Bourbonnais to be a comparable city to Kankakee even though its median home value was 187.5% higher than Kankakee's. City of Kankakee, page 10. The arbitrator does not find merit to the City's objection to the inclusion of O'Fallon as a comparable community.

Under a +/- 50% comparability range, Fairview Heights meets three of the City's adjusted criteria: Per Capita Income, Population Per Police Officer, and EAV. It is only 214 residents shy of the bottom of the range for Population. It is less than \$2,000 from the top of the range for Median Home Value. These considerations plus Fairview Height's geographical proximity to Alton and the fact that its crime index falls within the comparability range support Fairview Heights's inclusion among the comparable jurisdictions. Fairview Heights has no less claim to inclusion than East St. Louis whose crime index is 243% higher than Alton's and which does not meet the +/- 50% standard for any of the criteria pertaining to tax revenue, whether it be total EAV, EAV per capita, property tax extension, extension per capita, sales tax receipts, or sales tax receipts per capita. The arbitrator concludes that Fairview Heights should be included among the comparable jurisdictions.

In summary, the comparable jurisdictions selected by the arbitrator are the four municipalities agreed to by the parties--Belleville, Collinsville, Edwardsville, and Granite City--plus East St. Louis, Wood River, Fairview Heights, and O'Fallon.

Summary of Residency Requirements

Following is a summary of the current residency requirements for Alton and the comparable communities:

Alton

Within city limits within 90 days of hire

Belleville

Within city limits within 15 months of hire

Collinsville

Within city limits within one year after completion of probationary period; must thereafter remain within city limits until completion of five years of employment; thereafter may live up to 15 miles from police station

East St. Louis

Within city limits within six months of hire

Edwardsville

State of Illinois if hired before May 1, 2000; if hired on or after that date, within Madison County

Fairview Heights

Within 30 minutes of police station

Granite City

Within city limits within 90 days of hire

O'Fallon

No residency requirement

Wood River

Within city limits within 12 months of hire

The Union's Position on Residency

The Union asserts that it wishes to expand the area in which police officers may reside for the following reasons: 1) to increase the safety of the officers and their families; 2) to improve the choices and quality of education for the officers' children; 3) to provide officers the opportunity to acquire affordable "move up" housing within surrounding incorporated or rural areas; 4) to decrease the loss of experienced officers from the police department; and 5) to improve the caliber of recruits by increasing the labor pool.

The Union acknowledges that "[t]he internal comparables provided to this arbitrator by way of City Exhibits 18-20 (collective bargaining agreements for the other existing city

employee unions) support the City's position of restricted residency." The Union asserts, however, that "no evidence was provided to this arbitrator concerning the bargaining history surrounding those collective bargaining agreements to indicate whether or not any or all of these unions benefitted economically from not bargaining expanded residency."

Burden of Proof

The Union contends that the well-accepted standard in arbitration that places a heavy burden on a party that wishes to change the status quo does not apply in this case because this is the first time that the parties are bargaining residency since the public sector bargaining statute in Illinois was changed permitting municipalities with populations under 1,000,000 persons to bargain residency. It cites recent decisions by other arbitrators that assertedly support the Union's position on this question. The Union argues that the fact that it negotiated the current agreement in 1999 after the amendment to the statute without obtaining a change in the residency rule has not deprived it of the ability to argue that this is the first negotiation of the parties regarding residency since it withdrew its proposal on residency only after the City agreed to a reopener clause on the residency issue. In addition, the Union asserts, the City's proposal on residency also is not to maintain the status quo so that the parties are on equal footing on the residency issue.

Interest and Welfare of Public

The Union asserts that in determining whether relaxation of the residency requirement will be in the interest and welfare of the public, the arbitrator should bear in mind that the bargaining unit members and their families are also members of the public at large.

Safety

The safety of the officers, the Union contends, is an important reason for awarding them the right to live outside the corporate boundaries of Alton. It notes that it has produced evidence of 20 incidents of vehicle or residence vandalism suffered by members of the bargaining unit during an eight year period between 1994 and 2002. All of the incidents, the Union asserts, were reported to the police department, and the City's attorney reviewed the police reports prior to agreeing to admission of the exhibit.

In addition, the Union points to its group Exhibit 24, which comprises reports of incidents involving police officers of

a more serious nature than vandalism to their home or car. These included a 1995 incident where a police officer shot and killed a local gang member and then received threats to himself and family that were deemed serious enough to move the officer, his wife, and their infant child out of the city for four weeks; a 1994 incident where a police officer heard gunshots outside her house, secured her son in the basement, went outside to investigate, and discovered the next morning that two rounds had hit her house, with one of the bullets coming through her kitchen window; a confrontation in 2000 at a gas station near her home of an officer by a man with whom the officer had previously had police dealings and who threatened to hit her over the head at the gas station with a beer can; additional threats by the same individual after his arrest and comments by him that he knew where most of the Alton officers lived; repeated harassment of a police officer in 1989 by a man he arrested and who was awaiting trial, including following the officer to his home, as a result of which harassment the individual was prosecuted and was convicted of felony communication with a witness; information received by the Alton police department in 2000 of a contract on the life of a patrol officer deemed sufficiently credible by the department to have the officer and his wife move out of their residence for a three day period and to maintain surveillance of the residence until the threat was effectively dealt with; also in 2000 the same officer and his partner made a traffic stop, and one of the occupants of the car described the vehicle his (the officer's) wife drove and their dog and said that the wife better be careful when she walked the dog; in January, 2003, a confidential informant reported in a written statement to the police that one of the drug dealers in town, whom the informant named, knew where several Alton police officers lived (naming the officers) and had followed them home.

The Union acknowledges that someone who truly wished to carry out a threat against a police officer could probably do so regardless of where the officer lives but asserts that allowing officers who wish to move outside the city limits to do so would substantially limit the amount of off-duty contact the officers would have with the people they have to arrest. In addition, the Union states, it would give peace of mind to the officers and their families.

Inadequate Education Opportunities

The Union contends that Alton's public school students had lower test scores on standardized tests than the students in the public schools of the surrounding communities. In addition, according to the Union, Alton High School has a high incidence of violence and other criminal activity, including drug offenses.

To avoid an inferior education or the dangers of the Alton school district, the Union argues, police officers with children of school age are forced to enroll them in private schools or maintain a second residence for their wife and children in another city. Either choice, the Union complains, is very expensive. The Union contrasts the record involving Alton schools of 98 incidents and 79 arrests for the period August, 2002, to February 17, 2003, with Bethalto's 12 incidents at its high school during the same period.

Housing

The Union contends that there is an inadequate amount of move-up housing available within Alton's corporate limits. According to the Union, the only area where there are affordable new homes available is a subdivision with a water table problem and where purchasers must sign an agreement not to build a basement. As for existing homes, the Union asserts, there are relatively few on the market within a price range that officers can afford.

Public Sentiment

The Union contends that the record does not support the City's contention regarding the benefits that the community gains from requiring police officers to live within the city limits. It notes Mayor Sandidge's testimony that through phone calls, letters, and in person more than 100 persons expressed to him the desire that police officers should reside within the city. The Union discounts this testimony, however, because he provided no documentation to support it and gave no names of residents who called or wrote. Even if the mayor's testimony on the subject were accepted, the Union argues, 100 out of 30,000 residents hardly reflects public sentiment. The Union also points out that no testimony was presented from community leaders, neighborhood groups, or other citizens' groups opposed to expanding the residency requirements.

Reduction of Crime

The Union maintains that the City has failed to prove that the residency requirement results in a reduction in crime. It notes Mayor Sandidge's testimony that he was personally aware of two neighborhoods where crime went down after police officers moved in and that his knowledge was based on statistical information he reviewed while employed as chief of detectives. On cross-examination, the Union asserts, when pressed about statistical information the mayor acknowledged that when he was chief of detectives crime statistics were not kept by blocks and

that he did not have statistical evidence to show that the crime rate decreased when he and other officers moved into his neighborhood or when officers moved onto the other street that he testified about. The Union stresses that the City presented no evidence to show that the crime rates are lower today in neighborhoods where officers reside than in other neighborhoods. The Union also argues that the assertion that a police officer's residence in a neighborhood reduces crime is inconsistent with the City's own action of removing take-home squad cars from police officers.

Off-Duty Enforcement of Laws

The Union contends that the City has been unable to support its assertion that Alton police officers are required to enforce all laws, on-duty or off-duty, at all times while inside the city limits. The Union takes the position that there is no rule or regulation that places such a responsibility on police officers. In addition, the Union contends, the actual practice for more than 20 years has been to discourage officers from taking any police action while off duty except for a felony or when someone's life is in danger. In all other situations, according to the Union, the department requires no more of officers than that they call the police when they witness a violation and be good witnesses. Any other rule, the Union reasons, would subject the department to huge overtime costs and expose the City to great liability.

Preservation of Economic Resources

The Union contends that the City has not proved its contention that eliminating the residency requirement will adversely affect the city's economy. On the other hand, the Union asserts, it (the Union) has shown that there is no requirement that officers shop within the City's limits and that some officers specifically choose not to do so. Further, according to the Union, none of the officers is wealthy enough to simply abandon his residence, and someone who wished to relocate would first have to sell his house within the city before being able to purchase elsewhere. Finally, the Union argues that the present bargaining unit of 65 officers constitutes only two-tenths of one percent (.2%) of the city's population and that even on the far-fetched supposition that every officer moved out of the city, the impact on the City's economy would be minimal. Further, the Union maintains, if the city is concerned that employees in other bargaining units would follow, the economic impact on the city would still be minimal because there are currently 292 full-time city employees, who comprise just below one percent of the city's population.

Response Time

The Union acknowledges that as a general rule an officer called in as a replacement or in an emergency would be able to respond faster from within the city than someone called in from a jurisdiction 20 miles distant. In real life, however, the Union argues, officers are not always home during off-duty hours but are frequently out of the city, as they have the right to be when not on duty. The Union points to the evidence in the record that an on-call detective is permitted to be as far away as 25 or 30 miles from the police station while off duty. The Union also argues that if the police chief believes that someone who lives out of the city cannot be relied on to respond quickly enough for the needs of the TRT (Tactical Response Team) the department has the management right to limit selection for the TRT to officers who reside within the city limits. The Union also argues that in certain local emergencies it is an advantage to have officers to call upon who live outside the city and are therefore not affected by the emergency.

COMPARABILITY

Internal Comparability

The Union acknowledges that the collective bargaining agreements for the other bargaining units do not contain any relaxed residency provisions and that this supports the City's position. The Union notes, however, that the dates of the IAFF and AFSCME contracts indicate that they were agreed to before the settlement of the police officers' contract and do not contain a residency reopener clause such as the one found in the present Agreement. No evidence of bargaining history on the other units was provided, the Union asserts, and it is not known whether any of the other bargaining units raised the residency issue or obtained other benefits in exchange for retaining city residency.

Even if the arbitrator were to find that internal comparability supports the City, nevertheless, the Union urges, the arbitrator should follow the reasoning of arbitrator Steven Briggs in City of Calumet City, ILRB Case No. S-MA-99-128 (1990), who found that internal comparability favored the city but nevertheless held for the union on residency because the members of the other bargaining units "do not arrest criminals" and "are not required as part of their profession to detain citizens, take them to jail, and contribute to their subsequent imprisonment."

Thus, in the Union's view, police officers are a special case, and it quotes arbitrator Briggs's statement, "In stark contrast to all other Calumet City employees, its police officers and their families are subject to reprisal at any time from persons who have demonstrated no respect for the law and little regard for human life."

The Union further argues that nevertheless the evidence on internal comparables is not entirely one-sided and that, in fact, the City has made exceptions when it suited its convenience to do so. It cites the example of two employees who worked respectively 198 and 199 days as temporary employees although the City gave testimony that temporary employees were permitted to work no more than 120 days without being required to take up residency. The Union also asserts that the roster of City employees introduced into evidence as a City exhibit lists two probationary police officers with more than 90 days of employment whose addresses are respectively in Carrollton, Illinois, and University City, Missouri. In addition, the Union states, four officers testified that they maintain an apartment inside the city but that their families reside outside the city. Because of the selective enforcement of the residency provision, the Union argues, and the current practice of accepting dual residency, there can be no clearly established internal comparability upon which to base a selection.

External Comparability

The Union asserts that of the four agreed upon comparable cities, two of the cities, Edwardsville and Collinsville, have expanded residency, and two do not, Belleville and Granite City. It notes that both additional cities proffered by the City have strict residency requirements and that seven of the nine proposed by it have relaxed residency rules.

The Union asserts that "no matter what group of comparables from which the arbitrator chooses[,] the cities with corporate limit residency requirements have a higher total crime index and number of crimes per 100 residents than those with relaxed residency requirements." The Union notes that the former director of police in Edwardsville, who is now City Administrator in Edwardsville, testified that one of the advantages of Edwardsville's more liberal residency policy is that now, in the event of adverse conditions affecting Edwardsville, it can call upon law enforcement officers who live outside the city and are not affected by the conditions.

Another advantage of expanded residency, according to the Edwardsville administrator's testimony, the Union states, is

that it promotes more neutral, even-handed enforcement of the law. The Union also notes the administrator's testimony that Edwardsville introduced measures to counteract any possible detrimental effect on the city's community policing policy. The Union asserts that the testimony of the Assistant Police Chief from Collinsville shows the benefits of relaxed residency requirements.

OTHER FACTORS

Quality of Recruits

The Union contends that the record establishes that the City has had difficulty recruiting both experienced and new officers because of its strict residency requirements and that the quality of those it has been able to recruit is lacking. This is shown, the Union argues, by the fact that from January, 1985, to October 31, 1994, no officers were terminated or resigned pending dismissal by the department, but that from October 31, 1994, to March 15, 2002, 21 officers were either terminated or resigned pending dismissal. The financial cost to the City, the Union asserts, has been substantial.

Other Residency Arbitration Awards

The Union contends that "the prevailing trend [of interest arbitration awards on residency] is to expand residency requirements for public employees."

The Employer's Position on Residency

The City contends that the Union is proposing the abolition of an historic, negotiated status quo and that it should not be awarded a "breakthrough" benefit. In the City's view the Union is here attempting to obtain unwarranted expansion of the residency requirement without any *quid pro quo*. In fact, according to the City, because the Union's demands got farther from the City's position with each new proposal, it is not unreasonable to question the *bona fides* of the Union's bargaining. It is clear, according to the City, that the Union made no attempt at any meaningful time to move toward agreement. The City urges the arbitrator not to permit the Union to win through interest arbitration what it has never responsibly pursued at the bargaining table through the give-and-take of good faith negotiations. This is especially true here, the City asserts, where the residency requirement, by virtue of the

current Agreement in 1999, is part of the negotiated status quo. Citing other arbitration decisions, the City argues that a party that seeks to alter an existing employment term that is the product of prior negotiations between the parties must provide strong reasons for the change and has an extra burden of proof.

The City anticipates that the Union may argue that the current strict residency requirement is not a negotiated status quo and argues that such an argument by the Union must fail. It cites arbitrator Perkovich's decision in City of Lincoln and Illinois FOP Labor Council, ILRB Case No. S-MA-99-140 (2000), in support of its position, which decision, according to the City, stated "that it is only when a matter is *first* negotiable between the parties after the 1997 amendments to the Act that there is no *status quo* such that the issue can be characterized as a 'breakthrough'" That is not the case here, the City asserts.

The City likens the bargaining history in this case to the situation in City of Macomb, ILRB Case No S-MA-01-161 (Martin H. Malin, 2002). The interest arbitration came before arbitrator Malin after the 1998 negotiations between the parties where the union decided not to go to arbitration and accepted the strict residency proposal of the city. The City quotes arbitrator Malin's comment that the strategic decision of the union not to go to arbitration in 1998, so soon after residency became arbitrable, was rational but did "not diminish the probative value of the party's actual 1998 agreement." The present case, the City contends, is parallel to City of Macomb, since the Union withdrew its demand for arbitration in the 1999 negotiations and agreed to in-city residency. Consequently, the City argues, the Union must be held to the same extra burden of proof applicable to parties seeking to change the bargained status quo.

The City quotes from the decision of arbitrator McAlpin in City of Nashville, ILRB Case No. S-MA-97-141 (1999), to the effect that a party that wishes to deviate from the status quo must provide strong reasons and a proven need or "must show that there was a *quid pro quo* or that other groups were able to achieve this provision without the *quid pro quo*." The City argues that in this case the Union never offered (and, in fact, refused to offer) to trade other items for the inclusion of its proposal in the labor contract. Nor, the City asserts, has the Union proven any need that has been recognized by other interest arbitrators as sufficient justification to award drastically relaxed residency requirements.

The City notes that the arbitrator is legally bound to

base his decision in this case on the eight factors enumerated in Section 14 of the Act. The City asserts that not all of these factors are applicable in deciding a non-economic issue such as residency and some, such as "The lawful authority of the employer" and "Stipulations of the parties," require little discussion. The City focuses on three criteria that it contends are determinative in this case: (1) the interest and welfare of the public; (2) external and internal comparability; and (3) other factors normally or traditionally taken into consideration in interest arbitration cases.

INTERESTS and WELFARE of the PUBLIC

General Comments

The City maintains that the public interest and its welfare are best served by having its police officers reside within the city for the bulk of their careers. It believes that its officers should not retreat from the city when their shifts are over. The City cites court decisions which have upheld city residency requirements as serving legitimate interest of a city. These, the City asserts, include enhancement of the quality of employee performance by greater personal knowledge of the municipality's conditions; diminution of absenteeism and tardiness among municipal personnel; ready availability of trained manpower in emergency situations; and the general economic benefits flowing from local expenditure of employees' salaries.

Additional Layer of Police Services

A specific benefit that the Alton citizenry obtains from the residency rule, the City contends, is that it provides residents with an additional layer of police services. The departmental rules and regulations, the City asserts, require police officers to carry their gun and badge at all times while within the city limits and to take some sort of appropriate action if a crime happens in their presence. It is a substantial benefit to the city, it argues, to have the additional presence and potential services of all off-duty police officers who might be moving through the city and living in its neighborhoods. As examples it cites the testimony of Police Chief Sullivan about the action of Officer Metzler in interceding while off duty in an incident of domestic violence and his own intercession in a fight outside his home, while directing a neighbor to call the police. A third incident cited by the City was testified to by Officer Rathgeb who, while walking his dog, observed someone in a truck slumped over the steering wheel, and when he went closer to investigate, saw a crack pipe and crack cocaine in plain view in

the truck. Officer Rathgeb ordered the individual out of the truck, made the arrest, and called for a marked squad car. The City notes that both its and the Union's witnesses were in agreement that the department rules require an officer to "do something" if a violation of the law occurs in the officer's presence while off duty, even if the action is limited to calling 911 and remaining on the scene to act as a good witness. Therefore, the City contends, "there can be no serious argument as to whether the citizens of Alton derive an extra layer of police service protection from officers as residents."

Greater Familiarity with the City and Its Citizens

It is not disputed, the City asserts, that Alton is a municipality that is not easy to navigate and that, in the initial stages of an officer's employment, living in town definitely enhances one's ability to learn the streets and the community. The City notes Mayor Sandidge's testimony that when he was a police officer, it took him five years to become familiar enough with the city to be able to get around without a map. It is also of value to the department, the City argues, for officers to be familiar with their neighbors to develop contacts at an informal level that may assist police work. The City cites the testimony of Mayor Sandidge that he reviewed area crime reports that showed that neighborhoods had a decrease in crime when police officers moved into the area.

Minimization of Response Time

One of the purposes of the City's residency requirement, the City asserts, is to keep police officers within close proximity to the police department and crime scenes to enable them to respond more quickly, especially in emergencies, and to be available for call-outs. Three types of police functions are affected by response time, the City notes, traffic, detectives, and the TRT (Tactical Response Team). A quick response is important for detectives, according to the City, because they are called out for homicides and violent crimes where there may be multiple crime scenes to be processed and evidence to be preserved. Another reason, the City states, is to interview subjects before they "attorney-up" and, witnesses before they are lost. The City notes that to facilitate a quick response the call-out detective is given a squad car.

With regard to TRT response, the City asserts that everyone agrees that time is of the essence, especially for a hostage crisis. The City notes that all members of the TRT currently live in the city and that during a recent hostage

crisis all 11 members of the team were at the site within 50 minutes after the first call was made. Nine of the members, the City asserts were there within 20 minutes, and the two who took longer came from out of town. If officers were permitted to live within 20 miles from the City, the City argues, it would increase the time it would take them to get to the station because they would have the additional distance to travel.

The City acknowledges that there has been only one hostage situation in the past five years and only two rapid response calls for the TRT since 1995. Nevertheless, the City insists, each emergency call-back must be responded to promptly.

The City stresses, moreover, that there were 482 call-outs generally in 2002. Further, the City takes issue with the Union's argument that residency time is not an issue for the TRT because the chief could make it a requirement for the position that an officer live in town. Although agreeing that the chief has discretion regarding TRT membership, the City asserts that TRT members are not necessarily exchangeable with other officers. The City notes that an extensive investment of training and resources has been put into each member and that not all officers in the department are equally suitable for TRT work. In addition, the City points out, even if a suitable replacement could be found, the cost of replacement is several thousand dollars per person, and the replacement would not become proficient until after additional training and experience.

The City asserts that also to be taken into account is the occasional disaster that requires an emergency response like the fireworks barge catastrophe in Alton on July 3, 1997, that killed and seriously injured people on the barge. The City notes Chief Sullivan's testimony that the department mobilized everyone who was available and that if it had been attempting to recall officers who were 20 miles away, the increase in time would have been a serious problem. The City notes also the testimony about large floods that closed roads surrounding the City in recent years and that some of the roads affected were within the residency radius included in the Union's final proposal. According to the testimony anyone living in that area would have had to take a circuitous route to get to the police station, with a travel time of two to three hours.

The City argues that the prompt response requirements mentioned above "counsel against the dramatic relaxation of the current residency requirement sought by the Union." It contends that the response time needs of the department alone are sufficient justification for rejecting the Union's proposal.

Effect on Recruiting and Retaining Qualified Police Officers

It is the City's position that the record does not show that the residency requirement prevents Alton from obtaining and maintaining a qualified, professional police force. The City concedes that if it did not have a residency requirement for its police officers, it might get more applicants than it does now. The number of applicants, however, the City argues, is not the essential inquiry. The fundamental question, the City contends, is whether it has been able to attract a sufficient number of qualified applicants to fill the vacancies in the department on an ongoing basis. Despite the Union's presentation of specific individuals who made a decision not to apply or to work for Alton, the City argues, the Union has not shown that there is a deficiency of qualified applicants to fill existing vacancies on an ongoing basis. In support of its argument, the City notes that currently there is an "eligible list" of 42 successful applicants from 110 who applied for police officer positions.

The City argues that even if a direct statistical link could be drawn between residency requirements and the size of the police officer applicant pool, that is not necessarily a bad thing. "Having large numbers of applicants," the City states, "takes significant amounts of time, energy, and resources to test and screen." Although there has been a decline in the number of applicants, the City asserts, it is not unreasonable to conclude that it is getting better-quality candidates. In addition, the City notes, a report introduced into evidence by the Union (Union Exhibit 33) states that municipalities everywhere are getting fewer applicants for police positions.

As evidence that residency is not a deterrent to hiring highly qualified applicants, the City points to Alton officers who testified at the hearing and accepted positions in Alton despite the residency requirement. Noting the testimony of Union witnesses Lieutenant Hayes and retired Captain and Assistant Chief McCain of the Alton Police Department who felt that the department would benefit from being able to attract lateral hires, the City argues, first, that the claims are unverifiable. In addition, the City points out that both Hayes and McCain declined to identify any officer they deemed to be less than a good officer when asked to do so. Further, the City notes McCain's testimony that he believes that every police force (irrespective of residency requirements) has officers on it that should not be there.

The City contends that the "Union's claims of excessive resignation due to the residency requirement are overstated and unfounded on the record." The City asserts that the evidence

establishes that at most two police officers left their job with the Alton Police Department because of the residency requirement. This is also true, the City maintains, if the records of resignations are perused back to 1985. "Even if all 19 resignations in the last 18 years were attributable to the residency requirement (which the City strongly denies)," the City asserts, "that still is an average of approximately one officer per year." There have always been more than enough applicants on the eligible list to fill these vacancies, according to the City, and "there is simply no statistical basis for the Union's assertion that the residency requirement has caused any 'exodus' of seasoned officers fleeing their employment with the City of Alton because of the requirement that they live within the City limits."

COMPARISON WITH OTHER EMPLOYEES

Internal Comparisons

It is the position of the City that all internal comparability factors favor the City here. The City notes that the City's Civil Service Rules applicable to all regular employees that are not appointed by the mayor requires residency within the city. This, according to the City, includes all civil service employees who are members of the police, fire fighters, public works, and miscellaneous general service employees who are covered by four collective bargaining agreements. In addition, all mayoral appointees, the City points out, have for many years been required to live in the city, and in 2000 this requirement was formalized in an ordinance enacted by the City Council. The only persons on the City's payroll who live outside the city, the City asserts, are casual or seasonal workers, such as teens who work for the parks department on grounds crews or as referees or umpires for sports programs, or members of the voluntary band.

The City states that it has enforced the residency requirement against any employee who has attempted to deviate from it. It cites the case of a mayoral appointee who resigned after the City insisted that he live in the city upon learning that he was not doing so. A second example noted is that of an employee in the Teamsters bargaining unit who was fired when the City believed that he was living in Edwardsville with his wife and child despite also having an Alton address. The City lost the case in arbitration. A third example cited by the City is the reprimand it issued to a police officer who it believed gave a false address in Alton as his residence.

The City contends that many interest arbitrators have

held that where there is a logical need for uniformity in particular conditions of employment, a comparison with other employees in the jurisdiction, whether or not part of the bargaining unit, is appropriate. It cites the decision of arbitrator Goldstein in Village of South Holland, ILRB Case No. S-MA-98-120 (1999), in which he stated, "There is a legitimate and logical concern on the part of management of the Village that a residency rule should be uniform among all its employees, unless a compelling reason for a difference in that particular condition of employment for this bargaining unit has been proved, I find." Arbitrator Goldstein, the City quotes, found that "the Union's attempt to establish such a compelling need for the liberalization of the Village's residency rules because of the unique nature of the terms of work for police officers does not convince me in this case to disregard the internal comparables, which undisputedly show all other Village employees work under the same rules for residency as does this bargaining unit."

The City notes that arbitrator Goldstein examined the bargaining implications of granting the FOP union's request to liberalize the residency rule and predicted "that the Village's other employees will instantly be jockeying back and forth for a similar more liberalized residency requirement" or "to outdo the FOP at the bargaining table to obtain an even wider area in which those employees could live and still be Village employees." As quoted by the City, arbitrator Goldstein concluded, "Under these factual circumstances, it is not irresponsible or unreasonable for management to resist being put in position where it can be whipsawed on the residency question."

The City asserts that the same issues are present in this case and compel the same result, namely, rejection of the Union's proposal.

External Comparisons

The City contends that the four communities agreed to by the parties as comparable communities--Belleville, Collinsville, Edwardsville, and Granite City--support the City's position in that three of them require in-city residency for all, or a substantial portion, of the police officers' tenure of employment. The fourth one, Edwardsville, also supports the City's position, it contends, because the requirement that police officers hired after May 1, 2000, live within Madison County is a more stringent requirement than the previous rule.

The City acknowledges that Fairview Heights and O'Fallon have residency requirements that approximate the Union's proposal in this case but argues that those jurisdictions have

much higher EAV and median home values than Alton which would require those communities to pay salaries commensurate with income levels required to afford the kinds of property values if they wanted to require their officers to live within town.

The City asserts that there are no reported interest arbitrations involving residency for any of the communities offered as comparables by the Union. Therefore, the City argues, whatever residency requirements they have are the product of negotiation and some exchange of appropriate *quid pro quo*, which, according to the City, is not the case here. The City maintains that because the Union wishes to change an historic term of employment a much more compelling showing of need must be made than simply that other municipalities have such a provision.

OTHER FACTORS

Safety

The City argues that the threat to officers and their families has been overstated by the Union. The City asserts that the incidents testified to by the officers may be categorized in three groups: (1) reported encounters or threats of retaliation in the wake of arrests or criminal trials; (2) unpleasanties endured by officers and their families in public; and (3) property damage issues. In every case, the City argues, the testimonies regarding the incidents reveal that the number of incidents is small and that no actual harm has happened to any officer or his family.

The City asserts that there were only five incidents of threats that were the subject of a police report. The City enumerates these as follows: 1) In 1987 Officer Hayes arrested T.W.B.⁴, who threatened to "get even" and who, after being released, harassed Hayes by telephone and by casing his house. The City asserts that although T.W.B. was subsequently convicted for communicating with a witness, there was no evidence that any harm actually came to Hayes or any member of his family in 1987 or that he has encountered any difficulty of that type since then.

(2) In 1995 Officer Timothy Palen shot and killed K.C.G. in the line of duty. Following the shooting, police

⁴For reasons of privacy the arbitrator is using only the initials of the persons arrested or who were otherwise involved in incidents with the Alton police department.

intelligence learned that K.C.G.'s associates might be planning to retaliate against Palen and/or his wife. On the advice of the department, Palen, his wife, and their daughter were relocated temporarily to another city. When they returned to their home four weeks later, no retaliation ever occurred.

(3) In April, 2000, Detective Rory Rathgeb arrested R.P. Thereafter the department received information that R.P. might be planning to retaliate against Rathgeb by vandalizing his house. Rathgeb moved out of his house for three days. Wiretap surveillance turned up nothing. No threat ever materialized. Rathgeb testified that neither he nor his wife has ever been physically assaulted or harmed because of his involvement as a police officer.

(4) In 2000 Officer Jeanniece Young was confronted by C.D., whom she had previously arrested, at a gas station. After a brief argument, during which C.D. threatened to hit Young with a 40 ounce can of beer, Young called the police, and C.D. was arrested. The latter has never confronted Young since the altercation at the gas station.

(5) In 2000 Sergeant Scott Golike was interviewing a reputed gang member, who indicated the gang was discussing possible violence against Golike. Since the interview there have been no subsequent threats from the gang, and neither Golike nor his family has been the victim of any retaliation in any form.

The City contends that five threats in 15 years are not a significant number and points out that none of the Union's other eight witnesses who were Alton police officers testified that these types of things happened to them or their families. Nor, according to their testimony, the City asserts, did its own witnesses, Chief Sullivan and Mayor Sandidge, a former police officer, encounter such incidents. These incidents, the City argues, fall within the realm of *braggadocio* that officers expect from criminals. The City notes the testimony of Officer Simmons that he understands that he is going to be threatened in connection with his job and of Officer Rathgeb that such behavior "just comes with the territory" and that some people "just like to make threats."

The City asserts that the remaining reports, excluding those of property damage, involved unpleasanties that the officers or their families endured but that did not involve a police report. According to the City, each officer who related such an incident stated that it was not serious enough for him to file a police report and that no actual confrontation, assault,

or harm flowed from the event. The City notes that the Union did not offer any evidence that these types of things happened to other witnesses who were Alton officers. The City contends that this arbitrator should view these unreported incidents the same as arbitrator Goldstein in Village of South Holland viewed unreported "unpleasant and unplanned contacts with civilians who were arrested by these particular officers," in the case before him, namely, as not an appropriate basis for abandonment of an existing residency requirement.

The City next addresses the evidence of various types of property damage that occurred to officers, including the shooting out of the window of an officer's car, gunshots fired through the kitchen window of an officer's home, the egging of officers' cars, and a Union exhibit summarizing approximately 20 vehicle or residence damage reports from 1994 to 2002. The City asserts that in each of the cases none of the officers involved could attest that, in fact, the vandalism was done by a person who was motivated by retaliation against a specific officer for his police actions. The City also asserts that the Union offered no evidence, statistical or anecdotal, regarding the frequency of these types of crimes committed against Alton police officers or in neighboring communities that are within the radius of residency that the Union seeks here. The City contends that the property damage evidence does not establish that the events occurred as a result of the residency requirement.

The City contends that the Union's proposed liberalization of the residency rule will make officers and their families less safe. This is so, the City asserts, because "the additional layer of police protection services that Alton officers provided while they are within the City's limits, as a matter of duty, is real and substantial." According to the City, both Kathryn Palen and Officer Rathgeb testified that they felt that they and their residences were better protected within the City limits by virtue of being within the police department's jurisdiction. Rathgeb, the City asserts, said that he felt safer since the individuals named as having an interest in shooting up his house were contacted by officers and detectives of the police department and were told that nothing had better happen to Rathgeb or his family. "Rathgeb," the City states, "specifically testified that his co-workers would not have been able to produce that level of protection if Rathgeb had lived outside the City limits of Alton. . . ." Other Union witnesses, the City asserts, testified that moving out of town would not make them any safer if a criminal was intent upon retaliation. The City contends that the threats to the safety of officers and their families "are neither numerous nor severe enough to warrant the abolition of the City's residency requirement and are not a sufficient

basis for awarding the Union's proposal."

Affordable Housing

The City argues first that there was no evidence presented that any officer lives in substandard housing or that officers were in need of homes other than their present address. In addition, the City argues, the earnings of police officers show that they are well able to afford to pay the mortgage cost of purchasing existing homes within the price range they are looking for and that there is an ample selection of such homes. It is for this reason, the City asserts, that the Union has focused on new construction housing developments. The City argues that it is not aware of any interest arbitration award that has found a personal choice to live in new construction a special need that warrants the abolition of a bargained status quo to grant a "breakthrough" benefit to subsidize employees' personal lifestyle choices.

Schools

The City disputes the Union's contention that the Alton school district's academic offerings are substandard or that Alton's public schools are not a safe environment for Alton police officers. It asserts that Alton is more ethnically diverse and has more low income residents than the surrounding communities, presenting it with some challenges not faced by the others. Nevertheless, the City argues, Alton's schools are competitive with most of the other school districts referred to in the hearing.

The 2002 Report Cards, the City asserts, with regard to the Illinois Scholastic Aptitude Tests (ISATs) and the Prairie State Achievement Examination (PSAEs) for the 2001-2002 school year, "show that Alton students, on average, are in the same ball park as the other districts, with the single exception of Edwardsville. . . ." At the high school level, the City states, the Report Cards show that Alton does as well or better than Bethalto, Collinsville, and Jerseyville.

The City argues that Alton has received accolades and press coverage for its honor students, for one of its recent graduate's admission to the naval academy, for its ROTC program, and its marching band. Graduates of Alton High School, the City notes, have been admitted to medical school.

With regard to the safety of the school system, the City asserts that 79 arrests in 100 days amounts to less than one incident per day for a total student population of approximately

6,800. The City argues that if one allows for the population difference between Alton and Bethalto, the latter community's 12 arrests is not dramatically lower than Alton's.

With regard to the testimony that officers fear retaliation against their children from the children of people they arrest, the City notes that none of the witnesses provided any evidence of actual retaliation. As for the testimony of a Madison County deputy sheriff that his child is having problems with the son of someone he arrested, the City argues that the deputy admitted that he does not have specific knowledge that his son's problems were the result of his job as sheriff's deputy. The City cites the testimony of other police officers whose children attend Alton schools and have never encountered any harassment or intimidation.

The City argues that this case presents no different concerns than those presented on the same issue in Village of South Holland where arbitrator Goldstein stated that in the absence of any concrete proof that any child of a police officer had actually been harassed, intimidated, or physically hurt, he was not persuaded that an expansion of the residency rule was required. The City also notes the decision of arbitrator Malin in an interest arbitration involving the city of Maywood, who stated that the problems of crime and poor schools were not confined just to the bargaining unit.

The City asserts that it has offered a relaxation of the residency requirement which responds to the Union's stated desire to enable officers who are nearing their retirement to start establishing a home outside of the city. Based on the record and its arguments, the City contends, its proposal "is not only the more reasonable of the two, but is also the only possible outcome that could have flowed from the parties' own negotiations had the Union not sought interest arbitration."

Analysis and Conclusions

Burden of Proof and Status Quo

With an exception to be discussed below, the City's argument that the Union is proposing the abolition of an historic status quo and should not be awarded a "breakthrough" benefit is similar to the argument of other municipal employers in residency

cases since the 1997 amendment of the Act to permit an arbitration award on the issue of residency for municipalities with a population under 1,000,000.

Certainly the majority opinion among arbitrators who have considered the question is that the existence of a longstanding in-city residency requirement does not make residency a "breakthrough" issue requiring an "extra burden of proof" when raised by a union for the first time following amendment of the Act. Arbitrator Goldstein, for example, in Village of South Holland, supra, stated:

. . . I am convinced that given the amendments about residency made to IPLRA in 1998 [sic, 1997], this proposal should be treated as if the parties were making a new contract. Thus, although Management argued bargaining should be relevant to the current case, I hold instead that the genesis and evolution of the Village's uniform residency rules are much more probative, when connected with the claimed political realities and when considered under the rubric of criterion 3. 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 hold.

Arbitrator Steven Briggs held similarly in City of Calumet City, supra:

It is important to recognize that there really is no negotiated status quo on this issue. The residency requirement was imposed unilaterally by the City, and until January, 1998 it was an issue considered to be a non-mandatory subject of bargaining. Thus, it was only in the most recent round of negotiations (i.e., for the successor to the 1996-1999 Agreement) that the City had a statutory obligation to discuss the Union's desire to amend the residency rule. There is no longstanding record of agreement between the parties requiring Calumet City police officers to live within City limits. The residency requirement was initially imposed unilaterally by the City, and it has been unilaterally administered by the City for nearly all of its 30-year existence. That background falls well short of comprising a longstanding negotiated history which should not be disturbed in interest arbitration proceedings. Accordingly, the Neutral Chair does not view the Union's final offer (or the City's, for that matter) as reflective of a "breakthrough."

Other interest arbitration decisions with similar holdings are City of Lincoln, supra (Robert Perkovich, 2000) at page 3; City of Blue Island, ILRB Case No. S-MA-00-0138 (Robert Perkovich, 2001) at pages 3-4; and City of Elgin, ILRB Case No. S-MA-00-102 (Elliott H. Goldstein, 2002), at page 99.

The City contends, however, that the present case is different from the cited cases because the Union did not respond to its October, 2002, offer to relax its strict residency requirement and because the Union agreed to a new contract in 1999, after the effective date of the amendment of the Act, without negotiating a change in residence. This, the City contends, made the present residency rule a negotiated status quo.

With regard to the question of negotiated status quo, the City would apply a mechanical rule. If there were negotiations between the parties after the effective date in 1997 of the amended act permitting arbitration of residency, then whatever residency rule is in effect between the parties on residency on the date the new contract was signed, whether specifically negotiated or not, becomes the negotiated status quo. This arbitrator does not agree to such a mechanical approach. In the arbitrator's view what actually took place in the negotiations must be examined.

In the present case, on January 5, 1999, in the negotiations for the current Agreement, the Union proposed that officers be permitted to reside within 15 miles of the corporate limits of the city of Alton. The City countered with an offer of a five year agreement, but, regarding residence, the City's position was, "In no way will the City agree to change the requirement to reside in the City of Alton." The City did not budge from that position in the negotiations. In May, 1999, the parties reached tentative agreement on a new five-year contract with reopener language regarding certain economic terms. The tentative agreement also included a special reopener provision pertaining to residency, separate and apart from the reopening language regarding economic terms.

The Union expected City Council approval of the tentative agreement, but when it was not forthcoming by mid-June, 1999, the Union wrote the City, stating that to protect its rights, the Union had filed for interest arbitration. The letter left the door open for continued negotiations. What was delaying Council approval was its dissatisfaction with the proposed reopener language on residency. Discussions continued, and on June 23, the City Council approved a provision that, so far as is

here pertinent, permitted a reopening of the contract "upon the written request of either party" in the event of "any interest arbitration under Section 14 of the Illinois Public Labor Relations Act which is applicable to the City of Alton and which conflicts with Section 603 of the City's current Civil Service rules. . . ." Section 603 is the provision that requires all Civil Service employees to reside within the city limits of Alton. The Union ratified the agreement with the new language, and the City Council approved the agreement on July 14, 1999. The parties executed the contract, which is the current Agreement, on July 19, 1999.

In the ensuing months several interest arbitration decisions were rendered in Illinois involving other municipalities on the subject of residency. On July 17, 2000, Eric Poertner, Chief Labor Representative for the Union, wrote the City Personnel Director informing him of the interest arbitration awards involving Kankakee, Cicero, and Nashville, and taking the position that the awards were sufficient to trigger the application of the reopener language on residency. By letter dated August 18, 2000, Poertner notified Dave Miles, City Personnel Director, that the Union's "initial offer for expanded residency" was a "residency requirement of Madison County." The City disagreed with the Union's position that the condition for reopening had been met and refused to reopen the issue of residency. The Union filed a grievance in the matter, and the parties selected Elliott H. Goldstein to hear the dispute. He issued an award on February 6, 2002, finding that the City violated the collective bargaining agreement by its refusal to reopen and negotiate the issue of residency when requested to do so by the Union. He directed the City to enter into bargaining with the Union forthwith on the issue of residency.

The Union's proposal to the City following arbitrator Goldstein's award was to permit officers to reside within 30 miles of the corporate limits of Alton. The City rejected the Union proposal and made no counterproposal. By letter dated July 17, 2002, Director of Personnel Miles wrote Poertner stating, "In light of the Police Benevolent and Protective Association, Union 14, proposal to expand residency to 30 miles from the corporate limits of the City of Alton and the City Council's rejection of the Union's proposal, the City agrees to join the Union's request to waive mediation and proceed to interest arbitration to resolve this issue."

By letter dated August 9, 2002, from the Illinois Labor Relations Board the undersigned was appointed interest arbitrator in this case. By letter dated August 16, 2002, this arbitrator wrote to the parties confirming a hearing date of December 10,

2002. As of August 16, 2002, the City had not yet made any proposal regarding residency to the Union--either before or after the arbitration decision by arbitrator Goldstein.

The first time the City made any proposal to the Union on residency was by letter dated October 14, 2002, from the attorney representing the City in this proceeding to Eric Poertner. The letter proposed a new Article 33 that provided that employees with 20 or more years of service could elect to reside in any Illinois municipality that bordered on Alton in lieu of receiving longevity compensation benefits set forth in Article 24 so long as they resided outside the corporate limits of Alton. Any employee residing outside Alton would also be ineligible for any assignment that required or permitted the employee to keep a City police vehicle at his home for transportation to and from work. The Union did not respond to the City offer.

Poertner testified that the Union bargaining committee looked at the offer with a jaundiced eye. The timing was suspect, he stated, in light of the fact that a hearing was already scheduled for December 10th. In addition, he stated, the issue was on the table for almost four years without an offer, and then the City's tying it to money issues gave the impression that the offer was something the City felt it needed to do to put itself in the best possible position it could for this hearing.

Poertner testified without contradiction that prior to its October, 2002, offer the City took the position that it did not have any authority to make the police officers an offer. That position, Poertner stated, was held by the City throughout the negotiations, including back to the original negotiations for the contract. The City stated a number of times, according to Poertner, that it could not seriously discuss the Union's proposal or make the Union an offer.

Mayor Sandidge basically supported the testimony of Eric Poertner. He testified that he did not recall if the Union's 15 mile radius offer was presented to the City Council. He acknowledged that the City's response to the Union's 30 mile radius offer was that it did not want to talk about the residency issue (Tr. IV, 63). The mayor stated that he did not think that the Madison County offer would have been acceptable to the City Council even if it had been discussed, that the offer would have been rejected. He testified that the City Council discussed offering residency of no more than 10 to 20 miles from Alton after five years of service and rejected it. "In fact," the mayor testified, "they [the City Council] held a line of nothing until October." (Tr. IV, 67).

Asked whether the City had the opportunity, if it wished to take it, to obtain some sort of *quid pro quo* for giving up something on residency, the mayor answered, "Yes." Asked further if it was correct that the City never took any opportunity to do that, he stated, "That's correct." He further acknowledged that the City's line was "no, no, no to expanded residency." (Tr. IV, 67-68).⁵

⁵The City argues that the Union should not be permitted to achieve expanded residency without a *quid pro quo*. However, if the City wanted a *quid quo pro*, it should have bargained in a manner consistent with that goal. Mr. Poertner's and the mayor's testimonies make clear that the City was not interested in a *quid quo pro*. It wanted strict residency. It cannot now turn the tables and put the blame for *quid pro quo* being out of the equation on the Union. *Quid quo pro* is out of the picture now because of the way the City structured the bargaining. The City's eleventh hour proposal after the interest arbitration hearing was already scheduled was too little too late to provide any indication that the City was ready for realistic bargaining that would lead to expanded residency for the majority of the bargaining unit in return for a reasonable concession on the Union's part.

The arbitrator is satisfied that the record amply establishes that the City's position was adamant. It was not willing to permit all officers, or even those with five years of service like in Collinsville, to reside 30, 20, or even 15 miles outside the corporate limits of Alton regardless of whether the Union offered a *quid quo pro* for such a concession. Had it been willing to do so, it would have made some movement in that direction before this case was scheduled for interest arbitration. The history of the negotiations together with the testimonies of Mr. Poertner and Mayor Sandidge satisfy this arbitrator that there was no likelihood of the parties reaching agreement on the residency issue no matter how long they would have continued to negotiate in this case.⁶ This is therefore not a situation where interest arbitration is premature and sending the case back to the parties for further negotiation is likely to bring agreement. See, for example, City of North Chicago and Illinois Fraternal Order of Police (FOP) Labor Council, ILLRB Case No. S-MA-99-101 (Steven Briggs, 2000), at page 16. The arbitrator is convinced that here the City was not willing under any circumstances to voluntarily agree to expanded residency for the bulk of the bargaining unit and that the Union would not have agreed to anything less.

The arbitrator also finds that there is no negotiated status quo between the parties on the issue of residency. By agreement, through the residency reopener, the parties deferred the negotiation of the residency issue until after additional decisions on that issue would be rendered by arbitrators under Section 14 of the Act. At no time did the City inform the Union of its present contention that by jointly agreeing with the City

⁶Further evidence of the City's unwillingness to make any meaningful concession on residency that stood a chance of acceptance by the Union is the fact that the parties had no serious difficulty reaching agreement on the original contract in 1999 and on the economic reopener in 2002. The fact that after more than three years of involvement with this issue, it was the only one on which the parties could not reach an acceptable mutual accommodation shows that it was intractable.

to defer the negotiation of the residency issue until additional decisions on the question were rendered, it (the Union) was prejudicing its position with regard to the extent of its burden of proof.

In fact if Article 4 of the current Agreement is read together with the reopener clause, it is clear that there is no negotiated status quo between the parties. Article 4 states that the parties agree "to abide by the Rules of the Civil Service Commission" but that "if there is a conflict between this Labor Agreement and the Rules of the Civil Service Commission or the City Code, this Agreement shall supersede." The residency reopener clause states that "[i]f any provision of this Agreement is subsequently declared to be unlawful or unenforceable, in whole or in part, . . . by any interest arbitration under Section 14 of the Illinois Public Labor Relations Act which is applicable to the City of Alton and which conflicts with Section 603 of the City's current Civil Service rules[,] then "[a]ny such dispute not resolved by mutual agreement shall be resolved in accordance with the provisions of Section 14 of the Illinois Public Labor Relations Act."

In the grievance arbitration between the parties, arbitrator Goldstein held that interest arbitration awards that were issued after execution of the 1999 contract triggered the reopener clause. The reopener clause itself requires that the interest arbitration decisions issued after the date of the 1999 Agreement be in conflict with Section 603 of the Civil Service Rules for the reopener clause to kick in. Thus arbitrator Goldstein's award must be interpreted as necessarily finding that at least a potential conflict with Section 603 was raised by the awards.

It is plain, therefore, that the parties did not agree in the 1999 Agreement to a strict residency rule on an indefinite basis in accordance with Section 603 of the Civil Service Rules. What they agreed to was to maintain strict residency until one or more interest awards were issued in Illinois that conflicted with Section 603. When that event occurred the issue of residency became arbitrable between the parties in accordance with the provisions of Section 14 of the Act. Arbitrator Goldstein held that such an event did occur. The present interest arbitration is the result of the occurrence of the event. There was no agreement to maintain a permanent status quo for the life of the contract. The agreement rather was for residency to become negotiable between the parties with the occurrence of the event that arbitrator Goldstein held did, in fact, occur. The parties did not provide in their reopener clause, or in any other part of the Agreement, that special conditions should pertain to any

Section 14 arbitration that might ensue through the operation of the reopener. This arbitrator holds that there are no such conditions or restrictions and that neither side is saddled with a special burden of proof. As the party proposing to change the existing residency rule, the Union has the burden of proof to show that its offer should be accepted. But its burden is the ordinary one of preponderance of the evidence, not any special burden. See City of Rockford, ILRB Case No. S-MA-99-78 (Elliott H. Goldstein, 2000) at pages 49-50.

The City relies on City of Macomb, supra, for its position that there is a negotiated status quo in this case. That case is not apposite because there, following the effective date of the amendment of the Act, the parties negotiated a residency provision in their contract effective from 1998 to 2001. City of Macomb, supra, at page 3. The 1998-2001 agreement did not contain a reopener clause involving residency, and no other language in the contract indicated that the residency issue was not fully disposed of by the parties for the life of the agreement. The case is therefore not at all parallel to this case.

Application of Statutory Criteria

Of the eight statutory criteria listed in Section 14(h) of the Act, the parties have limited their discussion basically to three of them, items (3), (4) and (8), namely, the interest and welfare of the public; external and internal comparability⁷; and other factors normally considered in arbitration or otherwise between the parties. The arbitrator agrees that these three criteria are the most relevant in this case.

⁷Although the statute does not specifically mention internal comparability, referring rather to "employees . . . in comparable communities," interest arbitrators in Illinois uniformly consider internal comparability together with external comparability. In any event, internal comparability would otherwise be covered by item (8) of the statute, "other factors . . . which are normally or traditionally taken into consideration"

As regards the other criteria, both parties' offers are consistent with the lawful authority of the employer. The parties have stipulated that the residency issue is non-economic and are in agreement as to four of the comparable communities. Consumer prices for goods and services is not a factor in this case. Neither side has argued that resolution of the residency issue is somehow tied into the overall compensation or benefits received by the bargaining unit employees or any other employees. There is no contention that there has been a change of circumstances relevant to the statutory criteria during the pending of the arbitration proceedings.

The arbitrator will proceed to analyze the facts in light of the three agreed upon applicable criteria.

INTERESTS and WELFARE of the PUBLIC

Additional Layer of Police Services

One of the reasons given by the City for its residency requirement is that it provides an additional layer of police services to the citizenry. This follows, according to the City, from departmental rules and regulations that require officers to carry their gun and badge at all times while within the city limits and to take some kind of appropriate action if a crime happens in their presence. The Union, on the other hand, emphasizes that officers are very limited in what they can do while off duty because officers are discouraged from taking any action while off duty, beyond calling the police and serving as a witness, except in cases of a felony or when life is in danger.

The arbitrator would agree with the City that there is additional protection available to the citizenry from having police officers reside in their community. The fact that police officers are told to take action off-duty only for a felony or when someone's life is at stake does not detract from the benefit to the community of having a police officer present. It is the more serious types of crime that are most threatening and when police intervention will be most needed and appreciated. Having extra police officers available in such situations is certainly an asset.

The City, however, has presented no statistics as to how often off-duty police officers have intervened to save a life, prevent a serious crime, or apprehend a dangerous criminal. The record contains some testimony about some off-duty activity by police officers spanning a period of years. One is not left with the impression from the record as a whole that off-duty

police officers in Alton have been involved in a significant number of incidents where they were instrumental in saving a life or apprehending a criminal in their role as an armed, off-duty police officer.

It is true that the potential police service that an off-duty officer is capable of rendering is an asset in itself regardless of the fact that the service may, in the end, not have to be given. However, as arbitrator Goldstein stated in City of Rockford, supra, at page 50, "There also must be a balancing of the reasons for and against change and a determination as to which offer is more or less appropriate under the proven facts." The number of times that off-duty officers actually perform police services while off duty affects the balance.

It is also probably true that the public feels safer having a police officer live down the street rather than in the next town. There is, however, no rule requiring officers to live in neighborhoods with high crime rates. A resident of a high-crime neighborhood will not feel any safer because an officer lives in somebody else's neighborhood. And if an officer lives in a neighborhood where there is little or no crime, probably even the residents of that neighborhood will not feel appreciably safer. In the present case the record does not show how many, if any, police officers live in high-crime areas. It is therefore not possible to say that the public perception of safety is significantly enhanced as a result of the City's residency requirement.

Greater Familiarity with the City and Its Citizens

One of the advantages of a residency requirement, the City contends, is that police officers will be able to navigate the streets more easily. It notes the testimony that Alton is not an easy city to learn how to get around in. Mayor Sandidge testified that it took him five years to become familiar enough with the city to be able to get along without a map. Chief Sullivan, however, testified that he moved to Alton from out of town and that by the end of his training period he was able to navigate the streets (Tr. III, 239-240). He stated that he believed that any other officer hired from out of town could learn exactly the same way he did.

The City contends, however, that living in the community enhances one's ability to learn the community and to develop informal contacts that may help in police work. No testimony, however, was given of any example where because a police officer resided in the city he was able to make contacts that were valuable in solving or preventing crime. The

arbitrator is not able to say from the evidence that in practice, as opposed to theory, the City's residency requirement is an important tool in fighting crime. In this connection it is to be noted that Alton's rate of 6.7 crimes per 100 residents is higher than that of any of the four agreed upon comparable communities. In addition, of the four stipulated comparables, the two communities with relaxed residency requirements have less crimes per 100 residents than the two with a strict residency rule. Of the eight comparable jurisdictions selected by the arbitrator, the municipality with the worst crime index by far is East St. Louis, a city that requires its police officers to live within the city's boundaries. One has no basis for concluding from the evidence in this record that all things being equal, the police department of a municipality that has a strict residency requirement for police officers will be more effective at fighting or preventing crime than the department of a municipality that has a relaxed residency rule for police officers.

There is, moreover, direct evidence in the record that there are police methods available that can achieve the advantages of community policing without having a strict residency rule. Edwardsville City Administrator, and former director of the police for 25 years, Bennett Dickmann described the steps Edwardsville took to compensate for lifting the residency requirement in that city:

We have a very strong school resource officer program in Edwardsville. We also have implemented what we call the ward officer program where individual police officers are assigned as liaisons to the individual aldermen and to the neighborhood homeowners associations. We . . . also have other isolated programs that are implemented whether it's a bicycle patrol or simply making presentations in the schools over and above the school resource officer's program. But I think those certainly help to offset the otherwise lost community-oriented policing that, I think, prevails when you have officers living in the community. (Tr. IV, 205)

Dickmann stated that he thought that these steps taken by the city had successfully addressed compensating for discontinuance of the residency requirement and that he did not think that reinstating it now would lower Edwardsville's crime rate (Tr. IV, 205, 206).

Response Time

The City devotes a large section of its brief to argue the importance of the City's residency requirement to keep police officers in close proximity to the police department to enable them to respond more quickly for call-outs of the TRT team, of detectives in the event of a homicide or violent crime, of replacements for absent officers, and for special emergencies. The arguments are summarized at pages 29-30 above.

The arbitrator believes that it is definitely important that officers live close enough to the police station so that they are available when needed. He is not persuaded by such arguments as the Union's contention that the chief is free to limit assignments to the TRT team--or to any other police function--to officers who reside in the city. Rule 300.14, headed DUTY RESPONSIBILITIES, City Exhibit 37, places important responsibilities on police officers:

. . . Proper police action must be taken whenever required. The administrative delegation of the enforcement of certain laws and ordinances to particular units of the Department does not relieve members of other units from the responsibility of taking prompt, effective police action within the scope of those laws and ordinances when the occasion so requires. Members assigned to special duties are not relieved from taking proper action outside the scope of their specialized assignment when necessary. (emphasis added)

A police officer may not wash his hands of his police responsibilities by moving so far away from his place of work that he is no longer available for prompt and effective police action. It is true that the TRT is a voluntary assignment, but there are other assignments within the normal scope of duties of all police officers that require that they be available for prompt action as needed.

The foregoing said, the evidence nevertheless shows that an officer can be miles outside the city limits of Alton and still respond on time for TRT, detective, and other call-outs. For example, City witness Jody O'Guinn, Deputy Chief of Police, Alton Police Department, is a long-time member of the TRT as sniper team leader. He has currently taken himself off the team temporarily for personal reasons. O'Guinn testified, "It has been our policy throughout the T.R.T. team, if we can assemble the full team and get them on the scene within a hour, that would be a good response." (Tr. III, 100).

O'Guinn stated that a 20 mile residency requirement from the outskirts of Alton could be a problem in meeting the one hour time period because of traffic delays. The arbitrator believes, however, that a shorter distance from the police station should not be a problem, and that even 20 miles might be feasible where there is no traffic congestion. For example, it is not disputed on the record that when he was on the TRT, Detective Gary Cranmer was typically among the first to respond to a TRT call-out even when he came from East Alton, Illinois, a community about 10 miles from Alton where his wife lives (Tr. I, 190). Cranmer testified that he believed that he would still be among the first even if he were coming from 20 miles away, although he acknowledged that it would take longer.

Former Captain and Commander of the Alton Police Department, Rick McCain, who retired in December, 2002, on disability after 23 years of service, testified that he expected the on-call detective to be at the station within 30 minutes after being called (Tr. IV, 159). McCain testified that detectives on call were told not to go farther than Busch Stadium in St. Louis. He estimated the distance from the stadium to the police station as 25 or 30 miles. While 30 minutes is probably an unrealistic timetable for a 30 mile trip, considering traffic, nevertheless McCain's testimony is consistent with the probability that living outside Alton's city limits should not prevent a timely response by the call-out detective provided he lived a reasonable distance from the police station.

The City has stressed the fact that coming from outside the city boundaries will take longer than coming from within the city. The arbitrator does not believe that that should be the test, however. The test should be whether a patrol officer or detective can respond in a timely manner. Over time the department has established what is considered to be an acceptable response time to a TRT or an on-call detective call-out. It is probably reasonable to believe that most responses, or certainly many of them, will be from an officer's home. It is therefore proper to require officers to live within a reasonable distance from the station, which is the place to which they respond. Reasonableness should be judged in terms of acceptable limits rather than the fastest time possible. A reasonable balance must be struck between departmental and employee needs, provided, of course, that good police practices are still maintained.

The record indicates that the police department itself strikes a balance between what would be the very best possible arrangement in terms of fighting and preventing crime and budgetary considerations. Thus, who could quarrel with Detective Sergeant Golike's letter of October 3, 2002, to Chief Sullivan,

City Exhibit 59, describing the advantages to the department in terms of fighting crime if every detective were given a squad car to drive to and from work? Yet the police department has not changed its current policy of giving a take-home squad car only to the on-call detective. It apparently has determined that regardless of the advantages in terms of having additional manpower available to the department "free" during the times that detectives are driving to and from work, the occasional police benefit this might yield was not worth the certain costs to the department for gasoline and wear and tear of its fleet.

There was testimony, moreover, that sometimes it is an advantage to a police department in responding to an emergency to have some of its officers living outside the jurisdiction. Thus Edwardsville City Administrator Dickmann testified that should adverse weather conditions in a community require police assistance, then "[o]bviously, if our employees are not personally affected by those conditions, it is an advantage to have them available and have them available to the point where they can concentrate on the situation at hand as opposed to having in the backs of their minds worries about their personal property and their own families." (Tr. IV, 203).

Aside from the common types of call-outs such as for TRT, the on-call detective, or to replace an absent employee, the City notes that there have been occasional disasters, like the fireworks explosion on a barge in July, 1997, that killed and seriously injured people. In addition, it states, there have been floods, and there is the potential for other emergencies because of a munitions plant and a gambling boat moored dockside in Alton. It is not, however, as if there are not police officers on duty 24 hours a day available for immediate response to any emergency. Nothing in the record persuades this arbitrator that the current call-back times in effect are not adequate to provide, in a timely manner, the additional police help that may be needed in the event of different types of emergencies.

The arbitrator does not believe that the City has made out a case that response time considerations for call-outs and emergencies are an important reason favoring a strict residency requirement for Alton police officers. The record does establish, however, that it is important that police officers not live so far away from the police station that they cannot return to work promptly when called to do so.

Recruiting and Retention of Officers

The record (City Exhibits 54 and 57) shows that 36

police officers were hired by the Alton Police Department between April, 1997, and January, 2003, of which 12 were discharged or resigned to avoid termination of employment--a failure⁸ rate of 33%. The parties stipulated that the terminations were for nonperformance or misperformance of their duties. Although no statistics were given for other police departments with which to make comparisons, intuitively a 33% failure rate is very high and indicates that there is a problem with the City's method of selection.

One of the common criticisms of a strict residency requirement is that it contributes to a decline in the quality and competency of a police force. Union Exhibit 16, p. 47. The large percentage of officers who have been dismissed from the force or forced to resign for performance reasons is consistent with a decline in the quality of applicants. When City counsel stated to witness Lieutenant Hayes that he was "concerned that the police forces here are fully staffed by competent police officers," Lieutenant Hayes replied, "Well, we could do a lot better than we're doing." (Tr. II, 186). The termination figures seem to bear that out.

Captain Rick McCain, Retired, testified that "the last several years" the police department hired a lot of people who were not good candidates. "A lot of times," he stated, "detectives would recommend that police candidates not be selected for police employment, but I believe the civil service commission had other thoughts as they believed--at least I was led to believe that the civil service commission believed that short of a felony conviction, we almost had to hire police candidates." McCain commented on the large number of suspensions and resignations in lieu of firing. "You could go back and find out that we got rid of a lot of people in the last several years. And I attribute that -- I personally believe," McCain's testimony continued, "that that's attributable to our hiring practices."

⁸By ?failure? the arbitrator does not mean failure to successfully complete the probationary period, although there were a number of employees who did not make it through probation. By failure the arbitrator means that the individual did not prove to be a good employee.

The arbitrator believes that the termination figures bear out Captain McCain's testimony that there was something wrong with the City's hiring practices. It is difficult otherwise to explain such a large percentage of terminations and forced resignations among newly hired police officers the past five or six years. Those practices, it must be remembered, included a strict residency requirement within the city limits. If nothing else, the residency requirement would have reduced the number of qualified applicants and thereby made it more likely that a faulty hiring practice would result in the employment of a less than qualified applicant.

Lieutenant Hayes also testified that when he was a deputy police chief, he recruited experienced officers on a regular basis but was unsuccessful on every attempt. Most of the officers he recruited, Hayes stated, said that they would not move to the city of Alton. By hiring an experienced police officer, the City avoids paying the cost of sending the new employee to the Police Academy for training, which costs the city from \$3,500 to \$5,000 per employee, depending on whether the City is able to obtain a training subsidy for the individual. Police trainees are paid their full salaries for the ten weeks they spend at the Academy.

Sergeant Jonniece Young of the Alton Police Department testified that she has been the department's recruiter for the past four years. She recruits at job fairs and colleges for persons to come to work for the Alton Police Department. Young testified that 20 to 30 percent of the people she talks to give as their reason for not filling out an application that they do not want to move into the city limits. The job profile she passes out lists the residency requirement.

Captain McCain, when asked by Union counsel whether or not the residency requirement in the City affects the caliber of recruits, stated, "I don't know if caliber is the right word, but it definitely kept some people from applying for the police department that we knew wanted to work for the police department, and in particular, experienced police officers. They liked the police department, but they didn't want to live in the City of Alton." The advantage to the City of hiring an experienced officer, he testified, would be to avoid the expense of sending the employee to a police training academy and would cut down on field training time. They could function as a police officer on their own in a shorter period of time, he stated.

The record indicates that fewer persons are now applying to become police officers. City Exhibit 54 shows that for the April, 1997, to April, 1998, eligibility list in Alton,

220 applications were returned. For the current list in effect from January, 2003, to January, 2005, there were only 119 applications submitted. Union Exhibit 33 shows that this is true not only in Alton but throughout the state of Illinois. With a smaller pool to select from, the number of highly qualified applicants available for hire is likely to be less than in previous years and the importance of being able to attract experienced officers from other police forces will become even more pronounced. The City's residency policy can only hurt it in terms of the number of highly qualified candidates that will apply for a job and its ability to attract experienced officers from other jurisdictions.

The City argues that the fact that a residency requirement may reduce the number of people who take out an application is not the issue on which to focus. "The fundamental question," the City asserts, "is whether or not the City has been able to attract a sufficient number of qualified applicants to fill the vacancies in the Department on an ongoing basis." The City asserts that the Union "has not shown that there is any such deficiency." In the arbitrator's opinion, the City is closing its eyes to the fact that 12 of the last 36 officers hired by the City had to be dismissed for poor performance or lack of performance.

The City also contends that fewer applicants can be a good thing because it takes significant amounts of time, energy, and resources to test and screen a large number of applicants. It cites an article in "Fire Chief Magazine" that argues that a protective services department may be better served by increasing the requirements for the positions, thereby reducing the number of applicants and saving time and costs associated with testing. There is no evidence, however, that the Alton Police Department has increased the requirements for its positions. It is reasonable to believe that a substantial reduction in the number of applicants for positions with the Alton Police Department will result in a concomitant reduction in the number of qualified applicants.

Economics

The City contends that police officers are among the top paid professionals in Alton. They live in the better homes, add stability to their neighborhoods, the City asserts, and are good citizens. The removal of their salaries from the city as a result of a relaxation of the residency requirement, the City argues, would have a negative impact upon the city in general and its revenues in particular.

The arbitrator believes that the City is overstating the economic impact of a relaxation of the residency requirement. Most people prefer to live in the community in which they work. It is therefore unlikely that a majority of officers will leave if residency is expanded. The experience in Collinsville has borne this out. The great majority of police officers who work for that community still reside in Collinsville even though the collective bargaining agreement permits them to move up to 15 miles from the police department.

There are also costs connected with Alton's strict residency policy. The credible evidence persuades the arbitrator that experienced officers of other departments who were recruited refused to come to the Alton department because they did not want to live in Alton. Every experienced officer hired instead of a trainee saves the City approximately \$5,000 in training costs. There is also a cost to the community when less than the best people are hired for the police officer job. The fact that 12 of the last 36 officers hired had to be dismissed, or were forced to resign, for performance reasons shows that the City is not getting the best people available to serve as police officers. This likely has also had a negative economic impact on the community in terms of solving or preventing crime.

It is reasonable to believe, moreover, that a person who is forced to live in a community against his will, will be resentful of the coercion and that it may affect the enthusiasm with which he performs his job. Despite its residency rule, Alton has been losing population. Between the 1990 and the 2000 censuses, Alton went down in population by 1500 people. If a city is to grow and prosper it must do things to attract people and industry or businesses. Forced residency has not worked so far to enable the city to hold its own in terms of population, and it is doubtful that it can work in the future. For any city to be successful in the long run, it must hire the best qualified and most dedicated people that are available. A strict residency rule is inconsistent with that effort.

COMPARISON WITH OTHER EMPLOYEES

Internal Comparisons

The City contends that the internal comparison

criterion clearly favors it in this proceeding. The arbitrator agrees. Except for employees who have not yet been on the City's payroll as full-time employees for 90 days, all full-time employees of the City, whether Civil Service or appointed by the mayor, are residents of the city. A mayoral appointee who was found to be living out of the city was instructed that he must live in the city. When the City would not make an exception for him, he resigned. A public works employee was discharged when the Civil Service Commission learned that his wife and children had moved to Edwardsville, that his vehicle was seen at the Edwardsville address one night after midnight, and that both he and his wife were named as the debtors on the mortgage for the Edwardsville residence. The employee also had a local address in Alton which he claimed was his residence.

As it turned out, the City lost the arbitration involving the public works employee. It thereafter permitted employees in the police bargaining unit to retain their employment where their spouse and children moved to another jurisdiction, but the employee maintained a local address and actually lived at that address. In other words, it is applying the residency rule to police officers in a manner consistent with the arbitrator's interpretation in the public works unit. The arbitrator finds that to be a reasonable course of action and not to represent a failure to enforce the residency rule.

The only exception that the City makes with regard to requiring residency within the city limits is for temporary employees or casual employees such as those who play in the City's voluntary band on a sporadic basis or referee sports games in the City's parks or recreation programs. None of these jobs are regular or full-time. For regular, full-time employees, however, there is no exception. The bargaining unit that is here involved consists of regular, full-time employees. The arbitrator finds that the internal comparisons criterion clearly favors the City's position in this case.

External Comparisons

Four of the eight comparable communities require police officers to live within the city limits: Belleville, East St. Louis, Granite City, and Wood River. The remaining four jurisdictions have relaxed residency requirements. O'Fallon has no residency requirement. Fairview Heights permits police officers to live within 30 minutes of the police station. In the arbitrator's opinion this would amount to between 15 and 20 miles from the police station.

The Collinsville collective bargaining agreement

provides that "Probationary officers will be allowed a period of 12 months after the completion of their probationary period to establish residence within the City limits." The contract does not state how long the probationary period is, but, according to the testimony of the Collinsville Assistant Chief of Police Edward Delmore, the usual probationary period is 12 months. That would mean that a newly hired officer in Collinsville could reside outside the city limits for the first two years of his employment.

The Collinsville contract further states, "Officers with five (5) years of service with the Collinsville Police department will be allowed to live outside the corporate limits of the City of Collinsville, but within fifteen miles of the Collinsville Police Department within the State of Illinois." Although for the third through fifth years of an officer's employment the Collinsville residency requirement is more restrictive than what the Union here seeks, it is, on the whole, much closer to the Union's last offer than the City's.

The collective bargaining agreement of the final comparable jurisdiction, Edwardsville, provides, "Any employee hired after the signing date of this Agreement must become a resident of Madison County within eighteen (18) months of completion of the probation period." The contract states, "An officer's probationary employment status shall be for a period of eighteen (18) months." Consequently in Edwardsville there is no residency restriction for the first 36 months of an officer's employment.

According to the Madison County, Illinois, website, Madison county includes the towns of Alhambra, Alton, Bethalto, Collinsville, East Alton, Edwardsville, Fairmont City, Glen Carbon, Godfrey, Granite City, Grantfork, Hamel, Hartford, Highland, Livingston, Madison, Marine, Maryville, New Douglas, Pierron, Pontoon Beach, Rosewood Heights, Roxana, St. Jacob, South Roxana, Troy, Venice, Williamson, Wood River, and Worden. The arbitrator considers Edwardsville's residency rule comparable, in terms of choices of communities, to the Union's last offer.

The City argues that Edwardsville's current residence requirements are more restrictive than previously existed and that Evansville's experience therefore supports a more restrictive, rather than expansive, treatment of the residency issue. While the City is technically correct, the more liberal rule was in effect for a relatively short time and resulted from a miscalculation on the part of one of its attorneys in collective bargaining negotiations. As Edwardsville City

Administrator Dickmann testified, "[I]nitially there was a residency requirement that mandated the officers to reside within the corporate limits of Edwardsville." (Tr. IV, 198). In any event, we must look at the situation now, and the current collective bargaining agreement for Edwardsville in effect until April 30, 2004, permits residency anywhere in Madison County. That provision approximates the Union's last offer in this case.

It is the arbitrator's conclusion that half of the comparable jurisdictions favor the City's position and half, the Union's. The external comparables criterion is not a significant factor in the determination of this dispute.

OTHER FACTORS

Officer Safety

The Union has presented evidence of at least eight serious incidents where the life or safety of an officer was put in jeopardy as the result of an off-duty incident while in the city; or where the danger was deemed great enough by the department to have the officer move out of his residence and/or have the residence placed under surveillance. These are summarized above at page 20 and will be reproduced here for convenience:

These included (1) a 1995 incident where a police officer shot and killed a local gang member and then received threats to himself and family that were deemed serious enough to move the officer, his wife, and their infant child out of the city for four weeks; (2) a 1994 incident where a police officer heard gunshots outside her house, secured her son in the basement, went outside to investigate, and discovered the next morning that two rounds had hit her house, with one of the bullets coming through her kitchen window; (3) a confrontation in 2000 at a gas station near her home of an officer by a man with whom the officer had previously had police dealings and who threatened to hit her over the head at the gas station with a beer can; (4) additional threats by the same individual after his arrest and comments by him that he knew where most of the Alton officers lived; (5) repeated harassment of a police officer in 1989 by a man he arrested and who was awaiting trial, including following the officer to his home, as a result of which harassment the individual was prosecuted and was convicted of felony communication with a witness; (6)

information received by the Alton police department in 2000 of a contract on the life of a patrol officer deemed sufficiently credible by the department to have the officer and his wife move out of their residence for a three day period and to maintain surveillance of the residence until the threat was effectively dealt with; (7) also in 2000 the same officer and his partner made a traffic stop, and one of the occupants of the car described the vehicle his (the officer's) wife drove and their dog and said that the wife better be careful when she walked the dog; (8) in January, 2003, a confidential informant reported in a written statement to the police that one of the drug dealers in town, whom the informant named, knew where several Alton police officers lived (naming the officers) and had followed them home.

In addition to the foregoing there were 19 reported instances of vandalism, burglary, or theft of the personal vehicle or residence of police officers between January, 1995, and May, 2002. There was also testimony of harassment encountered by officers in the presence of their families while patronizing local business establishments. The harassment was inflicted by persons whom the officers had previously arrested or by a family member of the person arrested.

The incidents occurring in this case were more numerous and no less serious than the occurrences described by arbitrator Steven Briggs in Calumet City and Illinois Fraternal Order of Police (FOP) Labor Council, ILRB Case No. S-MA-99-128 (2000), at pages 68-71, and which were the principal basis for arbitrator Briggs to hold for the Union in that case on the residency issue. According to Briggs's opinion the population of Calumet City was 37,840, and the number of sworn police personnel, 77. Both the population and the department therefore were somewhat larger than Alton's, although the incidents were fewer.

It appears to this arbitrator that safety is a legitimate issue for the Union in opposing Alton's strict residency law. Off-duty police officers are being threatened and harassed in circumstances where it is reasonable to believe that particular incidents would not have occurred but for the officers' residing in the city. Criminals have attempted to intimidate police officers by telling the officers that they know where they live and describing their personal vehicles or other possessions. It is reasonable for police officers to believe that living outside the city would make it more difficult for criminals to find them and their families.

The City argues with respect to the vandalism against the residences and vehicles of the officers that there is no proof that these were acts of retaliation against the police officers for their police activities. The City points out that the homes and cars of citizens who are not police officers are also vandalized. That may be true, but because of the nature of their jobs police officers have good cause to suspect that the vandalism is not random but directed against them in retaliation for acts performed by them in the line of duty. They are therefore more likely to feel intimidated by such acts than the ordinary citizen whose job does not involve daily confrontation with violent people or criminal elements. The many acts of vandalism directed against police officers in Alton do contribute to the argument that they should be permitted to reside outside the jurisdiction where it will be more difficult to find them.

The City argues that police officers in danger of retaliation are safer living in the city because when they reside outside the city they can no longer depend upon the support of on and off-duty officers who reside in the city. However, if criminals do not know where the police officer lives outside the city, that fact in itself will probably provide more safety for the officer and his family than the support of his colleagues. The fact that there are so many acts of harassment, vandalism, and intimidation against police officers shows that living in the city with one's colleagues does not really provide a great deal of protection. The cases where a great deal of protection was provided to police officers occurred in the situations where the police officers were asked to leave town with their families. That kind of protection can be provided no matter where the officer lives. And the fact that the department asked the officers and their families to leave town when it believed that they were in especially great danger shows that the department itself had serious reservations about its ability to protect them in town.

In addition to Calumet City, supra, another case where intimidation and vandalism against police officers played a large part in the arbitrator's decision to require a relaxation of a strict residency requirement was City of Kankakee and Illinois Fraternal Order Of Police Labor Council, ILRB Case No. S-MA-99-137 (Michael H. LeRoy, 2000.) Kankakee's population was approximately 10 percent below Alton's, and its police force consisted of 72 officers, the same size as Alton's. One of the grounds strongly relied on by the union in the Kankakee case in asking for relaxation of the residency requirement was the safety of the officers.

Arbitrator LeRoy enumerated 15 criminal acts committed

against police officers or their families between 1993 and 1999. Some of these were similar to the 19 acts of vandalism against the vehicles or residences of Alton police officers referred to above. None of the incidents described in the Kankakee case were as serious as the most serious of the eight serious incidents summarized above as occurring to police officers in Alton. Arbitrator LeRoy stated as follows regarding the criminal acts involving Kankakee police officers:

In sum, there is ample evidence that the residency requirement has exposed bargaining unit employees and their immediate families to crimes and safety threats that directly result from living within City limits. If this exposure had only affected the employees' enjoyment and use of personal time, there would be no basis under Section 14(h)3) to interfere with the City's residency requirement. However, since the record demonstrates a clear linkage between the residency requirement and personal safety concerns for employees and their families, which in turn has caused the City to lose the services of valuable employees in positions of leadership, the public interest and general welfare of the City is no longer being served by the residency requirement. Accordingly, the Arbitrator rejects the City's final offer of maintaining residency.

As noted, in the present case there were even more criminal acts or threats directed against police officers and/or their families than in the Kankakee case. Further, in this arbitrator's opinion Alton's worst cases surpassed the Kankakee worst cases in the degree of seriousness and the credibility of the threat to the police officers involved. In addition there is credible evidence that police officers have left the Alton police force because of the residency requirement. Michael Freiner testified that he left the Alton police department after nine years and took a pay cut to take a job with the Bethalto police department. His letter of resignation, he stated, gave the residency requirement as one of the reasons for his resigning. He moved to Bethalto, he testified, because his children were in sixth and second grades, and he had a lot of interaction with gangs and criminals while working in Alton. According to Freiner, some of the felony arrests he made involved children the same age as his 12 year old son and who were going to the same school with his son.

Lieutenant Hayes testified that many experienced officers have left the Alton force because of residency. He estimated at least 10 in the past 20 years (Tr. II, 171). Two

experienced officers who left most recently, he stated, were Mike Freiner and Gary Underhill.

The arbitrator finds that the evidence establishes that the police officers in Alton have legitimate concerns for their own and their families' safety as a result of being required to live within the city limits of Alton and that permitting them to live outside the city would contribute to their safety and probably reduce the amount of vandalism and attempts to intimidate them to which they and their families are subjected.

Concluding Statement

The arbitrator finds that the Union has sustained its burden of proof to show that the police officer bargaining unit should be granted expanded residency. Criteria (3) and (8) of Section 14(h) of the Act both favor a holding in favor of the Union on the residency issue. As for (3), the interests and welfare of the public, the arbitrator is persuaded that the requirement that all police officers reside within the city of Alton after hire has resulted in a decline in the quality of a significant number of applicants for employment. This is borne out by the fact that the department discharged one-third of the new police officers hired the past five and one-half years for performance reasons. The arbitrator finds that with expanded residency the City would have had a pool of better candidates to pick from and would also have had a much better chance of recruiting experienced officers from other police forces. The interests and welfare of the public are adversely affected when the quality of police department applicants declines as a result of restrictive residency requirements for employment.

With regard to criterion (8), "other factors," the arbitrator finds, for the reasons stated above in the section headed Officer Safety, that the current strict residency rule is detrimental to the safety of the police officers and their families. As stated above, the evidence establishes that Alton police officers have valid concerns for their own and their families' safety as a result of being required to live within the Alton city limits and that permitting them to live outside the city would contribute to their safety and likely reduce the amount of vandalism and attempts to intimidate them to which they and their families are exposed.

In Calumet City, supra, similar incidents, although fewer in number, were held by arbitrator Briggs to be a sufficient basis for adopting the union's last offer over the city's despite the fact that the internal comparables criterion

strongly favored the city. Arbitrator Briggs reasoned that the criminal acts perpetrated against the officers were a sufficient basis for breaking the pattern accepted by all of the other bargaining units because none of the employees in the other bargaining units arrested suspected criminals or testified against them on a routine basis as part of their jobs. "Obviously, then" arbitrator Briggs stated, "such employees are not concerned about whether the criminal element knows what they do for a living and where they live." Arbitrator Briggs continued:

In stark contrast to all other Calumet City employees, its police officers and their families are subject to reprisal at any time from persons who have demonstrated no respect for the law and little regard for human life. The Neutral Chair has concluded that the equity favors them here, and that their individual safety should prevail over the perceived need some citizens have expressed to have cops living in their neighborhoods.

The arbitrator believes that arbitrator Briggs's reasoning applies equally here. This arbitrator, however, need not only rely on safety considerations in order to find for the Union. Unlike the case before arbitrator Briggs there is a separate and independent reason, as explained above, why the interests and welfare of the public support a loosening of the residency requirement.⁹

⁹See also arbitrator Goldstein's decision in City of Rockford, ILRB Case No. S-MA-99-78 (2000), where he found that the internal comparables criterion strongly favored the city and that a holding for the union could subject the city to whipsawing tactics on the residency issue by the other bargaining units, but nevertheless adopted the union's proposal on residency because of the inability of management to show operational reasons for denying the request for change. An added consideration was the union's contention about the tax burden in Rockford.

Finally for the reasons discussed above under the headings Response Time and Economics the arbitrator finds that there are no operational reasons favoring adoption of the City's proposal.

The arbitrator will adopt the Union's proposal, but will modify it. The arbitrator believes that a 20 mile limit could easily make it too difficult for police officers to drive to the police station from their homes and arrive promptly. A more reasonable mileage limit is 15 miles, which is the limit in Collinsville and was also the original proposal of the Union. In addition, the mileage should be measured with reference to the police station as is the case in Collinsville and Fairview Heights (where time rather than mileage is measured). With these changes the arbitrator believes that there should not be a problem in meeting required response times. The arbitrator is also of the opinion that the matter of providing a vehicle to employees who reside outside the city limits should be left to the City's discretion rather than made the subject of an absolute rule. See arbitrator McAlpin's discussion of vehicle usage in City of Nashville, ILRB Case No. S-MA-97-141 (1999), at page 20.

A W A R D

The Union's proposal is adopted as modified below. The provision on residency in the current collective bargaining agreement of the parties shall state as follows:

No later than 90 days after appointment to a

position by the Civil Service Commission, employees shall be required, as a condition of continued employment, to establish and maintain residency in Illinois within 15 miles of the present Alton police station. The providing of a take-home vehicle to any officer who resides outside the corporate limits of the City of Alton shall be at the discretion of the Employer.

Respectfully submitted,

Sinclair Kossoff
Arbitrator

Chicago, Illinois
September 17, 2003